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PRESENTED & RECORDED

09/12/2023 09:40:21 AM

BETH C LANDRETH

REGISTER OF DEEDS

BY: KARIN SMITH

ASSISTANT

BK: DOC 1091

PG: 10 - 42

Please return to Robert E. Dungan, Allen, Stahl & Kilbourne, 20 Town Mountain Road, Suite 100
Asheville, North Carolina 28801

References: Book 1, Page 596
 Book 2, Page 173
 Book 2, Page 349
 Book 2, Page 437
 Book 2, Page 503
 Book 2, Page 623
 Book 3, Page 209
 Book 3, Page 213
 Book 4, Page 117
 Book 4, Page 122
 Book 6, Page 212
 Book 6, Page 223
 Book 6, Page 229
 Book 6, Page 306

**STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA**

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
TICOA VIEW VILLAS CONDOMINIUM**

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR TICOA VIEW VILLAS was adopted and approved as of July 14, 2023, by the Owner-Members of Ticoa View Villas Association One Inc., a North Carolina non-profit corporation (hereinafter, the "Association").

WITNESSETH:

WHEREAS Fred H. Smith (hereafter referred to as "Declarant") recorded the Declaration of Unit Ownership of Ticoa View Villas Condominium on June 13, 1975, in Book 1, Page 596, Transylvania County Registry ("Original Declaration"); and

Submitted electronically by "Allen, Stahl, & Kilbourne, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Transylvania County Register of Deeds.

WHEREAS Declarant unilaterally recorded amendments to the Original Declaration in order to record Architect's Certificates for the five (5) buildings and restate ownership interests as additional condominium buildings were constructed as follows: Book 2, Page 173; Book 2, Page 349; Book 2, Page 437; Book 2, Page 503; Book 2, Page 623; Book 3, Page 209; and Book 3, Page 213, Transylvania County Registry (hereafter "Declarant Amendments"); and

WHEREAS the Unit Owners amended the Original Declaration by amendment recorded on July 18, 1983, in Book 4, Page 122, Transylvania County Registry (hereafter "Owner Amendment"); and

WHEREAS the Unit Owners further amended the Original Declaration for the purpose of adopting the North Carolina Condominium Act on August 22, 1989, as recorded in Book 6, Page 223, Transylvania County Registry (hereafter "Condominium Act Adoption Amendment"); and

WHEREAS the Bylaws of the Association and the Rules and Regulations for the condominium were recorded as Exhibits "C" and "F" respectively of the Original Declaration; and

WHEREAS the Unit Owners amended the Bylaws and the Rules and Regulations at various times and recorded those amendments as follows: Book 4, Page 117; Book 6, Page 212; Book 6, Page 229; and Book 6, Page 306, Transylvania County Registry (hereafter "Bylaws and Rules Amendments"); and

WHEREAS being governed by the North Carolina Condominium Act allows the Association to operate and to administer the condominium with Bylaws and Rules and Regulations that are not recorded; and

WHEREAS the members of the Association in voting for this Amended and Restated Declaration of Condominium have also voted to strike the Bylaws as amended and the Rules and Regulations as amended in order that henceforth there shall be no further requirement to record Bylaws and Rules and Regulations, since the members are also voting on new unrecorded Bylaws and Rules and Regulations; and

WHEREAS the members of the Association by a vote of eighty-five percent (85%) of the voting and ownership interests of the condominium voted to approve the Amended and Restated Declaration of Condominium, to strike the Original Declaration to include the Bylaws (Exhibit "C") and the Rules and Regulations (Exhibit "F"), to strike the Owner Amendment, and to strike the Bylaws and Rules Amendments; and

WHEREAS the Declarant Amendments and applicable property and unit descriptions contained in exhibits to the Original Declaration will be preserved for the sole purpose of documenting the development of the condominium and the original description of units; and

WHEREAS the Condominium Act Adoption Amendment will be preserved to document the adoption of Chapter 47C of the General Statutes, even though the Amended and Restated Declaration of Condominium makes Chapter 47C the sole governing statute for the condominium to the exclusion of Chapter 47A;

NOW THEREFORE, the Association hereby strikes the Original Declaration, the Bylaws and the Rules and Regulations, the Owner Amendment, and the Bylaws and Rules Amendments, and replaces the Original Declaration with the attached AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR TICOA VIEW VILLAS. Furthermore, it is declared that the Bylaws of the Association and Rules and Regulations promulgated by the Association shall no longer be recorded.

IN WITNESS WHEREOF, the undersigned officers of Ticoa View Villas Association One hereby certify that the attached Amended and Restated Declaration for Ticoa View Villas Condominiums has been duly adopted by the Association and its membership in accordance with and pursuant to the requirements of the Original Declaration, as amended and to N.C. Gen. Stat. Chapter 47C, the North Carolina Condominium Act.

This 28th day of July, 2023.

Ticoa View Villas Association One

By: [Signature]
President

Attest: [Signature]
Treasurer

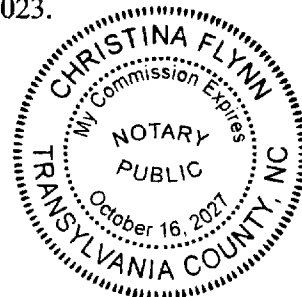
NORTH CAROLINA
Transylvania COUNTY

I Christina Flynn, Notary Public for Transylvania County, North Carolina, certify that Neal Estes came before me this day and acknowledged that s/he is Treasurer of Ticoa View Villas Association One, a North Carolina nonprofit corporation, and that by authority duly given as the act of the corporation, the foregoing instrument was signed by its President and attested by its Treasurer.

Witness my hand and official seal, this the 28th day of July, 2023.

Christina Flynn
Notary Public

My commission expires: 10.16.2029



**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR TICOA VIEW VILLAS**

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ARTICLE I
CONDOMINIUM PROPERTY

Section 1.1. The North Carolina Condominium Act (N.C. Gen. Stat. §§47C-1-101 et seq.) shall apply to and govern through its provisions the Condominium Property known as Ticoa View Villas Condominiums, located in Transylvania County, North Carolina, and, as such, the provisions of Chapter 47A of the North Carolina Statutes shall cease to apply to and govern through its provisions the Condominium known as Ticoa View Villas Condominiums.

