

**DECLARATION AND BYLAWS
OF
BEAVERDAM RUN CONDOMINIUM**

September 23, 2010

This copy is property of Unit Address _____.

This is a working copy of the Declaration of Condominium of Beaverdam Run Condominium Association,
including the Bylaws set out in Exhibit "C",
and incorporates amendments approved in July 1996
and September 2010
to the Amended and Restated Declaration of Condominium and Bylaws dated September 23, 1991.

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Exhibit “A”	Plats Submitting Property
Exhibit “B”	Building/Unit Numbers with Corresponding Street Addresses
Exhibit “C”	Bylaws

AMENDED
DECLARATION OF CONDOMINIUM
OF
BEAVERDAM RUN CONDOMINIUM

The property subjected to the original Declaration, which is by this reference incorporated herein, said property being 115 acres more or less, described in a Plat recorded at Plat Book 52 page 76, and further described in Article 1 and Exhibit “A” of the Original Declaration executed by NWS Properties, Ltd., a North Carolina corporation as Declarant, recorded in Deed Book 1425 Page 636, on April 16, 1986, as amended, all in the Registry of Deeds, Buncombe County, North Carolina, is amended to the terms of this Amended Declaration of Condominium of Beaverdam Run Condominium.

This Amended Declaration is adopted pursuant to the provisions of the Original Declaration and the North Carolina Unit Ownership Act, NC Gen. Stat. § 47A-1 et seq.

Article 1

Submission to North Carolina Condominium Act

Beaverdam Run Condominium is hereby submitted to the provisions of the North Carolina Condominium Act (NC Gen. Stat. § 47C-1-101 et seq.) (referred to hereafter and in the Bylaws as the “Condominium Act”) in accordance with the provisions of the Condominium Act and particularly as is permitted by NC Gen. Stat. § 47C-1-102(b). Submission of the governance, administration, and operation of the Condominium to the Condominium Act is for the benefit of all Owners at Beaverdam Run Condominium and to allow the Owners to take advantage of the expanded statutory basis for the governance of condominiums offered by the Condominium Act.

Article 2

Description of Condominium

Section 2.1 Name. The name of the condominium is Beaverdam Run Condominium (sometimes referred to herein as “Beaverdam Run” or “Condominium”).

Section 2.2 Location. The Condominium is located at 1 Stony Ridge, Asheville, Buncombe County, North Carolina. The Units and Common Elements of the Condominium are shown on those plats recorded in the Registry of Deeds, Buncombe County, North Carolina, which recording references are set forth in Exhibit “A” attached hereto and incorporated herein.

Section 2.3 Condominium Buildings. The Condominium consists presently of one hundred thirty-six condominium Units.

Article 3

Definitions

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

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

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

Section 3.3 Association or Unit Owners Association or Condominium Association means Beaverdam Run Condominium Association, and its successors.

Section 3.4 Board or Board of Directors means the governing body on behalf of and for the Association designated the Executive Board in NC Gen. Stat. § 47C-1-103(13).

Section 3.5 Bylaws means the Revised Bylaws of Beaverdam Run Condominium Association attached hereto as Exhibit "C" and as hereafter amended.

Section 3.6 Common Elements means all portions of the Condominium other than the Units.

Section 3.7 Common Expenses mean expenses or financial liabilities for the operation of and connected in any way with the administration of the Condominium. These include:

- (a) Expenses of administration, maintenance, repair or replacement of the Common Elements;
- (b) Expenses defined, referred to, or declared to be common expenses by the Documents or by the Condominium Act;
- (c) Expenses agreed upon as common expenses by the Association;
- (d) Such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any real or personal property acquired or held by the Association; and

- (e) Expenses levied against any particular Unit and Unit Owner for fines, late charges, interests, costs of collection, and attorney's fees.

Section 3.8 **Common Expense Liability** means the liability for common expenses allocated to each Unit pursuant to NC Gen. Stat. § 47C-2-107 and for any other common expense or charge in accordance with the Declaration and Bylaws.

Section 3.9 **Condominium or Condominium Property** means Beaverdam Run Condominium, being that real estate and improvements as described in the Declaration and exhibits thereto, portions of which are designated for separate ownership by Unit Owners and the remainder of which is designated for common ownership solely by the Condominium Unit Owners.

Section 3.10 **Condominium Act** means Chapter 47C of the North Carolina General Statutes, NC Gen. Stat. § 47C-1-101 et seq.

Section 3.11 **Declaration** means this Declaration of Condominium of Beaverdam Run Condominium, the Document filed of record in accordance with the Condominium Act for the purpose of creating the Condominium, and including any amendments to such Documents. The "Original Declaration" means that document recorded at Deed Book 1425 page 636 as amended prior to the date of recordation of this Amended Declaration.

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

Section 3.13 **Limited Common Element** means a portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units.

Section 3.14 **Mortgage** shall refer to any mortgage, deed of trust, deed to secure debt or other transfer, or conveyance for the purpose of securing the performance of an obligation, including but not limited to a transfer, conveyance, or for the purpose of fee title.

Section 3.15 **Notice and Opportunity to be Heard** mean the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right for an opportunity to be heard thereon. The procedures for such notice and opportunity to be heard are set forth in Article IX of the Bylaws.

Section 3.16 **Officer** shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Vice President, Secretary or Treasurer and such other supporting offices as the Board may determine necessary.

Section 3.17 **Person** means a natural person, corporation, business, trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

Section 3.18 Unit or Condominium Unit means the physical portion of the Condominium designated for separate ownership or occupancy whose boundaries are as set forth in the Declaration.

Section 3.19 Unit Owner or Owner or Member means a person or persons who own a Unit that is (are) the record Owner(s) of a Unit within the Condominium but shall not mean a mortgage holder.

Article 4

Units

Section 4.1 Unit Designations and Descriptions. The Condominium consists of one hundred thirty-six (136) separate Condominium Units, designated and identified as shown on Exhibit "B" attached hereto and by this reference made a part hereof.

Section 4.2 Unit Boundaries. The boundaries of each Unit both as to vertical and horizontal planes are the walls, floors and ceilings of the Units, and in accordance with Section 47C-2-102 of the Condominium Act,

1. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors, or ceilings are a part of the Common Elements.
2. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the boundaries of a Unit, any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.
3. Subject to the provisions of (2) above, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are part of the Unit.

The Unit also includes the space within the walls, floors and ceilings of any accessory areas, including enclosed garages, basements and storage spaces. The Unit also includes all exterior doors, window frames, window panes and screens, provided however that the exterior decoration and painting of the exterior surfaces of such doors and window frames shall be the exclusive responsibility of the Association.

Any portion of a chute, flue, duct, wire, conduit, pipe, drain or other facility for the furnishing of utilities and other services to the Unit lying within the boundaries of a Unit is a part of the Unit up to and including the point of entry of that facility through the interior surfacing material for the wall or ceiling or the subflooring material for the floor.

In interpreting this Declaration and its plans, the actual physical boundaries of a Unit as originally constructed, or of a Unit reconstructed in substantial compliance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in this Declaration, or its Plan, regardless of settling, or lateral movement of the building, and regardless of minor variances between boundaries shown on the Plans, and those of the Unit.

Section 4.3 **Allocated Interests.** The undivided fee simple fractional interest in the Common Elements of the Condominium allocated to each Unit is one/one hundred thirty-sixth (1/136). These interests and their formulation are now in accordance with Section 47C-2-107 of the Condominium Act. With the allocated interest as set forth above being equal for each Unit, each Unit shall have an equal percentage vote in the affairs of the Association, whereby each Unit shall have one (1) vote on all matters for which votes of the membership are required by the Documents, and equal common expense liability except as modified by the Documents.

