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Rutherford County, NC
Faye H. Huskey Register of Deeds
BK **880** PG **709-731**

PRICE, Youngblood & MASSAEE
240 Third Ave. West
Hendersonville, NC 28739

Prepared by Bill's Mountain, LLC

STATE OF NORTH CAROLINA

Declaration Of Covenants And Restrictions

For

COUNTY OF RUTHERFORD

Vista At Bill's Mountain

THIS DECLARATION is made this 15th day of August, 2005, by Bill's Mountain, LLC, a Florida limited liability company (the "Declarant"), presently of 525 North Main Street, Hendersonville, North Carolina 28792;

WITNESSETH:

WHEREAS, the Declarant is the Owner of the Development, as hereinafter set forth, and desires to make, execute and declare this Declaration of Covenants and Restrictions for Vista At Bill's Mountain; and

WHEREAS, the Development currently consists of those certain tracts or parcels of land more particularly described on Exhibit A, as well as additional adjoining tracts as may be added from time to time by Declarant;

NOW, THEREFORE, the undersigned hereby makes this Declaration for the purposes and subject to all the terms and provisions hereinafter set forth, by the execution hereof:

ARTICLE I
DEFINITIONS

1.1 Definitions. The terms defined below shall be deemed to have the meanings specified whenever they appear in this Declaration, unless the context otherwise requires. These definitions shall apply whether or not the defined terms are capitalized. Unless the context otherwise provides, all terms herein that are defined in the Act, shall have the same meaning as contained in the Act and similar terms contained herein, as contained in the Act, shall have the same meaning as contained in the Act, when the context so requires.

"Act" shall mean the North Carolina Planned Community Act, which is Chapter 47F of the North Carolina General Statutes, as amended, unless context clearly provides otherwise.

"Additional Property" means such additional tracts or parcels of land which are submitted to this Declaration by the Declarant pursuant to an Instrument recorded in the Office of the Register Of Deeds of Rutherford County, North Carolina containing provisions indicating the intention of Declarant to subject such Additional Property to the provisions of this Declaration.

"Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time, a copy of the initial Articles of Incorporation being attached to this Declaration as Exhibit B.

"Assessment" means the share of the Common Expenses from time to time assessed against a Lot or Unit and its Owner by the Association in the manner herein provided.

"Association" means the Vista at Bill's Mountain Homeowners' Association, Inc., a North Carolina Non-Profit Corporation formed for the purpose of exercising the powers of the Association under the Instruments and the Act. The Association shall possess all the powers and have all the responsibilities as provided in Article 3 of the Act, in addition to those provided herein.

"Board of Directors" or "Board" means the executive board of directors of the Association, which is the governing body of the Association, which shall have the authority to act on behalf of the Association.

"Bylaws" or "By-Laws" means the bylaws of the Association, as amended from time to time, a copy of the initial By-Laws being attached to the Instruments.

"Common Areas and Facilities" means all portions of the Development other than the Lots and Units, and shall have the same meaning as the term "common elements" as that term is defined in the Act.

"Common Expenses" means all sums lawfully assessed against the Owners by the Association; ad valorem taxes, public assessments or governmental liens, if any, levied on Common Areas and Facilities; expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities; expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by, this Declaration or the Bylaws together with any such expenditures by permitted or required by the Act; and, insurance premiums.

"Declarant" means initially Bill's Mountain, LLC, a Florida limited liability company, the fee simple owner of the Development, which has executed this Declaration.

"Declaration" means this Declaration, as amended from time to time.

"Development" means the property described on Exhibit A and being all of the property, which is currently subject to the Declaration, and all Additional Property hereafter subject to this Declaration.

"Director" means a member of the Board of Directors.

"First Mortgagee" means the holder of a first-in-priority Mortgage.

"Foreclosure" includes, without limitation, the judicial foreclosure of a Mortgage or the exercise of a power of sale contained in any Mortgage.