Section 1.2. The North Carolina Condominium Act shall apply to and govern through its provisions the Ticoa View Villas Association One, Inc., which is the association of Unit Owners for the Condominium.

Section 1.3 The Condominium known as Ticoa View Villas consists of twenty (20) condominium units, located in five (5) condominium buildings, developed in phases, which Condominium Property is described in the Original Declaration recorded in Book 1, Page 596, Records of Condominiums, Transylvania County Registry and in Exhibit "A" to this amended and restated declaration.

ARTICLE II
DEFINITIONS

In accordance with 47C-1-103 of the Condominium Act and unless specifically provided otherwise or the context otherwise requires, the following terms as used in this Amended and Restated Declaration of Condominium for Ticoa View Villas Condominiums shall have the following meaning:

1. "Assessment" means a Unit Owner's share of the common expenses assessed against such Unit Owner and his or her Unit from time to time by the Association, in the manner hereinafter provided.
2. "Association" or "Condominium Association" means the Ticoa View Villas Association One, a North Carolina non-profit corporation.
3. "Board" or "Board of Directors" means the Board of Directors of Ticoa View Villas Association One and "Director" or "Directors" means a member or members of the Board.
4. "Bylaws" means the corporate Bylaws for the Association.
5. "Common Areas" or "Common Elements" means all the condominium property excluding

the Units but including Limited Common Areas and Limited Common Elements. The terms "Common Areas", "Common Areas and Facilities", and "Common Elements" shall be equivalent and interchangeable as used or referred to in the Declaration, Bylaws, and Rules and Regulations. This equivalency facilitates the transition from the Unit Ownership Act to the Condominium Act.

6. "Common Expenses" means all or any of:
 - A. All expenses incident to the administration, improvement, maintenance, repair or replacement of the Common Elements.
 - B. Expenses determined by the Association to be common expenses, and which are lawfully assessed against the Unit Owners.
 - C. Expenses declared to be common expenses by the Condominium Act or the Condominium Documents.
 - D. Expenses agreed upon as common expenses by the Association.
 - E. Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the Common Elements or any other real or personal property acquired or held by the Association.
7. "Common Expense Liability" means the liability for common expenses allocated to each Unit pursuant to the Condominium Act and for any other common expense or charge in accordance with the Declaration and Bylaws.
8. "Condominium Act" means the North Carolina Condominium Act, Chapter 47C of the General Statutes of North Carolina, as amended.
9. "Condominium Documents" means and includes this Amended and Restated Declaration, all Plats and Supplemental Declarations subjecting property to the covenants, conditions and restrictions contained in this Declaration and previous declarations, the Articles of Incorporation, the Bylaws, and such Rules and Regulations as may be created governing the use of the Condominium Property.
10. "Condominium Property" or "Property" means all the property submitted to the covenants, conditions, and restrictions of the Original Declaration, as described in Book 1, Page 596, Records of Condominiums, Transylvania County Registry, and as described in Exhibit "A" attached hereto.
11. "Declaration" means this Amended and Restated Declaration for Ticoa View Villas Condominiums.
12. "Limited Common Area" or "Limited Common Elements" means and includes those common elements which are agreed upon by all the Unit Owners to be reserved for the use of a certain number of Units to the exclusion of other Units, and include those areas as designated on the Plans to the Declaration or identified in Article IV, Section 4.5 of this Amended and Restated Declaration or identified in any subsequent Supplementary

Declaration or amendment.

13. "Majority" or "Majority of the Owners" means the owners of more than fifty 50 percent (50%) of the aggregate interest in the Common Elements.
14. "Mortgage" means any deed of trust, mortgage, security agreement and financing statement or all other similar instruments given to secure the payment of a debt by granting a security interest in a Unit.
15. "Mortgagee" means any secured party under a security agreement or mortgage and the beneficiary under or a holder of a deed of trust.
16. "Officer" shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Secretary, Treasurer and such other support and offices as the Board may determine necessary.
17. "Percentage Interest" or "Allocated Interest" means the percentage of undivided interest each Unit Owner owns in the Common Elements as set forth in the Exhibit "B" of this Amended and Restated Declaration.
18. "Person" means a natural person, corporation, business, partnership, association, trustee, fiduciary or other legal entity.
19. "Plat" means a site survey depicting the boundary of the Ticoa View Villas Condominium which shows the location of the foundations and the Units and which was submitted as a separate attachment to the Original Declaration, and was also recorded in File No. 1, Slide 47, Transylvania County Registry.
20. "Plans" means the plans of the buildings and Units by a Professional Engineer or architect. The Plans for Ticoa View Villas Condominium were attached to the Original Declaration as Exhibit B and filed in Condominium File 1, Transylvania County Registry.
21. "Supplementary Declaration" means any declaration the filed by Declarant to submit additional property to the Original Declaration and to provide further documentation for additional phases.
22. "Unit" or "Condominium Unit" means the physical portion of the Condominium designated for separate ownership or occupancy whose boundaries are as set forth in Article III of this Declaration.
23. "Unit Owner" or "Owners" or "Members" means the record legal fee owner or owners of a Unit, excluding any lender, trustee, or creditor whose interest in the unit is merely as security for the performance of an obligation or repayment of an indebtedness.

ARTICLE III

UNITS

Section 3.1. Description of Units.

A. Nature of Ownership. Every Condominium Unit, together with the corresponding undivided interest in the Common Elements, shall constitute a separate parcel of real estate. The Unit Owner is entitled to the exclusive ownership and possession of the Unit, subject only to the covenants, conditions, and restrictions contained in the Condominium Documents. The percentage undivided interest in the Common Elements of each Unit shall not be separated from the Unit to which it appertains. A Unit Owner is automatically a member of the Association and shall remain so until his or her ownership ceases for any reason. By acceptance of a deed to a Unit the Unit Owner agrees to abide by the Condominium Documents.