Article 5

Common Elements

Common Elements include all parts of the Condominium located outside the boundaries of the respective Units.

Article 6

Limited Common Elements

The Limited Common Elements appurtenant to and for the exclusive use of each Unit are all parts of the buildings and surrounding areas that form or service the individual Unit but are not part of the Unit. Such Limited Common Elements include, but are not limited to, foundations, firewalls, footings, framing, joists, beams, rafters, roofs, flashing, gutters, downspouts, compressor pads, exterior surface materials, doorsteps, stoops, decks, porches, patios, driveway pads, and concrete walkways leading to individual Units.

Article 7

Use Restrictions and Purpose

Section 7.1 **Purpose.** The purpose of the Condominium is for residential purposes and residential purposes only.

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

Section 7.3 Use of Units. The Units in the Condominium shall be and are restricted exclusively to single-family residential purposes and use, and no business activities of any kind shall be conducted upon the Condominium Property except as may be permitted by the Board of Directors, which permission may be granted or denied by the Board in its sole discretion. The Condominium Property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Unit or any resident thereof. The Board of Directors of the Association shall, in its sole discretion, determine what constitutes a health hazard or unreasonable disturbance. No Owner shall make any use of a Unit or store or keep anything in a Unit which will increase the insurance rates for the Association or for other Unit Owners.

Section 7.4 Vehicles and Parking. It is intended that portions of the Common Elements are to be used for parking of passenger vehicles as defined herein by Owners, their guests, tenants, families, lessees, and other persons authorized to be on the premises. Those portions of the Common Elements to be used for parking of passenger vehicles are intended to be equitably used by all Owners in the Condominium, such that one Owner's use of the Common Elements for parking does not interfere with the collective use of the Common Elements for parking by all Owners, guests and invitees. To this end, the Board of Directors is hereby authorized to adopt rules and regulations governing parking of vehicles on the Common Elements, including, but not limited to, designation of areas to be used for parking and limitation of the type and number of vehicles any one Owner may park on the Common Elements.

No recreational vehicles or commercial vehicles, including, but not limited to, boats, boat trailers, house trailers, trailers, campers, trucks (including pick-up trucks), camping trailers, and motor driven tricycles shall be kept or parked within the Common Elements except in areas designated and for time periods set by the Board of Directors in its sole discretion.

There shall be no repairing or other maintaining of vehicles, except for washing, on the Condominium Property, except in areas that the Board of Directors, in its sole discretion, may choose to designate.

No inoperable vehicle shall be stored anywhere on the Common Elements. For purposes of this section, the term "inoperable vehicle" means any vehicle which cannot move under its own power or whose license plate registration is not current and up-to-date. The Association has the authority to have towed at the Owner's expense any inoperable vehicle which remains parked on the Common Elements in violation of these Restrictions or any rules adopted by the Board. Owners' vehicles shall be parked in garages at all times except for normal loading or unloading.

The Board of Directors may promulgate additional rules and regulations in order to regulate further both Unit Owner and visitor parking.

Section 7.5 Pets. Owners will be permitted to keep no more than two (2) dogs, cats, birds, or other usual and common household pets per Unit. With aforementioned exceptions, no other animals or livestock of any kind may be raised, bred, kept or permitted in any Unit or on the Common Elements. No pets shall be kept, bred, or maintained for any commercial purposes. Those pets which are allowed to roam free or are found by the Board in its sole discretion to

endanger the health of the residents and Owners, to make objectionable noise, or to be a nuisance or inconvenience to the Owners of other Units, may be ordered to be removed by the Board. Pets shall be confined on a leash and under the control of their owners at all times that they are outside a Unit unless permitted otherwise by the Rules and Regulations. Without prejudice to the Board's right to order removal of any such pet, no pet that has caused damage or injury may be walked in or on the Condominium Property.

The Board is hereby authorized to promulgate and to enforce additional rules and regulations for pets.

Section 7.6 **Antennas.** No exterior antennas or receiving or sending devices of any kind, including but not limited to radio and television antennas and satellite dishes, shall be placed, allowed or maintained by an occupant upon any portion of the Common Elements or Limited Common Elements. However, a receiver of video transmission that is a "dish" or other type of antenna less than one meter (39.37 inches) in diameter or diagonal measurement may be placed on the floor of the Unit deck. If the occupant can demonstrate that this restriction does not allow reception of an acceptable quality signal, the occupant may request the Board to permit a satisfactory alternative location.

Section 7.7 **Signs.** No sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of the exterior or interior (if visible from the outside) of any Unit or on any portion of the Common Elements without written permission from the Board, which permission shall not be unreasonably withheld. As an exception hereto, signs for the Owners' names may be permitted, but must be approved in accordance with the architectural control provisions set forth in Article 15 of this Declaration. In its sole discretion, the Board may have signs erected on the Common Elements for identification or for such other purposes as the Board finds necessary.

Section 7.8 **Occupancy Restriction.** Each Unit shall be occupied by no more than two permanent residents for each bedroom in the Unit, without permission of the Board, given or withheld in its sole discretion.

Section 7.9 **Clotheslines.** No clothesline, clothes drying "tree" or any other similar type mechanism, or hanging or drying of clothes or other items is permitted.

Section 7.10 **Prohibition of Time-Sharing.** Time-sharing and time shares as defined in the North Carolina Time Share Act (NC Gen. Stat. § 93A-39 *et seq.*) of any Unit in the Condominium is prohibited.

Section 7.11 **Nuisances.** No Owner, invitee, guest, or tenant shall permit, cause or create any nuisance in or on the Condominium Property. The Board, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. No person shall cause or create unreasonable noise which might disturb other occupants of the Condominium.

Section 7.12 Rule Making Authority. The Board of Directors may, from time to time, without consent of the members, promulgate, modify, or delete rules and regulations applicable to the Units, Common Elements, or Condominium Property as a whole. Such regulations and use restrictions shall be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by the vote of Owners holding a majority of the total votes in the Association. Such rules and regulations may be enforced by the Association in accordance with the Condominium Act, the Declaration and Bylaws, to include but not be limited to the imposition of monetary fines and penalties or a legal action in ejectment.

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

Article 8

Insurance

Section 8.1 Coverage. To the extent reasonably available, the Board shall obtain and maintain insurance coverage as a common expense in accordance with Section 47C-3-113 of the Condominium Act and as set forth in this Article. If such insurance is not reasonably available, and the Board determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners at their respective last known addresses.

Section 8.2 Property and Casualty Insurance. The Association shall procure and maintain property and casualty insurance on the Common Elements and Units insuring against all risks of direct and physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be in an amount not less than that required by Section 47C-3-113 of the Condominium Act. Such insurance shall cover the replacement cost of structures within the Condominium, including personal property and improvements thereto except for such personal property that is contained in but not attached to the Unit and is owned by the Owner personally. Such insurance shall also exclude land, excavations, foundations and other items normally excluded from property insurance policies.

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

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

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

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

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

1. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;
2. Officers and Directors Liability Insurance, including coverage for committee chairs and committee members acting on behalf of the Board, in such amounts as the Board may determine. Such insurance shall contain a cross liability endorsement;
3. Such other insurance as the Board of Directors may determine to be necessary.

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

Article 9

Repair, Replacement, Damage, and Reconstruction

Section 9.1 Duty to Repair. In the event that all or any part of the Condominium Property shall be in need of repair or replacement, or shall be damaged or destroyed by casualty, the Association shall effect such repair or replacement and if applicable the proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113 of the Condominium Act.