"Institutional Mortgagee" means one or more commercial or savings banks, savings and loan associations, trust companies, credit unions, industrial loan associations, insurance companies, pension funds, or business trusts, including, but not limited to, real estate investment trusts, any other lender regularly engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such a lender, or any combination of any of the foregoing entities.

"Instruments" means this Declaration, the Articles of Incorporation, the Bylaws and the Plat(s), including any and all exhibits, schedules, certifications, and amendments thereof, as they may exist from time to time, made and recorded with respect to the Development.

"Lease" means any lease, tenancy, sublease, rental contract, or other occupancy agreement whether oral or written.

"Lot" means a physical portion of the Development designed for separate ownership or occupancy by a Lot Owner and shall initially include the Lots as described in Article 3.

"Lot Designation" means one or more numbers and/or letters that identify each Lot and/or each Unit, as shown on the Plat and the Plan.

"Lot Owner" has the same meaning as Owner, when the context so requires, and means one or more persons, including Declarant, who owns a Lot or Unit. This term does not include a Mortgagee in his capacity as such.

"Majority" means more than fifty percent (50%) in any context, unless a different percentage is expressly required.

"Mortgagee" means the holder, guarantor or insurer of a Mortgage or a beneficiary under a Deed of Trust.

"Occupant" means any person, including, without limitation, any guest, customer, invitee, tenant, lessee or licensee of an Owner, occupying or otherwise using or visiting in a Unit or in a dwelling located on a Lot.

"Officer" means an officer of the Association.

"Owner" has the same meaning as Lot Owner and includes all of such owners when the context requires.

"Person" means a natural person, corporation, business trust, estate, joint venture, partnership, association, trust or other legal entity, or any combination thereof.

"Plat" or "Plats" means the plat(s) of survey for the Development or portions thereof which is certified and recorded, as amended and certified from time to time, in the Rutherford County Registry. "Plat" or "Plats" shall include Plats of survey showing any or all portions of the Development as recorded from time to time.

"Record" or "file for record" means filing for record in the Office of the Register of Deeds, Rutherford County, North Carolina.

"Size" means the square footage or acreage of a Lot as computed by reference to the Plat.

"Unit" means any physical portion of the Development designed for separate ownership or occupancy as a residential unit within a condominium or planned unit development permitted within the Development pursuant to any declaration(s) of condominium and/or declaration of planned unit development that may be filed of record by the Declarant, its successors or assigns.

"Vote" means the weight of the vote for each Lot in the Association as set forth in Section 3.5.

ARTICLE 2

DECLARATION OF COVENANTS AND RESTRICTIONS

2.1 Submission to this Declaration. Declarant hereby submits the Development to this Declaration. The Development and every interest therein shall, after the recording of this Declaration, be owned, held, transferred, sold, conveyed, used, leased, occupied, mortgaged, and deeded in trust subject to this Declaration. Every person acquiring or having an interest in the Development, by acceptance of a deed or other instrument of any kind, whether or not such deed or other instrument is signed by such person or otherwise agreed in writing, shall take such interest subject to the Instruments and shall be deemed to have agreed to the same. Further, nothing contained herein shall be intended to or construed to apply to any Lots within the Development not currently owned by Declarant, so as to render such Lot or the structure or structures thereon in violation hereof, but the provisions hereof shall be applicable to any subsequent improvements or substantial modifications of existing structures on any such Lots. Furthermore, in the event any residential structure currently located on any such Lot not now owned by Declarant is completely or substantially destroyed by fire or other casualty, the provisions of this Declaration shall be applicable to any reconstruction, but shall not prohibit reconstruction on such Lot of residential structures substantially consistent with that as previously existed prior to such casualty.

2.2 Name and Location. The name of the Development is "Vista At Bill's Mountain". The Development is located in Rutherford County, North Carolina.

2.3 Governing Provisions. The Development, the Association, and each Owner shall be governed by the Instruments and any rules and regulations adopted by the Association pursuant to the Instruments.