B. Unit Boundaries. Each Unit shall include all the space within the interior finish of all exterior walls or party walls of said Unit. Each Unit is bounded both as to horizontal and vertical boundaries by the interior facing of the exterior perimeter walls of the building, the unfinished upper surface of the subflooring in each floor and the interior surface of the roof sheathing, decking or roof joists. The Unit will include all interior lath, furring drywall, wallboard, plasterboard, plaster, paneling, molding, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of any wall, floor or ceiling. The following are also included a part of the Unit:

1. Heating and air conditioning systems, dehumidifiers, sump pumps and radon abatement systems serving the Unit wherever located.
2. The electrical wiring and system, including but not limited to breaker boxes and fuse boxes, wherever located, from the service meter to the place where it connects with all uses within the Unit.
3. All other utility lines at the point they enter the building in which the individual Unit is located, other than those items described as Common Elements under Article IV, Section 4.1, below.
4. Plumbing at the point where the water lines enter the building in which the individual Unit is located to the end use in a Unit, including and together with all plumbing fixtures.
5. The sewer plumbing and drainage from all points within the individual Units to the point where the sewer plumbing, or drainage exits from the building in which the individual Unit is located.
6. Television, internet, wi-fi, and cable systems serving the Unit, wherever located.

7. All fireplaces.
8. Any built-in cabinets and appliances.
9. Any installed burglar alarm system, intercom system, or electric garage door opening system.
10. Any installed bathroom, kitchen, attic, or other fan.
11. Any exterior light which is controlled from within a Unit, the repair and replacement of which shall be the Unit Owner's responsibility subject to approval by the Board of Directors.

Section 3.2. Interpretation. In interpreting the Declaration and its Plans, the actual physical boundaries of a Unit, as originally constructed, or of a Unit reconstructed in substantial compliance with the original plans thereof, shall be conclusively presumed to be its boundaries regardless of settling or lateral movement of the building, and regardless of minor variances between boundaries shown on the Plans and those of the Unit. Each Unit designation, type, and percentage interest in the Common Elements are set out in Exhibit "B" of this Amended and Restated Declaration.

ARTICLE IV

COMMON ELEMENTS

Section 4.1. Common Elements or Common Areas. Common Elements include and consist of all parts of the Condominium located outside of the Unit boundaries of the respective Units, including but not limited to the following:

- A. The land on which the buildings are erected and all the land surrounding the buildings that lies within the boundaries of the land subjected to this Declaration.
- B. The foundation and structural members, (including interior loadbearing walls, studs, and supports, columns, girders, and beams), exterior walls, concrete slabs, wall and roof insulation, roofs, roof trusses, roof underlayment and shingles, halls, corridors, stairs, stairways, and entrances to and exits from the building, ceiling and floor joists, subflooring, and every part of the building and property other than the Units.
- C. All utilities designed and intended for common use or to serve more than one Unit including but not limited to electrical service, gas, plumbing, sewer pipes, heating and air conditioning, ducts, wires, cables, wires, cable or television or radio antenna systems, whether located in Common Areas or in the Units, excluding from such utilities all items affixed or connected thereto not designed or intended for common use by more than one Unit.

- D. Easements for access, maintenance, improvements, repair, reconstruction or replacement of Common Areas or any property owned by the Association and all other services necessary or convenient to the existence, maintenance, safety and use of the property or any property owned by the Association.
- E. The yards, fences, non-public roads and driveways, parking areas, walkways, retaining walls, and all paved areas.
- F. All maintenance and recreational areas.
- G. Any portion of the property shown and designated on the Plans as Common Areas or Limited Common Areas.

Section 4.2. Percentage Interest. The Unit Owners shall own the Common Elements, with each Unit having appurtenant thereto the undivided percentage fee simple interest in said Common Elements as set forth in Exhibit "B", attached hereto and by this reference incorporated herein; provided, however, the use of the Limited Common Elements shall be restricted as set forth in Section 5 of this Article.

Section 4.3. Inseparability of Percentage Interest. The percentage interest in the Common Elements cannot be separated from the Unit to which it appertains and shall automatically be conveyed or encumbered with the Unit, even though such interest is not expressly mentioned or described in the deed or other instrument.

Section 4.4. Use of Common Elements. Each Unit Owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Unit Owners. In the event of a dispute, the Board, in its sole discretion, may determine the purpose for which a part of Common Areas is intended. The Board shall have the right to promulgate rules and regulations limiting the use of Common Areas to Unit Owners and their guests as well as provide for the exclusive use of a part of the Common Elements by a Unit Owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any Unit Owner may delegate, in accordance with the provisions of this Declaration and the Bylaws and reasonable Rules and Regulations, his or her right to use the Common Areas to the immediate members of his or her family living in the Unit or to a limited number of guests or to tenants who reside in his or her Condominium Unit.

Section 4.5. Limited Common Elements. Certain parts of the Common Elements, herein called and designated as "Limited Common Elements," are hereby set aside, and reserved for the exclusive use of the Units to which they are appurtenant, and such Units shall have appurtenant thereto an exclusive easement for the use of such Limited Common Area and Facilities. The Limited Common Elements shall be those set forth in N.C. Gen. Stat. 47C-2-102(2) and (4), which shall include, but not be limited to exterior doors and windows, doorsteps, stairways, shutters, awnings, window boxes, storm doors, windows, porches, railings, balconies, patios and storage units adjacent to and/or associated with a particular Unit or Units. Owners may perform their own maintenance to the Limited Common Elements. However, any maintenance, repairs or re-construction performed on Limited Common Elements by the

Unit Owner shall first be approved by the Board of Directors.

ARTICLE V
RESTRICTIVE COVENANTS AND USE RESTRICTIONS

Section 5.1. Residential. Each of the Units shall be restricted exclusively to single-family residential use and shall be occupied only by a single family, its nurses, aides, servants or caretakers and guests.

Section 5.2. Subdividing. No unit may be subdivided into smaller units, nor any portion thereof sold or otherwise transferred.

Section 5.3. Business Activities. No business activities shall be conducted on any portion of the property; however, a private office may be maintained in a Unit as long as such use is incidental to the primary residential use of the Unit, no traffic is associated with the office, and is approved by the Board of Directors.

Section 5.4. Alterations. A Unit Owner(s) shall not change the exterior appearance of any entrance door, storm doors, porch area, walls, etc. (by painting it with a different color, adding fixtures thereto, or otherwise) or windows to their unit, nor shall a Unit Owner make structural alterations or modifications to his or her Unit or to any of the Common Elements or Limited Common Elements, without the written approval of the Board of Directors.