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

The procedure for repair and construction shall be as follows:

- (a) **Cost Estimates.** Immediately after a fire or other casualty causing damage to the Condominium, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.
- (b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient and other funds are not reasonably available, then assessments shall be made against all of the Unit Owners. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

- (c) **Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed.
- (d) **Encroachments.** Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.
- (e) **Construction Fund.** The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.
- (f) **Method of Disbursement.** The construction fund shall be paid by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

Article 10

Easements and Additional Rights

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

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

- (a) the right of the Association to suspend the voting rights and rights to use of the recreational facilities by an Owner for any period during which any

assessment against that Owner's Unit remains unpaid for a period of thirty (30) days or more or for any infraction of its published rules and regulations;

- (b) the right of the Association to limit the number of guests of Owners;
- (c) the right of the Association to borrow money for the purpose of maintaining, improving, or repairing the Common Elements and facilities; and
- (d) the right of the Association to determine the time and manner of use of the recreational facilities by the Owners.

An Owner may assign, in accordance with the Declaration and Bylaws, that Owner's right of enjoyment of the Common Elements and Limited Common Elements to members of that Owner's family who are permanent residents of that Unit. If an Owner leases that Owner's Unit, the Owner shall transfer and assign to the lessee for the term of the lease any and all rights and privileges that the Owner has to use the Common Elements and Limited Common Elements of the Condominium, to include, but not be limited to, the use of any and all recreational facilities or other amenities. Such Owner shall during the term of such lease have no rights to the use of any recreational facilities or the Common Elements.

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

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

Section 10.4 Utility Easements. There is hereby created a blanket easement upon, across, over and under all of the Condominium Property for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers,

storm drainage, gas, telephones, and electricity and a master television antenna system. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the Common Elements in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents and employees, and to any management agent selected by the Association to enter in or to cross over the Common Elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, drains, electrical lines, water lines, or other utilities may be installed or relocated on said property except as approved by the Board of Directors. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable Document, the Board of Directors shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this article shall in no way affect any other recorded easement on said premises.

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

In connection with such right for entry in case of emergencies, the Unit Owners shall deposit with the Association or its designated agent a key to their respective Units or make such other arrangements for access entry as are acceptable to the Board of Directors. Should no key be available for a Unit into which emergency entry is required, then the Association has the right to make a forcible entry. The Association shall be held harmless from and not be liable for any damage caused by or resulting from such forcible entry.

Article 11

Budgets, Assessments, and Collection of Assessments

Section 11.1 Purpose of Assessments. The assessments for common expenses as described in Section 47C-3-115 of the Condominium Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Units in the Condominium as may be more specifically authorized by the Board. Such common expenses include, but are not limited to, any and all costs related to or connected with the operation, administration, and maintenance of the Condominium, the Association, and the Common Elements.

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

Section 11.3 Common Expenses Attributable to Fewer than All Units.

- (a) Any common expense associated with the maintenance, repair or replacement of components and elements attached to, planted on, or a part of particular Units, or of Limited Common Elements, shall be assessed against the Unit or Units to which such Limited Common Element is assigned, provided such components or elements are of a type that are not part of the Limited Common Elements present in all units. By way of example, but not of limitation, two units have ornamental pools, with electrical pumps and water supply. These are Limited Common Elements which are not provided to all units, and therefore the costs of repair or maintenance are the responsibility of those Unit Owners.

If any such Limited Common Element is assigned to more than one Unit, the common expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

- (b) Any common expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from such service.
- (c) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit.
- (d) If a common expense is caused by the negligence, malfeasance, or misconduct of a Unit Owner, the Association shall assess that expense exclusively against that Unit Owner's Unit.
- (e) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Unit Owner pursuant to the Condominium Act, Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

Section 11.4 Computation of Operating Budget and Annual Common Expense Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Condominium during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements, including the amount of common expense assessments to be levied against all Units for the applicable fiscal year, as provided by Article VI of the Bylaws.

Section 11.5 Computation of Capital Budget and Capital Assessments. The Board of Directors may annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost, including the amount of capital assessments to be levied for the current fiscal year, as provided by Article VI of the Bylaws.

Section 11.6 Special Assessments.

- (a) If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.
- (b) The Board of Directors may levy special assessments for capital improvements upon the Common Elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective, any such special assessment shall be approved by the affirmative vote of a majority of the votes of the Association represented in person or by proxy at a special meeting duly called for that purpose, or by the affirmative vote of a majority of the votes of the Association by mail ballot, if voting by mail ballot is designated by the Board pursuant to the procedures set out in Article III of the Bylaws.

Section 11.7 Payment of Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless otherwise provided, the annual assessments shall be paid in monthly installments due on the first day of a month, and such monthly installments shall be late and the Unit Owner in default if not paid on or before the fifteenth (15th) day of the month due.

Section 11.8 Personal Liability of Unit Owners. The Unit Owner of a Unit at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred.

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

Section 11.9 Acceleration. If the Unit Owner shall be in default in payment of any assessment or charge payable in installments, the Board of Directors may accelerate the remaining assessments, including monthly installments based on the annual budget, special assessments, and specific assessments, upon ten (10) days written notice to such Unit Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

Section 11.10 No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

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

In addition the Board may set a late charge to be assessed against Unit Owners for late payment of any common expense assessments or installment thereof.

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

Section 11.12 Lien for Assessments.

- (a) Any assessment levied against a Unit remaining unpaid for a period of 30 days or longer shall constitute a lien on that Unit when filed of record in the office of the Clerk of Superior Court of Buncombe County. The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, collection costs, attorney's fees, and interest charged pursuant to Sections 47C-3-102(a)(10), (11), and (12), 47C-3-107(d), 47C-3-107.1, and 47C-3-115 of the Condominium Act, the Declaration, Bylaws, and Rules and Regulations are enforceable as assessments under this Section.
- (b) The lien under this Section is prior to all other liens and encumbrances on a Unit except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This subsection does not affect the priority of mechanics' or materialmen's liens.
- (c) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within six years after the full amount of the assessment becomes due; provided, that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.
- (d) This Section does not prohibit actions to recover sums for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.
- (e) A judgment, decree or order in any action brought under this Section must include costs and reasonable attorney's fees for the prevailing party.

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

Article 12

Association of Unit Owners

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

Section 12.2 Association Membership. All Unit Owners by virtue of their ownership of a Unit in the Condominium are members of the Unit Owners' Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Condominium Act and the Documents, such Owners shall be entitled to one (1) vote for each Unit in which they hold the interest required for membership.

Section 12.3 Powers and Duties. Acting by and through its Board of Directors and/or its membership in accordance with the provisions of the Documents, the Association shall have all of 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;
- (c) Collect assessments for common expenses for Unit Owners;
- (d) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium;
- (f) Make contracts and incur liabilities;
- (g) Regulate the use, maintenance, repair, replacement, and modification of Common Elements;

- (h) Cause additional improvements to be made as a part of the Common Elements;
- (i) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 47C-3-112 of the Condominium Act;
- (j) Grant easements, leases, licenses, and concessions through or over the Common Elements;
- (k) Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than Limited Common Elements described in Subsections 47C-2-102(2) and (4) of the Condominium Act and for services provided to Unit Owners;
- (l) After notice and opportunity to be heard, levy reasonable fines not to exceed the maximum amount permitted by law for any violation of the Declaration, Bylaws and Rules and Regulations of the Association pursuant to Sections 47C-3-107 and 47C-3-107.1 of the Condominium Act;
- (m) Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates required by Section 47C-4-109 of the Condominium Act, or statements of unpaid assessments;
- (n) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;
- (o) Exercise all other powers that may be exercised in this State by non-profit corporations; and
- (p) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 12.4 Right to Assign Future Income. The Association may assign its future income, including its right to receive and collect common expense assessments, only by the affirmative vote of Owners of Units to which at least a majority of the votes in the Association are allocated at a meeting called for that purpose.