ARTICLE 3 **DESCRIPTION OF THE DEVELOPMENT**

3.1 Development. The Development is described on Exhibit A and shown on the Plats, and includes all improvements thereon and all rights and easements appurtenant thereto. The Development is expected to consist of approximately Three Hundred (300) Lots all as more particularly shown on the Plats. Notwithstanding the foregoing, Declarant reserves the right to change the number of Lots, the number of each type of such Lot, alter the boundary lines of each Lot still owned by Declarant and otherwise change and alter the location of the Common Areas and Facilities. In such event, Declarant reserves the right at anytime, and regardless of whether Declarant owns a sufficient number of Lots to allow or permit Declarant under the provisions of Article 12 of this Declaration or under Section 47F-2-117 of the Act, to record an appropriate amendment to this Declaration, reflecting such change or alteration. In addition to Lots, the Development will include areas with town homes and cottages. These areas may have different covenants and restrictions.

3.2 Lots. The Lots shall be the single family lots as shown on the Plats and shall be intended for the construction thereon of one (1) single family residence in accordance with the provisions hereof. Nothing contained herein shall require Declarant to construct a residence on any such Lot and Declarant may elect, at its sole discretion, to convey all or a portion of any such Lot to the Association, in which event such Lot, or portion thereof, shall become a portion of the Common Areas and Facilities. Notwithstanding the foregoing, the Declarant reserves the right to modify the terms hereof so as to provide for the construction on a portion of the Development of town homes, cottages or condominiums, and, in so doing, may subject one or more portions of the Development to the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

3.3 Common Areas and Facilities. The Common Areas and Facilities will consist of all portions of the Development other than Lots and Units, not otherwise retained or reserved by Declarant on the Plat(s), as amended from time to time by Declarant.

3.4 Increase of Size of Development. As of the recondition of this Declaration it is contemplated that the Development will contain approximately Three Hundred (300) Lots. In addition to the right, as

reserved in Section 3.1 to change the number and type of Lots as contained in the Development, and to alter the size, location and improvements located on the Common Areas and Facilities, the Declarant further reserves the right to add Additional Property to the Development by filing an appropriate instrument in the Office of the Register Of Deeds of Rutherford County, North Carolina subjecting such Additional Property to the terms and provisions of this Declaration, regardless of whether at such time Declarant shall own a sufficient number of Lots to permit it to amend this Declaration pursuant to the provisions of Article 12 of this Declaration or Section 47F-2-117 of the Act, reflecting such change or alteration. In the event that the Declarant shall exercise any of the rights contained herein, either to alter the size and location of the Lots or to add Additional Property, then the undivided interests in the Common Areas and Facilities shall be altered either in the Development or the Additional Property, as the case may be, and Declarant shall record an appropriate instrument adjusting such allocated interests. Further, Declarant shall be absolutely and completely absolved and relieved from any liability or responsibility with respect to any determination of the appropriate Allocated Interests, Votes in the Association, and liability for (Allocated Interests in) Common Expenses in conjunction therewith, so long as Declarant exercises such discretion in good faith.

3.5 Allocation of Interests in Common Areas and Facilities. The Allocated Interests in the Common Areas and Facilities, Votes in the Association, and liability for (Allocated Interests in) Common Expenses are allocated among the Lots located within the Development as follows: the undivided interests in the Common Areas and Facilities, Votes in the Association and liability for Common Expenses, shall be allocated among the Lots located within the Development proportionately, in equal shares, with the proportion of each Lot to be determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Development. . In the event that Declarant shall exercise the right to subject Additional Property to the terms and provisions of this Declaration as described in Section 3.4 herein above, Declarant shall allocate the Allocated Interests in the Common Areas and Facilities, as described in the immediate preceding sentence. Votes in the Association and liability for (Allocated Interests in) Common Expenses shall be allocated among the Lots in accordance with such proportion.

ARTICLE 4

ARCHITECTURAL CONTROL

To assure a community of congenial Owners and thus protect the value of the developed Lots and Units, the Lots, dwellings and all other improvements shall be subject to the prior review and approval of the Declarant or the architectural committee of Owners appointed by the Board of Directors as described below.