Section 5.5. Renting/Leasing. The condominium has been and the Unit Owners desire that it continue to be a community of owner-occupied homes. The Unit Owners also recognize the necessity of leasing or renting out a Unit that might arise. Nevertheless, the Unit Owners want to restrict the renting of Units to retain the character of this community. No Unit Owner therefore shall be permitted to rent out or lease a Unit more than three times in one (1) calendar year. Additionally, no Unit shall be rented or leased for a period of less than one calendar month. Subleasing of a leased Unit is prohibited, and thus all leases for Units must contain this prohibition of subleasing. The Board of Directors shall have the specific right to promulgate Rules and Regulations concerning renting and leasing of Units.

Section 5.6. Access to Units. The Association and its agents shall have access to each Unit during reasonable working hours, upon twenty-four (24) hours written notice to its owner, as may be necessary for the maintenance, repair, or replacement of any Common Areas.

Section 5.7. Emergency Access. All Unit Owners shall provide the Association or its agents with a key(s)/code, to the Unit to permit emergency access if the Owner is absent. If the Unit Owner changes the lock(s)/keypad to the Unit, a new key/code must be provided to the Association immediately.

Section 5.8. Noise Control. Owners shall control noise, in and from, their units at all times so as to not disturb the comfort and convenience of neighbors.

Section 5.9. Pets. No dogs shall be housed in a condominium unit by owners, tenants or guests except for registered service dogs. No other pets shall be housed in a condominium unit without written approval of the TVVA Board of Directors.

Section 5.10. Motor Vehicles. No motor vehicles (other than private passenger vehicles), boat, boat trailer, mobile home, trailer, or any similar items shall be parked overnight in in the Common Elements or any roadway within Ticoa View Villas unless approved by the Board.

Section 5.11. Vehicle Parking. There are approximately thirty (30) parking spaces for twenty (20) units. Parking has never been assigned at Ticoa View Villas. Changing use of the Units and parking demand at the condominium may require measures to control and to facilitate parking for owners. The Board of Directors shall have the specific authority and right to assign parking spaces to units and to promulgate Rules and Regulations that address vehicle parking. Should the Board exercise its authority to assign spaces to units, the Board may do so by publishing the assignment of spaces and marking such assignments in the manner that the Board may decide in its sole discretion. Assignment of parking spaces by the Board is not intended to be nor shall it be construed to be a designation of limited common elements. Parking spaces and the parking area shall continue to be common elements.

Section 5.12. Signs. No signs shall be displayed which are visible from the exterior of any Unit or on the Common Elements, including "For Sale" signs, without written permission from the Board.

Section 5.13. Prohibitions in Use of Common Elements. Except on specific approval of the Board or as stated in the Rules and Regulations as adopted by the Board, the Common Elements, including Limited Common Areas, shall not be used for temporary or permanent storage of supplies, personal property, trash or refuse of any kind, except in trash receptacles placed in designated areas, nor shall they be used for the drying or airing of clothing, rugs, or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed. In general, no activity shall be carried on nor condition that will despoil the appearance of the Condominium Property.

Section 5.14. Nuisances. No nuisances shall be allowed upon the Condominium Property and no person shall engage in any use, practice or activity upon such property which is obnoxious, offensive or a source of annoyance to Unit Owners or which reasonably interferes with the peaceful and proper use of the property by any Unit Owner. All parts of the property shall be kept in a clean and sanitary condition. No rubbish, refuse or garbage shall be allowed to accumulate, and no fire hazard shall be allowed to exist. No Unit Owner shall permit any use of his or her Unit or make any use of the Common Elements which will increase the rate of insurance upon the Condominium Property.

Section 5.15. Antennas. There shall be no exterior antenna for television, radio, citizen band, ham radio, nor any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals except with the express written permission of the Board of Directors.

Section 5.16. Restriction on Transfer of Common Elements. The Association shall not sell, transfer, or encumber any portion of the Common Elements without the written approval of owners and mortgagees of Units totaling ninety percent (90%) of the percentage interest in the Common Elements and

all of those having use of Limited Common Areas thereby affected.

Section 5.17. Rules and Regulations. The Board has authority to promulgate and may from time to time promulgate reasonable rules and regulations respecting the Units and the Common Elements.

ARTICLE VI

EASEMENTS

Section 6.1. Use and Enjoyment. Every Unit Owner, his or her family living in his or her Unit, his or her tenants and permitted guests shall have a right and easement of use and enjoyment in and to the Common Elements., except Limited Common Elements not allocated to his or her Unit shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- A. The right of the Board of Directors to control the use and enjoyment thereof, which shall include but not be limited to, the right of the Board to limit use and enjoyment thereof to the Unit Owners and their respective families living in the Unit, tenants and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof, at certain designated times by a Unit Owner, his or her family, tenants and guests.
- B. After notice and opportunity to be heard, the right of the Board of Directors to suspend the voting rights and rights to use the recreational facilities by a Unit Owner, his or her tenants and guests, for any period of time during which an assessment against his or her Unit remains unpaid, or any separate charge incurred by such Unit Owner for use of the recreational facilities remains unpaid or for infractions of its published Rules and Regulations.

Section 6.2. Maintenance and Repair. There shall be an easement through the Units and the Common Elements for the installation, maintenance, repair and replacement of Units and the Common Elements. Use of this easement shall be only during normal business hours, except that access may be had at any time in the case of emergency.

Section 6.3. Structural Support. Every portion of a Unit or the Common Elements which contributes to the structural support of any other unit shall be burdened with an easement of structural support.

Section 6.4. Encroachment. If any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon any other Unit or upon any portion of the Common Elements as a result of settling or shifting of a building or as the result of survey error or error in description, an easement for the encroachment and for the maintenance of the same so long as the building stands, shall exist. If any building, any Unit, any adjoining Unit or any adjoining part of the Common elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of eminent domain proceedings and then rebuilt upon the original site and upon the same Plans as the original building, encroachments of parts of the Common Elements due to such rebuilding shall be permitted, and valid easements for such

encroachments and the maintenance thereof shall exist so long as the subject building shall stand.