Section 12.5 Maintenance Responsibility.

- (a) By the Owner. Each Owner shall have the obligation and duty to maintain and keep in good repair all portions of that Owner's Unit and any type of alteration that the current or any previous Owner has made to a Unit's Limited Common Elements. The Owner shall maintain and promptly make repairs to all internal lines for transmission of electricity, telephone, cable,

water, sewerage and other utilities exclusive to that Unit, as well as the Unit's heating and air conditioning systems, doors, windows, glass, and all other components and accessories that are part of the Unit as specified in Section 4.2 of this Declaration. Owners shall promptly notify the Board of any repairs or maintenance an Owner believes should be undertaken by the Association either to the Unit or to that Unit's Limited Common Elements.

- (b) By the Association. The Association shall maintain and keep in good repair, as a common expense, all of the Condominium Property not required to be maintained and kept in good order by an Owner. Except to the extent that insurance maintained by the Association covers any damage or loss, the Association shall not be responsible for performing or paying the cost of any maintenance or repair to the interior of a Unit except in any case where the Association is negligent in fulfilling its responsibilities set forth in the preceding sentence of this subsection 12.5(b). The Association shall be responsible, as a common expense, for the maintenance and repair of the Limited Common and Common Elements of the Condominium except as set forth in Section 11.3 of this Declaration. The Association shall maintain all landscaped areas included within the Common Elements of the Condominium. The Association shall provide for the exterior care of each Unit as follows: painting of exterior surfaces specified in subsection (a) hereof; preservation and repair or replacement of exterior building surfaces as specified in subsection (b) hereof, roofs (to include not only the maintenance of roof shingles, but also to include all parts and portions of the structure of the roofs), gutters and downspouts as the Board of Directors may from time to time deem reasonable and appropriate and the proper lamping of electrical fixtures illuminating Unit numbers and garage fieldstone pillars. The Association shall be authorized to perform, after ten (10) days notice to a Unit Owner, any maintenance upon a Unit for which the Owner is responsible and to charge the Owner, as provided for assessments herein, with the actual costs of maintenance.
- (c) Responsibility for Damages. In accordance with Section 47C-3-107 of the Condominium Act, if damage for which a Unit Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any common element, the Association may direct such Unit Owner to repair such damage or the Association may itself cause the repair to be made and recover the costs thereof from the responsible Unit Owner.

If, on the other hand, damage is inflicted on any Unit by an agent of the Association in the scope of his or her activities as such agent, the Association is liable to repair such damage or to reimburse the Unit Owner for the cost of repairing such damages. The Association shall also be liable for any losses to personal property of the Unit Owner caused by such agent in the course of his or her duties.

In both such above-described instances, when the claim involved is five hundred dollars (\$500.00) or less, the Board may delegate to an adjudicatory panel selected or designated by the Board of Directors the power to determine if a Unit Owner is responsible for damages to any Common Element or whether the Association is responsible for damages to any Unit. Such adjudicatory panel shall proceed with regards to notice, an opportunity to be heard, presentation of evidence and notice of decision in accordance with those procedures set forth in the Bylaws. The adjudicatory panel may assess a liability for each damage incident not in excess of five hundred dollars (\$500.00) against each Unit Owner charged or against the Association. Liabilities of Unit Owners shall be assessments in accordance with Section 47C-3-107 of the Condominium Act and the Declaration. Any liability of the Association may be used by the Unit Owner as an offset against amounts owed to the Association.

- (d) Insurance Deductibles. If maintenance is required as a result of an insured loss, the amount of the deductible shall be considered a loss assessment expense to be paid by the person or persons who would be responsible for such repair in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board of Directors among the parties suffering loss in accordance with the total cost of repair.
- (e) Freeze Damage Protection. All Unit Owners are responsible for taking necessary steps and exercising reasonable precautions to avoid and prevent freezing of pipes and fixtures in the Units and Limited Common Elements and damage resulting from broken or burst water pipes. All Unit Owners further recognize that the climate at the Condominium is and can be severe and will cause freeze damage to pipes if proper precautions are not taken. The Unit Owner will be responsible for any damages caused by freezing and resulting broken or burst pipes. Furthermore, the Association may impose fines for violation of freeze prevention measures on a daily or per occurrence basis in accordance with the Declaration and Bylaws.

The Board of Directors may make Rules and Regulations as it deems necessary to implement and enforce freeze prevention measures.

Article 13

Leases and Sales

The sale or leasing of a Unit by an Owner shall be subject to the following provisions so long as the Condominium shall be owned in accordance with the terms and conditions of the Documents and the Condominium Act:

Section 13.1 Leasing of Units. Units may be leased only in their entirety; no fraction or portion may be leased. No transient tenants shall be permitted. Except for situations where an owner sells a unit and then enters into a “lease-back” arrangement, all leases must be for a term of not less than one hundred and eighty (180) days nor more than three (3) years to any one tenant. No Unit shall be leased more than once in any calendar year unless either (i) the Unit Owner terminates the lease due to the lessee’s default or (ii) the Unit becomes vacant through no fault of the Unit Owner. In the event either situation described in the preceding sentence occurs, the Unit Owner may lease the Unit during such calendar year for a new term of not less than one hundred and eighty (180) days nor more than three (3) years. All leases and lessees are subject to the provisions of the Declaration, Bylaws, and Rules and Regulations. The Unit Owner shall provide the tenant with copies of the Declaration, Bylaws, and Rules and Regulations. “Leasing” for purposes of this Declaration is defined as regular occupancy of a Unit by any person other than the Owner for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

Any lease agreement for a Unit at the Condominium shall contain equivalent language and equivalent terms and conditions to the Association’s recommended and approved lease agreement, a copy of which should be obtained from the Board Secretary. Any Owner proposing to lease his or her Unit with no changes to the text of said recommended and approved lease shall submit the proposed lease agreement to the Board of Directors for approval at least fifteen (15) days prior to the date occupancy will commence. Any other lease agreement must be submitted to the Board of Directors for approval at least thirty (30) days prior to the date occupancy will commence. Lease agreements shall be deemed to contain the provisions set forth below in subsections (a) and (b), whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not incorporated verbatim into a lease such covenants nevertheless apply to the Unit through the existence of this covenant. Any lessee, by occupancy in a Unit, agrees to the applicability of this covenant and incorporation of the following provisions into the lease:

- (a) Liability for Assessments. Lessee agrees to be personally obligated for the payment of all assessments against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee’s activities, including, but not limited to, activities which violate provisions of the Condominium Act, the Declaration, the Bylaws, or the Rules and Regulations adopted pursuant thereto. The above provision shall not be construed to release the Unit Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

Upon request by the Association, lessee shall pay to the Association all unpaid common expense assessments, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, however, lessee need not make such payments to the Association in excess of or prior to the due dates for monthly rental payments unpaid at the time of the Association’s request. All such

payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor.

- (b) Compliance with Declaration, Bylaws, and Rules and Regulations. Lessee agrees to abide by and comply with all provisions of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. Owner agrees to cause all occupants of his or her Unit to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and Rules and Regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or Rules and Regulations for which a fine is imposed, such fine shall be assessed against the lessee; provided, however, if the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines constitute a lien against the Unit in accordance with the Condominium Act and Declaration. Any lessee charged with a violation of the Declaration or Bylaws, or Rules and Regulations adopted pursuant thereto, is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction as set forth in the Bylaws.