4.1 Approval Required for Construction, Alterations, Or Changes. To preserve the architectural appearance of the Development, no construction (including the initial construction of the residential structure on the Lot), painting or other changes of any nature whatsoever shall be commenced or maintained by any Owner, (other than Declarant or a contractor, subcontractor or employee hired by Declarant), with respect to the exterior of any dwelling on a Lot, or any other portion of the Development, including any Common Areas and Facilities appurtenant thereto, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, color, height, materials, (including, without limitation, all exterior surface, roofing, and other such materials) and location of the same shall have been submitted and approved in writing as to external design and location in relation to surrounding structures and topography by the Board of Directors or by an architectural committee of Owners appointed by the Board of Directors. Furthermore, prior to commencing any such construction, alteration or modification, the contractor and/or subcontractor conducting same must be approved by the Board of Directors, in its sole discretion. This provision shall not be construed or intended to limit or restrict routine repainting in the same or substantially the same color as such structure was previously painted, routine landscaping and trimming and normal routine maintenance and repair with the same or similar materials. Any modifications, alterations or additions to the lawn or landscaping of the Lots must be approved by the Association. An Owner may make improvements and alterations within the dwelling on his Lot; provided

same are not visible from the exterior of the residential structure on the Lot. No Owner shall impair any easement without first obtaining the written consent of the Association and of the Owner or Owners and their Mortgagees for whose benefit such easement exists.

ARTICLE 5 BUILDING AND USE RESTRICTIONS

5.1 Building Restrictions.

5.1.1 Exterior. No vinyl siding or log construction shall be permitted. In addition, all concrete or masonry block foundations must be covered with stone, brick, or stucco on all exterior surfaces. Furthermore, to provide a neat and attractive appearance throughout the Development, no awnings, shades, screens or other items shall be attached to, hung or used on the exterior of any window or door of any building without the prior written consent of the Board of Directors or an Architectural Review Committee ("ARC") appointed by the Board of Directors. Further, no foil or other reflective material shall be used on any windows or sun screen, blinds, shades or any other purpose.

5.1.2 Minimum Square Footage. No residential structure may be constructed on a Lot having a ground floor square footage of heated living area of less than 2,000 square feet, if a one story structure, or 1,400 square feet, if a two story structure, with an aggregate minimum square footage for such two (2) story structure of not less than 2,200 square feet; provided that this provision shall not be applicable to any structure constructed by, for, or on behalf of Declarant. Notwithstanding anything to the contrary contained herein, Declarant may, at any time in its sole discretion, modify this provision, or vary some or all of such provision with respect to any Lot, regardless of whether such provision is then owned by Declarant.

5.1.3 Completion of Improvements. No Owner shall be obligated to commence construction on any Lot within any specific period of time, but once any Owner shall commence construction on any Lot, such Owner shall cause such construction to be completed within not more than twelve (12) months. For purposes hereof, commencement of construction shall be deemed to have occurred upon the commencement of site grading. Completion shall occur upon the issuance of a certificate of occupancy.

5.2 Setbacks. No structure or other improvement shall be erected on a Lot within fifty (50') feet of any street or road right of way including a cul de sac, nor within twenty-five (25') feet of the rear or side Lot lines, unless applicable governmental regulations require a greater setback. For purposes thereof, the rear or side Lot lines will be all Lot lines not adjoining or located within a road right of way. Notwithstanding anything to the contrary contained herein, Declarant may, at any time in its sole discretion, modify this provision, or vary some or all of such provision with respect to any Lot, regardless of whether such provision is then owned by Declarant.

5.3 Minimum Lot Size; Subdivision. All Lots within the Development shall consist of not less than one (1) acre and shall not be further subdivided from that shown on the Plat, unless approved by the Board of Directors, except by the Declarant who shall at all times be entitled to subdivide any Lot owned by Declarant into one or more Lots of such size and shape as Declarant shall determine, in its sole discretion.