Section 6.5. Utilities. There shall be a general easement upon, across, above and under all of the property for ingress, egress, installation, replacing, repairing and maintaining all utilities including, but not limited to, water, sewer or septic or sewage treatment system, telephone, gas and electricity or other community service (i.e., master television antenna system or cable television or security system, if installed) which the Declarant or the Association has installed or the Association might install to serve the property. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles and other necessary equipment on the property and to affix and maintain wires, conduits, cables, and the like on, above, across, under and through the roofs and exterior walls of the Units. Each Unit shall also be subject to a general easement of ingress and egress for the installation, replacement, repair, and maintenance of any utility system existing for the benefit of any other Unit. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only with advance notice to the unit owner directly affected thereby.

Section 6.6. Other. There shall be a general easement to the Association, its directors, officers, agents, and employees (including, but not limited to, any manager employed by the Regime) to enter upon the property or any portion thereof in the performance of their duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the unit owner directly affected thereby.

ARTICLE VII

ASSOCIATION OF UNIT OWNERS

Section 7.1. Association Authority. The Association shall manage and administer the Condominium and shall have all powers and duties granted to it by the applicable provisions of the Condominium Act and the Documents.

Section 7.2. Delegation of Unit Owner Authority to Association: The Unit Owners, for themselves and for their heirs, assigns and successors in interest, do hereby delegate all responsibility pursuant to the terms of this Amended and Restated Declaration and to the Act to the Association for the management and administration of the affairs of the Condominium, with such delegation of authority to run with the land.

Section 7.3. Association Membership. All Unit Owners by virtue of their ownership of a Unit in the Condominium are members of the Unit Owners Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Such Owners shall be entitled to vote the allocated percentage interest for

each Unit as set forth in Article IV and Exhibit "B" of this Amended and Restated Declaration. The membership of the Association shall be limited to and consist of all the Unit Owners.

Section 7.4. Powers and Duties. Acting by and through its Board of Directors, the Association shall have the powers and duties necessary for the administration of the affairs of the Condominium which shall include, but not be limited to the following:

- A. Adopt and amend bylaws and rules and regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for common expenses from unit owners;
- C. Hire and terminate management agents and other employees, agents, and independent contractors;
- D. Institute, defend or intervene in its own name in litigation or administrative proceeds on matters affect the condominium;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement, and modification of the common elements;
- G. Impose charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and opportunity to be heard, suspend privileges or services provided by the association (except rights of access to Units) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer, and levy reasonable fines not to exceed one hundred dollars (\$100.00), pursuant to Section 47C-3-107.1 of the Act for violations of the Declaration, Bylaws or rules and regulations of the Association;
- H. Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates required by Section 47C-4-109, or statements pursuant to Section 47C-3-107.1 of unpaid assessments of the Act;
- I. Provide for the indemnification of and maintain liability insurance for officers, executive board, directors, employees and agent;
- J. Assign its right to future income, including the right to receive common expense assessments;
- K. Exercise all other powers that may be exercised in this state by legal entities of the same types as the Association; and
- L. Exercise any other powers necessary and proper for the governance and operation of the Association.

ARTICLE VIII

MAINTENANCE RESPONSIBILITIES

Section 8.1. By the Association. The Association shall maintain, repair, and replace the Common Elements and the cost shall be charged to the Unit Owners as a common expense. Notwithstanding this, each Unit Owner shall be responsible for the general upkeep and maintenance (but not repair and replacement) of the Limited Common Elements allocated to his or her Unit.

Section 8.2. By the Unit Owner. Unit Owners are financially responsible for any maintenance, repair or replacement of those items contained within the Unit Boundaries as defined in Article III (3)(B) and as further described in Article III (3) (B) (1-10) of this Declaration.

Section 8.3. Liability for Damages to Units and Common Elements. Damages to any portion of the Unit caused by agents or employees employed by the Association shall be repaired by the Association. All damages to the Common Elements and Limited Common Elements intentionally or negligently caused by Unit Owner, their family invitees, agents and lessees, employees or contractors shall be repaired promptly by such Unit Owner, except to the extent such damage is covered by hazard insurance maintained by the Association. If the Unit Owner fails to repair said damage within fifteen (15) days from written demand by the Board, the Association may repair said damages and costs thereof shall be assessed against the responsible Unit Owner.

Section 8.4. Restrictions on Unit Owners. No Unit Owner shall perform any maintenance, repair, or replacement upon his or her Unit which infringes the rights of the other Unit Owners, or which jeopardizes the soundness or the safety of the Condominium Property. Any work so performed, which in the sole opinion of the Board violates the terms of this paragraph, shall be immediately corrected by the owner. If the Unit Owner fails to correct said work within fifteen (15) days from written demand by the Board, the Association may remove, modify, or alter the work and costs thereof shall be assessed against the responsible Unit Owner. A Unit Owner shall not repair, alter, or replace any of the Common Areas without the prior written consent of the Board.

ARTICLE IX

ASSESSMENTS

Section 9.1. Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare and approve a budget covering the estimated cost of operating the Association during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, reserves for contingencies and replacements, reserves for contingencies, replacements and maintenance items not performed annually. The Board shall cause the budget and the annual assessments to be levied against each Unit for the coming fiscal year. Within thirty (30) days after adoption of any proposed budget for the condominium, the Board shall provide to all Unit Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified

without a quorum. The Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget, such meeting to be held not less than ten (10) not more than sixty (60) days after mailing of the summary and notice. In the sole discretion of the Board, such summary and notice may be sent by electronic mail or means in lieu of postal mailing. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established is ratified unless at the meeting a majority of all the Unit Owners in the association rejects the budget. If the membership rejects the proposed budget, the budget in effect for the current year shall continue for the succeeding year.

Section 9.2. Purpose of Assessments. The assessment fixed pursuant to this Section shall be used to pay the Common Expenses including, but not limited to, all expenses, costs and charges incurred by the Association in connection with the administration, management, and operation of the Condominium; the costs of maintenance, repair and replacement of the Common Areas and reasonable reserves; the cost of insurance; and any and all expenses agreed upon as Common Expenses by the Association.