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

Section 13.2 Approval of Lease or Notice of Sale. Any Owner proposing to lease his or her Unit shall submit the proposed lease to the Board of Directors for approval at least ten (10) days prior to the execution of such document. Any Owner proposing or agreeing to sell his or her Unit shall give notice in writing to the Board of Directors at least ten (10) days prior to the execution or closing of such action, stating the name and address of the intended purchaser and the proposed date of possession or closing date of the sale. The Board of Directors shall have authority to make and to enforce reasonable rules and regulations in order to enforce this provision, including the right to impose fines.

Article 14

Amendments

Except for certain cases of amendments as referenced in Section 47C-2-117(a) of the Condominium Act, this Declaration may be amended only by affirmative vote or written agreement of Unit Owners of Units to which at least Sixty Seven Percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47C-2-117 of the Condominium Act. The Declaration may be amended by a vote taken by mail, pursuant to procedures set out in Article III of the Bylaws.

Article 15

Architectural Standards and Control

No Owner, occupant, lessee or lessor, or any other person may make any encroachment onto the Common Elements, exterior change, alteration, or construction (including planting or landscaping in any form), nor erect, place, or post any sign, object, light, or thing on the exterior of the buildings or any other common element, or on any place or thing in the Condominium visible from the outside of a Unit, without first obtaining the written approval of the Board of Directors of the Association or its designee. The Board may establish general exceptions to this section in duly adopted Rules and Regulations.

The Board shall have the authority to establish an architectural control committee or to delegate authority under this section to any existing committee in order to enforce and implement the provisions of this Article.

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

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

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

Article 16

Enforcement Powers

Section 16.1 Rules Making Authority. The Condominium shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Units and the Common Elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written consent of a majority of the total Association vote at an annual or special meeting, or by the affirmative vote of a majority of the total Association vote by mail ballot pursuant to the procedures set out in Article III of the Bylaws.

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

Section 16.3 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 upon a Unit or any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, 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 ten (10) days 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.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. The Association shall be entitled to judgment ordering ejectment of any Owner or occupant who continues in violation of the Declaration, Bylaws, or Rules and Regulations following the imposition of fines or penalties pursuant to the procedures set out in these documents. All costs of any such legal action,

including reasonable attorney's fees actually incurred, shall be assessed against the violating Unit Owner and shall be collected as provided for herein for the collection of assessments.

Article 17

Condemnation

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

Article 18

Termination

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

Article 19

Miscellaneous Provisions

Section 19.1 Captions. The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents nor the intent of any provision thereof.

Section 19.2 Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 19.3 Waiver. No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 19.4 Invalidity. The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 19.5 Conflict. The Documents are intended to comply with the requirements of the Condominium Act and Chapter 55-A of the North Carolina General Statutes. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

Section 19.6 Preparer. This Declaration was prepared by Robert E. Dungan, 1 Rankin Avenue, Asheville, North Carolina 28801.

EXHIBIT "A"

BEING all of those certain tracts of land shown on the following plats, which plats are recorded in the Buncombe County Registry, reference to which plats are hereby made for a more particular description:

<u>Beaverdam Condominium Building</u>	<u>Plat Book</u>	<u>Page</u>
A	52	87
B	52	91
C	52	141
D	52	142
E	52	143
F	52	163
G	53	62
H	53	63
I	53	42
J	53	12
K	52	155
L	53	11
M	53	6
N	53	41
O	53	40
P	53	39
Q	53	144
R	55	108
S	55	109
T	53	141
U	53	142
V	53	143
W	53	149
X	53	150
Y	55	18
Z	55	8
AA	55	7
BB	55	17
CC	56	10
DD	56	51
EE	59	138
FF	63	76
GG	53	20

EXHIBIT "A" (cont.)

<u>Beaverdam Condominium Building</u>	<u>Plat Book</u>	<u>Page</u>
HH	59	183
II	59	181
JJ	56	52
KK	56	25
LL	59	55
MM	57	168
NN	59	34
OO	59	148
PP	59	184
QQ	61	5
RR	55	57
SS	55	58
TT	55	59
UU	55	75
VV	55	76
WW	58	48
XX	59	90
YY	57	160
ZZ	58	73
AAA	60	25
BBB	55	182
CCC	55	181
DDD	55	173
EEE	55	176
FFF	59	91
FF/A	63	39
GGG	59	137
HHH	59	182
GG/A	63	115
GG/B	63	116
III	63	117
JJJ	65	2
KKK	65	3

EXHIBIT "B"

BUILDING / UNIT NUMBERS WITH CORRESPONDING STREET ADDRESSES OF UNITS AT BEAVERDAM RUN CONDOMINIUM

A-1	1	Ridge Terrace	V-1	12	Governors Way	SS-1	22	Stony Ridge
A-2	3	Ridge Terrace	V-2	10	Governors Way	SS-2	24	Stony Ridge
A-3	5	Ridge Terrace	W-1	4	Stony Ridge	TT-1	28	Stony Ridge
B-1	7	Ridge Terrace	W-2	2	Stony Ridge	TT-2	26	Stony Ridge
B-2	9	Ridge Terrace	X-1	8	Stony Ridge	UU-1	30	Stony Ridge
B-3	11	Ridge Terrace	X-2	6	Stony Ridge	UU-2	32	Stony Ridge
C-1	15	Ridge Terrace	Y-1	12	Stony Ridge	VV-1	34	Stony Ridge
C-2	17	Ridge Terrace	Y-2	10	Stony Ridge	VV-2	36	Stony Ridge
D-1	19	Ridge Terrace	Z-1	16	Stony Ridge	WW-1	38	Stony Ridge
D-2	21	Ridge Terrace	Z-2	14	Stony Ridge	WW-2	40	Stony Ridge
D-3	23	Ridge Terrace	AA-1	4	Clubsid Drive	XX-1	42	Stony Ridge
E-1	25	Ridge Terrace	AA-2	2	Clubsid Drive	XX-2	44	Stony Ridge
E-2	27	Ridge Terrace	BB-1	8	Clubsid Drive	YY-1	48	Stony Ridge
E-3	29	Ridge Terrace	BB-2	6	Clubsid Drive	YY-2	46	Stony Ridge
F-1	31	Ridge Terrace	CC-1	12	Clubsid Drive	ZZ-1	52	Stony Ridge
F-2	33	Ridge Terrace	CC-2	10	Clubsid Drive	ZZ-2	50	Stony Ridge
G-1	14	Ridgeview Drive	DD-1	16	Clubsid Drive	AAA-1	54	Stony Ridge
G-2	16	Ridgeview Drive	DD-2	14	Clubsid Drive	AAA-2	56	Stony Ridge
H-1	10	Ridgeview Drive	EE-1	20	Clubsid Drive	BBB-1	60	Stony Ridge
H-2	12	Ridgeview Drive	EE-2	18	Clubsid Drive	BBB-2	58	Stony Ridge
I-1	6	Ridgeview Drive	FF-1	24	Clubsid Drive	CCC-1	64	Stony Ridge
I-2	8	Ridgeview Drive	FF-2	22	Clubsid Drive	CCC-2	62	Stony Ridge
J-1	2	Ridgeview Drive	GG-1	18	Ridgeview Drive	DDD-1	68	Stony Ridge
J-2	4	Ridgeview Drive	GG-2	20	Ridgeview Drive	DDD-2	66	Stony Ridge
K-1	30	Ridgeview Drive	HH-1	40	Clubsid Drive	EEE-1	70	Stony Ridge
K-2	32	Ridgeview Drive	HH-2	38	Clubsid Drive	EEE-2	72	Stony Ridge
L-1	28	Ridgeview Drive	II-1	44	Clubsid Drive	FFA-1	28	Clubsid
L-2	26	Ridgeview Drive	II-2	42	Clubsid Drive	FFA-2	26	Clubsid
M-1	22	Ridgeview Drive	JJ-1	48	Clubsid Drive	FFF-1	74	Stony Ridge
M-2	24	Ridgeview Drive	JJ-2	46	Clubsid Drive	FFF-2	76	Stony Ridge
N-1	42	Ridgeview Drive	KK-1	52	Clubsid Drive	GGA-1	32	Clubsid
N-2	44	Ridgeview Drive	KK-2	50	Clubsid Drive	GGA-2	30	Clubsid
O-1	38	Ridgeview Drive	LL-1	5	Governors Drive	GGB-1	36	Clubsid
O-2	40	Ridgeview Drive	LL-2	7	Governors Drive	GGB-2	34	Clubsid
P-1	34	Ridgeview Drive	MM-1	1	Governors Drive	GGG-1	80	Stony Ridge
P-2	36	Ridgeview Drive	MM-2	3	Governors Drive	GGG-2	78	Stony Ridge
Q-1	4	Pond Lane	NN-1	101	Stony Ridge	HHH-1	84	Stony Ridge
Q-2	2	Pond Lane	NN-2	103	Stony Ridge	HHH-2	82	Stony Ridge
R-1	4	Weeping Willow	OO-1	105	Stony Ridge	III-1	88	Stony Ridge
R-2	2	Weeping Willow	OO-2	107	Stony Ridge	III-2	86	Stony Ridge
S-1	8	Weeping Willow	PP-1	109	Stony Ridge	JJJ-1	3	Ridgeview
S-2	6	Weeping Willow	PP-2	111	Stony Ridge	JJJ-2	1	Ridgeview
T-1	4	Governors Way	QQ-1	113	Stony Ridge	KKK-1	7	Ridgeview
T-2	2	Governors Way	QQ-2	115	Stony Ridge	KKK-2	5	Ridgeview
U-1	8	Governors Way	RR-1	18	Stony Ridge			
U-2	6	Governors Way	RR-2	20	Stony Ridge			