5.4 Lighting. The design, type, location, size, intensity, and color of all exterior lights (including both those mounted as part of the original design or otherwise in place at the time of the conveyance of a Lot to an Owner and those mounted with the consent of the Board of Directors) shall be subject to the prior written approval of the Board of Directors.

5.5 Residential Purposes. Except for Declarant's rights as set forth herein, all Lots and Units shall be, and the same hereby are, restricted exclusively to residential use, and the occupancy thereof shall be

subject to such restrictions as the Board of Directors may establish pursuant to the rules and regulations of the Association. The Board of Directors is given full and complete judgment, in its discretion, to determine whether a proposed use or occupancy is in violation of the restrictions set forth herein. In no event shall the Association or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph.

5.6 Trees and Landscaping. No Owner, other than Declarant, shall be entitled to cut, remove, mutilate or otherwise damage any trees shrubs, bushes, or other vegetation having a trunk diameter of eight (8) inches or more at a point of four and one-half (4 ½) feet above the ground level, or other significant vegetation as designated, from time to time, by the Declarant or the architectural committee of Owners appointed by the Board of Directors without obtaining prior approval by the Declarant or the architectural committee of Owners appointed by the Board of Directors. Notwithstanding the foregoing, dead or diseased trees shall be cut and removed promptly by the Owner. Additionally, burning of leaves, shrubbery, trees or trash will not be permitted. Furthermore, all Owners shall keep and maintain all lawns, landscaping and other vegetative matter in neat and orderly manner and shall keep grass, weeds or underbrush trimmed on a regular basis, which grass, weeds, or underbrush shall not exceed two (2') feet in height. In such event, Declarant or the Association may elect to trim or cut such at the expense of the Owner.

5.7 Signs. Except as may be required by legal proceedings and except as permitted in accordance with Section 5.7 hereof, no "For Sale" or "For Rent" signs of any kind shall be maintained or permitted on any portion of the Development, without the express written permission of the Declarant, so long as Declarant retains the right to appoint the Board of Directors and, thereafter, without the express prior written permission of the Board of Directors. Notwithstanding the foregoing, the provisions of this Section shall not apply to any signs maintained by the Declarant, its agents, representatives, or assigns, during the period that the Declarant has a Lot for sale. The foregoing shall not apply to the signs placed by Declarant upon, and becoming a portion of, the Common Areas and Facilities at each entrance to the Development which identifies the name of the Development and the directional signs placed by Declarant at various locations on the Common Areas and Facilities. The maintenance responsibility for such signs shall rest with the Association.

5.8 Pets. No animals or birds, or any kind of pet, shall be kept or maintained on any portion of the Development, except that, notwithstanding the foregoing, Owners may keep and maintain no more than two (2) typical domestic pets with dogs not exceeding sixty (60) pounds each. All such animals shall be further subject to such reasonable rules and regulations as the Association may impose.

5.9 Use of Common Areas and Facilities. The use and enjoyment of the Common Areas and Facilities by the Owner and their Occupants shall be subject to such reasonable rules and regulations as may be made and amended from time to time in accordance with Section 9.5 of this Declaration. This Section is for the mutual benefit of all Owners and is necessary for the protection of all Owners.

5.10 Antennas. No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Development, whether attached to a building or structure or otherwise, without the express written permission of the Declarant, so long as Declarant retains the right to appoint the Board of Directors and, thereafter without the express written permission of the Association; provided, however, that Declarant and the Association shall have the right to erect, construct and maintain such devices. Notwithstanding the foregoing, any such device which may not be prohibited by the Association or the Declaration pursuant to the Federal Communications Act, or other similar statutory provision, shall be deemed herewith approved and permitted.

5.11 Tanks. All propane, gas, fuel and/or other storage tanks on any lot, or for the benefit of any

unit, shall be buried underground and the lid shielded from the view from any road by planting or other means approved by the Declarant or the architectural committee of Owners appointed by the Board of Directors.