Section 9.3. Common Expense Assessments. Except for assessments under Section 4 of this Article, all common expenses shall be assessed against all the Units in accordance with the allocation set forth in the Declaration pursuant to N.C.G.S. 47C-2-107(a). Inasmuch as each Unit has an identical percentage ownership of common areas, for the purposes of this Declaration, each Unit shall be assessed an equal amount for general common expenses.

Section 9.4. Limited Common Expense Assessments.

- A. Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the Unit or Units to which that limited common element is assigned, equally, or in other proportion that the declaration provides;
- B. The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

Section 9.5. Assessments for Misconduct. If a common expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit. Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Unit Owner pursuant to the Act, Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

Section 9.6. Special Assessments. If the annual assessment proves inadequate for any calendar year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners for the purpose of supplementing the annual assessments. The Board may levy special assessments for capital improvements upon the common elements and for other such matters as the Association shall determine; provided, however, that prior to becoming effective, any such special assessments shall be approved by an affirmative vote of a majority of votes represented, in person or by proxy, at a meeting at which a quorum is present, duly called for that purpose.

Section 9.7. Assessments to Satisfy a Judgment. Assessments to pay a judgment against the

association (G.S. 47C-3-117(a)) may be made only against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.

Section 9.8. Reallocation of Common Expense Liabilities. If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

Section 9.9. Lien for Non-payment. Any assessment attributable to a unit which remains unpaid for a period of thirty (30) days or longer, together with interest at a rate not to exceed eighteen percent (18%) per annum, collection costs and reasonable attorney fees shall be a continuing lien upon that unit when a claim of lien is filed of record in the office of the clerk of superior court of Transylvania County in the manner provided in the N.C. Gen. Stat §47C-3-116. Once filed, a claim of lien secures all sums due the association through the date filed and any sums due to the association thereafter. Fees, charges, late charges and other charges may be imposed pursuant to G.S. 47C-3-102, 47C-3-107, 47C-3-107.1, and 47C-3-115 are subject to the claim of lien under this section as well as any other sums due and payable to the association under the declaration, the provisions of N.C.G.S. 47C, 47A, or as the result of an arbitration, mediation, or judicial decision. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45.

Section 9.10. Extinguishment of Lien. A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

Section 9.11. Judgement, Order or Decree. A judgment, decree or order in any action brought under this Section must include costs and reasonable attorney's fees for the prevailing party.

Section 9.12. Priority of Assessment Lien. The lien under this Section shall be prior to all other liens and encumbrances on a Unit except (a) liens for ad valorem taxes and other governmental assessments or charges against the Unit, (b) mortgages or deeds of trust recorded before the docketing of the assessment lien, and (c) materialmen's and mechanic's liens. The sale or transfer of any unit shall not affect the assessment against such unit: provided, however, where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Unit which became due prior to acquisition of title to such Unit by such purchaser. Assigns. Such unpaid assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners including such purchaser and its heirs, successors, and assigns.

Section 9.13. Acceleration. If the Unit Owner shall be in default in payment of any assessment or charge, including, but not limited to, the regular installments based on the annual budget, the Board may accelerate the remaining assessments, including regular installments based on the annual budget,

special assessments, and specific assessments, upon ten (10) days written notice to such Unit Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

Section 9.14. Personal Liability of Unit Owners. The Unit Owner of a Unit at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. The grantee of a Unit shall be liable, jointly, and severally, with the grantor Owners for all unpaid assessments due and owing against the latter at the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. The Association may bring an action at law against the owner personally obligated to pay the assessment, and interest, reasonable attorney's fees and costs of such action shall be added to the amount of such assessment.

Section 9.15. Owner's Non-Use. No unit owner may exempt himself or herself from liability for payment toward Common Expenses by waiver of the use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his unit.

Section 9.16. Surplus Funds. Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long-range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Unit Owners, nor shall such surplus funds be used as a credit to reduce future common expense assessments.

ARTICLE X INSURANCE

Section 10.1. Coverage. To the extent reasonably available, the Board shall obtain and maintain insurance coverage, as a common expense.

Section 10.2. Property Casualty Insurance. The Association shall procure and maintain property and casualty insurance on the Common Elements insuring against all risks of direct physical loss, including fire and extended coverage perils. The total amount of insurance after application of deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

Section 10.3. Liability Insurance. The Association shall procure in reasonable amounts, liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

Section 10.4. Unavailability of Insurance. If the insurance described in Sections 2 and 3 of this Article is not reasonably available, the Board shall promptly cause notice of that fact to be sent via electronic mail or sent prepaid by United States mail to all Unit Owners.

Section 10.5. Policy Requirements. Insurance policies carried pursuant to Sections 2 and 3 of this Article must provide that:

- A. Each Unit Owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the Association;
- B. The insurer waives its right to subrogation under the policy against any Unit Owner or members of his or her household.
- C. No act or omission by any Unit Owner, unless acting without the scope of his or her authority on behalf of the Association will preclude recovery under the policy;
- D. If, at the time of the loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.6. Receipt and Distribution of Proceeds. Any loss covered by the property policy under Sections 2 and 3 of this Article shall be adjusted with the Association, and all proceeds covering property losses shall be paid to the Association, as Trustee for all Unit Owners, and not to any mortgagee or beneficiary under a Deed of Trust. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage. The Association shall hold any insurance proceeds in trust for Unit Owners and lienholders as their interests may appear. Subject to the provisions of Section 8 of this Article, the proceeds shall first be disbursed first for the repair or restoration of the damaged property, and Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Condominium is terminated.

Section 10.7. Other Insurance. The Association may obtain as a common expense:

- A. Officers and Directors Liability Insurance to protect the officers and members of the Board.
- B. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law.
- C. Such other insurance as the Board may determine to be necessary.

ARTICLE XI
DAMAGE, REPAIR AND RECONSTRUCTION

Section 11.1. Duty to Repair. Any portion of the Condominium for which insurance is required under this Article which is damaged or destroyed shall be repaired and replaced promptly by the Association. Any insurance proceeds shall be paid to defray the costs of repair. All proceeds remaining after defraying such costs shall be distributed to the Association. If the proceeds are not sufficient to defray the costs of construction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion and repair, the costs thereof are insufficient, assessments shall be made against all the Unit Owners, but any such assessment shall be limited to the amount needed to restore the Common Elements and the cost of repair or replacement in excess of insurance proceeds is a common expense. No such assessment shall be made to repair the Unit as such costs, if any would be the responsibility of the Unit Owner or the insurance carrier for the Unit. All proceeds remaining after defraying such costs shall be distributed to the Association.