EXHIBIT “C”

This is a working copy of the Bylaws of Beaverdam Run Condominium Association and incorporates amendments approved in July 1996 and September 2010 to the Amended and Restated Bylaws dated September 23, 1991.

AMENDED
BYLAWS
OF
BEAVERDAM RUN CONDOMINIUM ASSOCIATION

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AMENDED
BYLAWS
OF
BEAVERDAM RUN CONDOMINIUM ASSOCIATION

Article I
General

Section 1. Applicability. These Bylaws provide for the self government of Beaverdam Run Condominium (the "Condominium") in accordance with the Articles of Incorporation for Beaverdam Run Condominium Association and the Declaration of Condominium for Beaverdam Run Condominium recorded in the Buncombe County, North Carolina, Registry of Deeds. All present and future owners, present and future lessees, and their families, employees, guests, and invitees, and any other person who might use the Condominium or any of the facilities thereof in any manner, are subject to the terms and provisions of these Bylaws and any amendments thereto.

Section 2. Name and Office. The name of the corporation is Beaverdam Run Condominium Association (hereinafter referred to as the "Association"). The principal office of the Association shall be at 1 Stony Ridge, Asheville, North Carolina 28804, or such other place as the Board of Directors shall designate from time to time.

Section 3. Membership. As provided in the North Carolina Condominium Act (NC Gen. Stat. 47C-1-101 *et seq.*) (hereinafter referred to as the "Condominium Act"), an Owner of a Unit shall become a Member of the Association upon taking title to the Unit and shall remain a Member for the entire period of ownership. As may be more fully provided below, the spouse of a Member may exercise the powers and privileges of the Member. If title to a Unit is held by more than one person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Unit. Membership does not include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to each Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title.

Section 4. Purpose. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the contributions to the common expenses, arranging for the management of the Condominium, enforcing the Declaration and these Bylaws, and performing all of the other acts that may be required to be performed by the Association by the Condominium Act and the Declaration. The Association shall also amend and supplement the system of administration, the Declaration and these Bylaws as may be required from time to time and perform all other things or acts required or permitted to the Association under the Condominium Act. Except as to those matters which either the

Condominium Act, the Declaration, these Bylaws or the North Carolina Nonprofit Corporation Act specifically require to be performed by the vote of the Members, the administration of the foregoing responsibilities shall be performed by the Board of Directors, as is more particularly set forth below.

Article II

Definitions

Terms as used in these Bylaws shall have the meanings as set forth in Article 3 of the Declaration unless specifically provided otherwise or the context otherwise requires.

Article III

Meetings of Members

Section 1. Annual Meetings. The regular annual meeting of the Members shall be held during the month of September or October at such time and place as shall be designated by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members for any purpose may be called at any time by the President, and shall be called upon the request of a majority of the Board of Directors, or upon the written request of Unit Owners having twenty percent (20%) of the votes in the Association.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Unit Owners a notice of each annual or special meeting of the Association at least ten (10) days and not more than fifty (50) days prior to each annual or special meeting. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

Section 4. Waiver of Notice. Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof; unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat, unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. The presence of Owners entitled to cast one-half (50%) of the eligible votes of the Members, in person or by proxy, shall constitute a quorum.

Section 6. **Proxy.** Any Member entitled to vote may do so by written proxy duly executed by the Member in favor of any other Member, setting forth the meeting at which the proxy is valid. To be valid, a proxy must be filed with the Secretary prior to the opening of the meeting for which it is to be used and must be dated. No proxy shall be revocable except by written notice delivered to the Association. A proxy shall be automatically revoked if the Member who has given such proxy is in attendance at the meeting at which the proxy is to be used.

Section 7. **Voting.** Each Unit shall be entitled to one (1) vote which may be cast in accordance with the terms herein.

- (a) The vote of a Unit shall be cast by the person(s) named in a certificate signed by the Owner(s) of the Unit and filed with the Secretary of the Association, and such certificate shall be valid until the person(s) named in the Certificate is no longer the owner of the Unit or until revoked by a subsequent certificate properly executed and filed with the Secretary. If a new Owner's certificate is not on file at the time the vote is counted, the vote of said Unit shall not be considered in determining the requirement for a quorum, nor for any other purpose. In addition, the approval or disapproval of a Unit on any matter, whether or not the subject of an Association meeting, shall be exercised by the person(s) named in said certificate. In situations where there are multiple Owners of a Unit, fractional votes for that Unit shall not be permitted.
- (b) The Board may prohibit any Owner from voting, either in person or by proxy, or from being elected to the Board of Directors if such Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association.

Section 8. **Majority.** As used in these Bylaws, for any vote of the membership held in accordance with or pursuant to the Declaration, the term "majority" shall mean those votes or owners as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes or owners. Unless otherwise specifically provided in the Declaration or these Bylaws, the words "majority vote" shall mean more than fifty percent (50%) of the eligible votes of the Members represented at a meeting in person or by proxy, or received by mail pursuant to the procedures for mail ballot set out in these Bylaws. Unless otherwise provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

Section 9. **Adjournment.** Any meeting of the owners may be adjourned from time to time by vote of the Owners holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at an adjourned session, and no additional notice of such adjourned session shall be required.

Section 10. Written Consents and Mail Ballots. Any action which may be taken by a vote of the Owners may also be taken by mail ballot or written consent signed by Owners. The Association through its Board of Directors, furthermore, shall have fifteen (15) days to solicit and obtain the written consent of Owners who did not vote or whose vote was not cast by proxy on any issue including amendment of the Declaration and Bylaws or election of Directors. Any such written consent shall be counted as if the Member voted in person or by proxy.