Section 11.2. Determination Not to Repair. A determination not to repair any portion of the Condominium which is damaged or destroyed may be made only under the following conditions:

- A. The Condominium is terminated. N.C.G.S. 47C-2-118 governs the distribution of insurance proceeds if the Condominium is terminated.
- B. Repair or replacement would be illegal under any State or local health or safety statute or ordinance; and
- C. The Unit Owners decide not to rebuild by an eighty percent (80%) vote including one hundred percent (100%) approval of Owners of Units not to rebuild or Owners assigned to Limited Common Elements not to be rebuilt.

Section 11.3. Distribution of Insurance Proceeds in Event of Non-repair. Proceeds from the payment of insurance shall be distributed as follows:

- A. The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium;
- B. The insurance proceeds attributable to Units and limited common elements which are not rebuilt shall be distributed to those Owners of those Units and the Owners of the Units to which those limited common elements were allocated or to lienholders, as their interests may appear, in proportion to their common element interest; and
- C. The remainder of the proceeds shall be distributed to all the Unit Owners or lienholders as their interest may appear, in proportion to their Common Element Interest.

Section 11.4. Re-allocation of Interests. If the Unit Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned

under N.C.G.S. 47C-1-107(a), and the Association shall promptly prepare, execute, and record an amendment to the Amended and Restated Declaration reflecting the reallocations.

ARTICLE XII

ARCHITECTURAL CONTROL

Approval Required for Changes. No exterior construction, change, alteration, or modification of any kind except as allowed in this Declaration shall be commenced on the exterior of any Unit or upon the Common Property without prior approval of the Board. Such limitation on construction, change, alteration or modification shall include the design and appearance of the exterior surfaces or facades; the painting, decorating, or change of color of any exterior surface, gate, fence, roof, or sign, nor shall any exterior addition or change, including, without limitation, the erection or construction of any fence or wall, any changes in window and door structures; any installation of awnings, painting or otherwise decorating the outside appearance of the building or the Limited Common Areas serving his or her Unit be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same have been submitted to and approved in writing as to harmony of exterior design, color and location in relation to the surrounding structures by the Board. A written application accompanied by detailed plans and specification and proof of contractor insurance shall be submitted to the Board who shall approve or deny the application in writing within thirty (30) days of receipt of same and shall be deemed approved if no action is taken by the Board.

The Board or its designee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours, to enter upon any Unit to inspect any Unit and any improvements thereon for the purpose of ascertaining whether this Declaration has been or is complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry.

ARTICLE XIII

ENFORCEMENT POWERS

Section 13.1. Rules Making Authority. The Condominium shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of the Units and Lots and the common elements, so long as copies of all such Rules and Regulations are furnished to all Unit Owners; provided, Such rules and regulations shall be binding on all Unit Owners unless specifically overruled at a regular or special meeting by the vote of a majority of the unit owners. No rule

or regulation shall conflict with either the Declaration or the Bylaws.

Section 13.2. Defaults and Remedies. Enforcement of the agreements contained in this Amended and Restated Declaration shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin violations or to recover damages. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all the other remedies or those which may be permitted by law or equity, and release any defense that enforcement is or may be selective.

Section 13.3. Fining Powers. Pursuant to Sections 47C-3-102(a)(11) and 47C-3-107.1 of the Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Lot Owners or occupants, which fine(s) shall constitute an assessment against the Unit in accordance with Article IX hereof, and become a personal obligation of the Unit Owner, and a lien upon the property; to suspend a Unit Owner's or occupant's right to use the common elements; and to suspend a Unit Owner's right to vote. The failure of the Board to enforce any provision of the Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 13.4. Suspension of Planned Community Privileges or Services. Condominium privileges or services shall be suspended only pursuant to the provisions contained in Section 47C-3-107.1. Voting privileges in Association affairs may be suspended if a member is delinquent in his or her assessments and the procedure for suspending said voting privilege shall be satisfied by sending notice of the delinquent assessments and filing a lien on the member's property securing payment of the delinquent assessment.

Section 13.5. Abatement and Enjoinment of Violations. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter into a Unit or any portion of the common elements to abate or remove any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Unit Owner forty-eight (48) hours written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Unit Owner, and shall be collected as provided for herein for the collection of assessments.

Section 13.6. Recovery of Attorney Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees and may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are uncured until paid.

Section 13.7. Nonwaiver of Covenants. The failure of the Association or any member thereof to enforce any term, provision, right, covenant or condition that may be granted by this Amended and Restated Declaration, the Bylaws, the Articles of Incorporation, the rules and regulation or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

ARTICLE XIV

ENFORCEMENT PROCEDURES

Failure to abide by the Declaration, Bylaws or the Rules and Regulations shall be grounds for an action to recover damages or obtain injunctive and equitable relief, or both. In addition to these remedies, the Board may, after providing notice and an opportunity to be heard, impose fines, or suspend a unit owner's privileges pursuant to Section 47C-3-107.1 of the Condominium Act.

If it appears that a unit owner is in violation of the Declaration, Bylaws or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the unit owner is not in violation of the Declaration, Bylaws or Rules and Regulations; (iii) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (iv) that the unit owner has the right to be represented by an attorney at the hearing.

The hearing shall be held before the Board of Directors and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five (5) days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47C-3-116. If it is decided that a suspension of condominium privileges or services should be imposed, the suspension may be continued without further hearing until the violation of delinquency is cured. The Board shall render its Final Decision to the unit owner regarding imposition of the fine or suspension of condominium privileges or services in writing.

ARTICLE XV

CONDEMNATION

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

ARTICLE XVI

TERMINATION OF UNIT OWNERSHIP

The Condominium property may be removed from the provisions of this Declaration and the Act only by agreement of Unit Owners of Units to which at least eighty percent (80%) of the votes in the Association are allocated by an instrument to that effect, duly recorded, approved by all Unit Owners and pursuant to the requirements of Section 47C-2-118 of the Act.

Upon removal of the property from the provisions of the Act, and this Declaration, the property shall be deemed to be owned as tenants in common by the Unit Owners. The undivided interest in the property owned as tenants in common which shall appertain to each unit owner shall be the percentage of the undivided interest previously owned by such Unit Owner in the Common Areas

ARTICLE XVII

AMENDMENTS

This Amended and Restated Declaration may be amended by the affirmative vote of, or a written agreement signed by Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. No such amendment shall be effective until recorded in the Transylvania County Registry.

ARTICLE XVIII

PERCENTAGE INTEREST OF COMMON ELEMENTS AND VOTING RIGHTS

The Ticoa View Villas Condominium has been fully developed and each Unit has the identical percentage ownership of the common elements, and, for the purposes of this Amended and Restated Declaration, each Unit shall be entitled to one (1) vote. There will be no percentage votes cast.

ARTICLE XIX

GENERAL PROVISIONS

Section 19.1. Covenants Running with the Land. All provisions of this Declaration shall be construed to be covenants running with the land.

Section 19.2 Captions. The captions contained in the Documents are inserted only as a matter of

convenience and for reference, and in no way define, limit, or describe the scope of the Documents nor the intent of any provision thereof.

Section 19.3. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 19.4. Waiver. The failure of the Association or any Unit Owner to enforce any covenant or provision of the Act or the Condominium Documents affecting the Condominium Property shall not constitute a waiver of the right to do so thereafter.

Section 19.5. Severability. Invalidation of any covenant, condition, restriction or other provision of this Declaration or the Bylaws shall not affect the validity of the remaining portions thereof, which shall remain in full force and effect.

Section 19.6. Conflict. The Documents are intended to comply with the requirements of the Condominium Act and Chapter 55A of the North Carolina General Statutes. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

EXHIBIT "A"

Condominium Property

All of that certain piece, parcel or lot of land situate, lying and being in DUNN ROCK TOWNSHIP, Transylvania County, North Carolina, more particularly bounded and described as follows:

BEGINNING on a stake, said stake standing N 60 deg. 25 minutes 02 seconds W 212.18 ft. from a stake in the north margin of Tinequa Court, south-west corner of Lot No. 16 of Unit No. 16 of Connestee Falls Development as shown by plat thereof recorded in Plat File 1, Slide 47, Records of Plats for Transylvania County, and runs thence S 27 deg. 46 min. 12 sec. W 30.68 feet to a stake; thence S 19 deg. 06 min. 49 sec. W 186.63 ft. to a stake; thence S 19 deg. 31 min. 4 sec. W 82.07 ft. to a stake; thence S 79 deg. 26 min. 45 sec. W 38.99 ft. to a stake; thence N 58 deg. 26 min. 31 sec. W 25.56 ft. to a stake; thence N 45 deg. 45 min. 53 sec. W 153.68 ft. to a stake; thence N 1 deg. 40 min. 39 sec. W 40.80 ft. to a stake; thence N 2 deg. 54 min. 41 sec. W 174.43 ft. to a stake; thence N 3 deg. 29 min. 56 sec. E 136.49 ft. to a stake; thence S 81 deg. 06 min. 49 sec. E 61.43 ft. to a stake; thence S 63 deg. 19 min. 34 sec. E 76.40 ft. to a stake; thence S 73 deg. 51 min. 44 sec. E 159.64 ft. to a stake; thence S 63 deg. 59 min. 35 sec. E 35.32 ft. to a stake; thence S 1 deg. 21 min. 57 sec. W 107.36 ft. to the BEGINNING. Containing 2.558 acres.

TOGETHER WITH a right-of-way for travel or all kinds, on foot and with all types of vehicles, in common with all others entitled to the use thereof, over and along the private road extending from the property hereinabove described to Tinequa Court, with the right of ingress, egress and regress over and along the same.

TOGETHER WITH a right-of-way for an electric power line, a telephone line, a gas pipe line, a water line, a sewer line, and other public utilities in common with Developer and all others entitled to the use thereof, over and across Parcel MF-6 of Unit 33 of Connestee Falls Development, with the right of ingress, egress and regress over and along the same for the purpose of installing, maintaining and repairing said utilities.

It is understood and agreed that the property hereinabove described is subject to rights of way for a water line, sewer line, telephone line, electric power line and other utilities and easements for the use and benefit of Connestee Falls Development Corporation, Connestee Falls Management Corporation and the remainder of the property included in Parcel MF-6, Unit 33, Connestee Falls Development, with the rights of ingress, egress and regress over and along same for the purpose of installing, repairing, replacing and maintaining the same.

EXHIBIT "B"

Condominium Units and Undivided Percentage Fee Simple Interests in Common Elements

<u>BUILDING NO. 1</u>		<u>PERCENTAGE</u>
Unit 1A	an undivided percentage interest of	5.0000
Unit 1B	an undivided percentage interest of	5.0000
Unit 2A	an undivided percentage interest of	5.0000
Unit 2B	an undivided percentage interest of	5.0000
Unit 3A	an undivided percentage interest of	5.0000
Unit 3B	an undivided percentage interest of	5.0000
 <u>BUILDING NO. 2</u>		
Unit 1A	an undivided percentage interest of	5.0000
Unit 1B	an undivided percentage interest of	5.0000
Unit 2A	an undivided percentage interest of	5.0000
Unit 2B	an undivided percentage interest of	5.0000
 <u>BUILDING NO. 3</u>		
Unit 1A	an undivided percentage interest of	5.0000
Unit 1B	an undivided percentage interest of	5.0000
Unit 2A	an undivided percentage interest of	5.0000
Unit 2B	an undivided percentage interest of	5.0000
 <u>BUILDING NO. 4</u>		
Unit 1A	an undivided percentage interest of	5.0000
Unit 1B	an undivided percentage interest of	5.0000
Unit 2A	an undivided percentage interest of	5.0000
Unit 2B	an undivided percentage interest of	5.0000
 <u>BUILDING NO. 5</u>		
Unit 1A	an undivided percentage interest of	5.0000
Unit 1B	an undivided percentage interest of	5.0000
	Total	100.00%