The Board may, at its sole discretion, designate any matter upon which the Association may vote to be decided by mail ballot, including, for example but without limitation, amending the Declaration or Bylaws. The Members shall be given notice of any matter so designated, along with the full text of the amendment or other matter, by first class mail addressed to the Member at the address deposited with the Secretary, at least two weeks before the deadline for votes to be received.

Section 11. Conduct of Business. Pursuant to Section 47C-3-108(c) of the Condominium Act, meetings of the Membership shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised unless the President notifies the Membership at least fifteen (15) days prior to any meeting of alternative rules of order that will apply.

Article IV

Board of Directors

Section 1. Composition. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of five (5) directors. The directors shall be owners of Units or spouses of such Owners; provided, however, spouses may not serve on the Board at the same time.

Section 2. Election and Term of Office. Directors shall be elected by vote of the Members. Directors may be elected by mail ballot or at the annual meeting of the Members, at the discretion of the Board.

- (a) If the Board chooses to designate an election by mail ballot, the following procedure shall be used. At least eight weeks before the annual meeting of the Association, notice shall be given to each Owner that the election will be held by mail ballot, and that Owners may place names in nomination for the seats on the Board by a given date no later than two weeks after the service of the notice. Upon the closing of the nomination period, the Board will serve upon each Owner a ballot, biographies of the nominees, and a notice of the address to which the ballots are to be sent and the last date upon which ballots may be received to be counted in the election. That date shall be no later than one week before the annual meeting. Results shall be tabulated and announced at the annual meeting.

- (b) If the Board chooses to designate an election by vote of those persons present, in person or by proxy, at the annual meeting, a quorum being present, the election shall be held by ballot and nominations may be made from the floor.

Those persons receiving the most votes shall be elected to the number of positions to be filled. The term of office for directors shall be for two (2) years, commencing from the date of the annual meeting at which the election is held or the results of the mail ballot announced, and continuing until the election of successors. Election of the directors shall be staggered such that two (2) directors shall be elected in odd numbered years, and three (3) directors shall be elected in even numbered years. The Board may select a Nominating Committee which shall solicit the nomination of candidates from the Members. Any such Nominating Committee shall be composed of at least three (3) Members, only one of whom may be an incumbent Director.

Section 3. Removal of Members of the Board of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by at least a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, and a successor may then and there be elected to fill the vacancy thus created. See Section 47C-3-103(b) of the Condominium Act. Any director whose removal has been proposed by the Members shall be notified of any stated reason(s) for the action and shall be given at least ten (10) days notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason, other than the removal of a director by a majority vote of the Association shall be filled by a majority vote of the remaining Directors. Each person so selected shall serve until a successor shall be elected at the next annual meeting of the Association to fill the unexpired portion of the term.

Section 5. Compensation. Directors shall not be compensated unless and to the extent authorized by the Members of the Association at any meeting duly called for that purpose.

Section 6. Organizational Meeting. The first meeting of a newly elected Board shall be held within ten (10) days of election at such time and place as may be determined by the Directors.

Section 7. Regular Meetings. Meetings of the Board of Directors shall be held regularly at such time and place as shall be determined from time to time by the Board. At regular intervals, the Board shall provide Unit Owners with an opportunity to attend a portion of a meeting to bring issues or concerns to the Board's attention, and the Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak. See Section 47C-3-108(b) of the Condominium Act.

Section 8. Special Meetings and Emergency Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days notice to each director given by mail, in person, by telephone, or by any other type of electronic communication, which notice shall state the time, place, and purpose of the meeting, or, if the meeting is not in person, then the alternative form of the meeting. Special meetings of the Board of Directors shall be called by the Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors. Notwithstanding the above requirements, in the event an emergency exists where the President determines that a quorum of Directors cannot be readily assembled due to a catastrophic event, the President may dispense with the need to give three (3) days notice to each director and instead may call an emergency meeting by providing reasonable notice under the circumstances to those directors who are practicable to reach in accordance with Sections 55A-2-07 and 55A-3-03 of the North Carolina Nonprofit Corporation Act.

Section 9. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall also constitute a waiver of notice by him of the time and place of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 10. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. Meetings of the Board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised, pursuant to Section 47C-3-108(c) of the Condominium Act, unless the President notifies the other Board members of alternative rules of order that will apply. Regular meetings may be conducted by any means of communication that permits any or all directors participating to hear each other simultaneously during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. Special meetings may be conducted by any means permitted for regular meetings or by any other type of electronic communication, even if such communication is not simultaneous. A majority of directors shall constitute a quorum for the transaction of business. A decision of the Board of Directors shall be by a majority of those directors present at the duly called meeting. The President may vote.

Section 11. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the Board of Directors.

Section 12. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Condominium and may do all such acts and things as are not by the Declaration, Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the Members. The Board shall have the power to adopt, modify, and repeal such reasonable rules and

regulations as it deems necessary and appropriate for the governance of the Condominium or the administration of the affairs of the Association and to impose sanctions for violations thereof, including, without limitation, monetary fines. Such powers and duties shall include but not be limited to:

- (a) Adopt, amend and enforce Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect assessments for common expenses for Unit Owners;
- (d) Hire and terminate, at the Board's discretion, a professional management agent or agents, at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. Any management contract shall contain a termination clause permitting termination, with or without cause and without penalty, upon no more than thirty (30) days' written notice. No management contract shall have a term of more than two (2) years.
- (e) Hire and terminate accountants, attorneys, architects, engineers, and other employees, agents, and independent contractors;
- (f) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium;
- (g) Make contracts, open bank accounts, and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (i) Cause additional improvements to be made as a part of the common elements;
- (j) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to Section 47C-3-112 of the Condominium Act;
- (k) Grant easements, leases, licenses, and concessions through or over the common elements;
- (l) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in Subsections 47C-2-102(2) and (4) of the Condominium Act and for services provided to Unit Owners;

- (m) After notice and an opportunity to be heard, levy reasonable fines not to exceed the maximum amount permitted by law per violation (on a daily basis for continuing violations) of the Declaration, Bylaws, and Rules and Regulations of the Association pursuant to Section 47C-3-107.1 of the Condominium Act;
- (n) Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale certificates required by Section 47C-4-109 of the Condominium Act, or statements of unpaid assessments;
- (o) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;
- (p) Borrow money and assign its right to future income, including the right to receive common expense assessments;
- (q) Prepare, execute, certify and record amendments to the Declaration and Bylaws on behalf of the Association;
- (r) Exercise any other powers conferred by the Declaration or Bylaws;
- (s) Exercise all other powers that may be exercised in this State by nonprofit corporations; and
- (t) Exercise any other powers necessary and proper for the governance and operation of the Association.
- (u) Exercise such powers that are determined to be necessary to manage an emergency situation on behalf of the Association including, but not limited to, authority to adopt, amend, or repeal bylaws that are necessary to manage the Association's affairs during such an emergency in accordance with Sections 55A-2-07 and 55A-3-03 of the North Carolina Nonprofit Corporation Act. Any such bylaws changes that are made shall be temporary and not remain in effect once the emergency ends.

Article V

Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, and the Secretary, all of whom shall be elected by and from the Board of Directors. The Board of Directors may elect a Treasurer, an Assistant Treasurer, an Assistant Secretary, and such other subordinate officers as in its judgment may be necessary. The Secretary and Treasurer, and the Assistant Secretary and Assistant Treasurer, may be the same persons. The subordinate officers shall not be required to be members of the Board of Directors.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the Members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected by the Board.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Act. In the event of an emergency where a catastrophic event prevents the President from convening an emergency meeting with any other director, the President may unilaterally exercise any of the emergency powers that the Board is authorized to take in order to manage the Association's affairs in accordance with Sections 55A-2-07 and 55A-3-03 of the North Carolina Nonprofit Corporation Act; provided, however, that the President may unilaterally exercise such emergency powers only until it becomes practicable to convene an emergency meeting of the Board.

Section 5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 8. Assistant Secretary and Assistant Treasurer. An Assistant Secretary and/or an Assistant Treasurer shall act in the absence of the Secretary and/or Treasurer respectively, and shall have all the powers, duties and responsibilities provided for the Secretary and/or Treasurer respectively, when so acting.

Article VI
Fiscal Management

The receipts and expenditures of the Association shall be credited and charged to accounts classified as follows, all of which expenditures shall be Common Expenses:

Section 1. Operating Fund. This fund shall be used for current maintenance, management and operations of the condominium and shall include: (1) fixed monthly revenue sums as set out in the budget for the year, monthly fund investment income and such sums as may be authorized from time to time by the Board to be transferred from the Contingency Fund, and (2) all expenditures with reference to the current year except those expenditures designated to be spent from the Capital Reserve Fund.

Section 2. Capital Reserve Fund. This fund shall be used for the maintenance and replacement of and capital improvements to the Common Elements and Limited Common Elements in such amounts as shall be determined from time to time by the Board of Directors by approval of a Capital Reserve Fund Long Range Plan. Sums deposited in the fund shall consist of fixed monthly revenue sums as set out in the latest approved Capital Reserve Fund Long Range Plan, monthly fund investment income and such sums as may be authorized from time to time by the Board to be transferred from the Contingency Fund.

Section 3. Contingency Fund. This fund shall be used for such purposes as the Board shall determine and which consists of (1) all Association receipts for the current year after distribution of fixed monthly budgeted sums and respective fund investment earnings to the Operating Fund and the Capital Reserve Fund and (2) less such sums as may be authorized to be transferred from it from time to time by the Board to the Operating Fund or the Capital Reserve Fund.

Section 4. Budgets and Assessments. In compliance with Sections 11.4 and 11.5 of the Declaration, the Board of Directors shall adopt an operating budget and, if necessary, a capital budget, for each calendar year that shall include the estimated funds required to defray the Common Expenses and capital expenditures and to provide and maintain funds for the foregoing accounts. A copy of the budget and proposed assessments shall be sent to each Member, on or before December 1 preceding the fiscal year for which the budget is made. At any time that the budget is subsequently amended, a copy of the amended budget shall also be furnished to each Member. However, delivery of a copy of any budget or amended budget to each Member shall not affect the liability of any Member for any assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and the assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board at any time in its sole discretion, to levy additional assessments in the event that the budget originally adopted shall appear to be insufficient to pay the costs and expenses of operation, maintenance and management of the Condominium, or in the event of an emergency.

At the delivery of the proposed budget to the Members, the Board shall give notice of a meeting of the membership to exercise its authority to reject the proposed budget. The meeting shall be held not less than seven nor more than thirty days after delivery of the budget and notice. The meeting shall be properly constituted in the absence of a quorum. The budget shall be approved and go into effect unless disapproved by the vote in person or by proxy of a majority of the votes of all Unit Owners.

Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

Section 5. Depository and Investment. The depository for Association funds shall be banks or such other financial institutions as the Board shall from time to time designate. Withdrawal or transfer of monies from such accounts shall only be permitted by persons designated by the Board; provided, however, that no reimbursements in excess of \$100, including payments made in the form of goods and services, may be made to any officer or Board member, unless the Board approves such payments in advance pursuant to Section 47C-3-118(c) of the Condominium Act. The funds of the Association may be retained in whole or in part in cash and/or be invested and reinvested in such conservative investments as the Board deems appropriate.

Section 6. Bonds. Fidelity bonds may be required at the discretion of the Board from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amounts of such bonds shall be determined by the Board. The premiums of such bonds required for officers shall be paid by the Association. All other bonds shall be paid for by the person or business entity bonded.

Section 7. Association Records and Financial Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Condominium Act, the Declaration and these Bylaws. The Board may choose to have the financial records audited by an independent accountant, but an annual audit is not mandatory. Any year that an audit is not obtained, there shall be a financial review of the records by an ad hoc committee appointed by the Board and the results of this review shall be distributed to all Members. All Members of the Association and all mortgagees shall, upon written request, be entitled to inspect all books and records of the Association during normal business hours at the office of the Association or other place designated reasonably by the Board of Directors as the depository of such books and records.

Section 8. Finance Committee. The Board shall establish a standing Finance Committee that provides recommendations for Board approval on financial matters and financial planning, recommends policies and guidelines to establish financial standards and procedures, oversees audits and financial reviews, coordinates with the Long Range Planning Committee, and assists with annual budget preparation.

Article VII

Committees

The Board shall: (1) establish committees from among the Members to assist in the conduct of the affairs of the Association, (2) designate a Board Member as the Board liaison for each committee, (3) appoint the chairs of standing committees to serve for the calendar year and chairs of ad hoc committees to serve until the assigned task is completed, and (4) appoint Members of the committees, or in the Board's discretion, the committee Members may be appointed by the Board liaison or the Chair of the committee.

Article VIII

Indemnification of Officers and Directors

The Association shall indemnify every officer and director against any and all expenses, including legal fees, reasonably incurred by or imposed upon such officer or director in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer or director, whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Article IX

Enforcement Procedures

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

Section 1. Demand. Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if such violation is a continuing one or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's sole determination, pose a danger or nuisance to safety or property.

Section 2. Notice. Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may impose a fine or suspension of condominium privileges by giving the violator written notice. The notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine and/or the type and length of suspension; (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Board of Directors or its designated committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have a fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

Section 3. Hearing. If the hearing is requested, it shall be held before the Board of Directors or a committee designated by the Board and the violator shall be given a reasonable opportunity to be heard. The Board or designated committee shall render its final decision regarding imposition of the penalty no later than fifteen (15) days after the hearing. The minutes of the meeting shall contain a written statement of the results of the hearing.

Article X

Miscellaneous

Section 1. Notices. All notices, demands, bills, statements, or other communications given or required to be given under the Declaration or these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally on the date so delivered to the Owner's or occupant's residence or into the unblocked mail slot provided for each Owner or occupant in the mail delivery area located on Condominium property, or if sent by United States mail, first class postage prepaid, on the date placed in a United States Postal Service depository for delivery:

- (a) if to a Unit Owner, or occupant, at the address which the Owner or occupant has designated in writing and filed with the Secretary, or at the address of the Owner as shown in the Buncombe County tax records, if different from the physical address; or,
- (b) if to the Association or the Board of Directors, at the principal office of the Association.

Section 2. **Severability.** The invalidity of any part of the Declaration or these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of the Declaration or these Bylaws.

Section 3. **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Declaration or these Bylaws or the intent of any provision thereof.

Section 4. **Gender and Grammar.** The use of the masculine gender in the Declaration or these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 5. **Fiscal Year.** The fiscal year shall be the calendar year.

Section 6. **Conflicts.** In the event of conflicts between the Condominium Act, the Declaration, and these Bylaws, the Condominium Act, the Declaration, and the Bylaws shall control, in that order.

Section 7. **Amendment.** These Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the Members holding at least two-thirds of the total vote of the Members. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is recorded in the Registry of Deeds of Buncombe County, North Carolina. Notwithstanding the above requirements, the Board of Directors or, in appropriate circumstances, the Board President, may adopt, amend, or repeal such bylaws that are necessary to manage the affairs of the Association during an emergency in accordance with Section 55A-2-07 of the North Carolina Nonprofit Corporation Act; provided, however, that any such changes to the bylaws that are made shall be temporary and not remain in effect once the emergency ends.

Beaverdam Run Condominium Association