5.12 Motor Vehicles, Trailers, Boats, etc. Automobiles shall be operated and parked only upon those portions of the Common Areas and Facilities designated for such purpose on the Plat or by the Board of Directors. Other motor vehicles, including, without limitation, mobile homes, motor homes, truck campers, trailers of any kind, and boats, shall not be kept, placed, stored, or parked on any portion of the Development, with the exception of motor vehicles temporarily parked on the Development for purposes of repairs of portions of the Development or for deliveries. No junked or inoperable cars shall be permitted. The provisions of this Section 5.12 shall not be applicable to any such motor vehicles, campers, boats, etc. which are parked at all times within a garage and operated or removed from within such garage solely to be moved from the Development for utilization of such motor vehicles, etc. or return from without such Development to such garage.

5.13 Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, except in containers specifically designated for such purpose, nor shall any odors be permitted, so as to render any portion of the Development unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Development. No nuisance shall be permitted to exist or operate upon any portion of the Development so as to be offensive or detrimental to persons using or occupying other portions of the Development. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Development.

5.14 Prohibited Activities. Noxious or offensive activities shall not be carried on in any Lot, or in any part of the Common Areas and Facilities. Each Owner and Occupant shall refrain from any act or use of his Lot or the Common Areas and Facilities which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants, or which would result in the cancellation of insurance on any portion of the Common Areas and Facilities, or which would be in violation of any law or governmental code or regulation. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, and the recreational discharge of firearms, shall not be pursued or undertaken on any portion of the Development.

5.15 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions, and the like applicable to the Development shall be observed. In the event of any conflict between any provision of any such governmental code, regulations, or restriction and any provision of this Declaration, the more restrictive provision shall apply.

5.16 Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Lots and/or Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns, and representatives to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Lots and/or Units, including, but without limitation, business offices, signs, model units, and sales offices.

5.17 Leasing. No Lot or Unit located within the Development may be rented or leased more than two times per calendar year, and no Lot or Unit may be rented to any tenant or lessee for any time period less than three consecutive months.

5.18 Right Of First Refusal. As long as Declarant owns a Lot or Unit in the Development (including any additions thereto) the Declarant shall have the right of first refusal regarding every Lot and every Unit

within the Development. No interest in any Lot or Unit within the Development may be sold and conveyed by any Owner, the Owner's heirs, successors or assigns, unless the following procedure has transpired:

A. The Owner has notified Declarant in writing, at least thirty days prior to the proposed closing date, of the complete and full terms and conditions of any proposed sale of the Lot or Unit (or any interest therein or part thereof) including, but not limited to, the purchase price and all consideration, all terms of the prospective transaction, the complete name, street address and mailing address of the proposed purchaser(s), all terms of any and all other transaction(s) or prospective transaction(s) between the Owner and the proposed purchaser(s), and the Owner's mailing address.

B. Declarant shall have 10 days after Declarant receives such complete and full written notice during which time Declarant may elect to purchase the Subject Property at the same price and under the same terms and conditions as contained in Owner's written notice to Declarant. Declarant must notify Owner of its acceptance in writing, sent through the United States mail, within the said 10 days. The posting of this acceptance by Declarant by certified mail with proper postage in the United States mail to the mailing address provided by Owner shall constitute the completion of the acceptance. In the event the Right of First Refusal is exercised by Declarant, the sale shall then be closed 20 days after the posting of the written acceptance in the United States mail by Declarant, and shall be closed at such reasonable time and place as Declarant may designate.

C. At closing [1] the Owner shall provide Declarant with fee simple title to the Subject Property, free of all liens and exceptions other than road rights-of-way, general utility easements and restrictive covenants of record and Rutherford County property taxes for the current year (which shall be prorated at closing on a calendar year basis) [2] the Owner shall execute and deliver to Declarant a general warranty deed for the property with no exceptions other than those expressly noted above, and the lien affidavits required by Declarant's title insurance company for it to issue coverage against labor and material men's liens, [3] Owner shall pay the documentary stamps and excise taxes owed by a seller pursuant to law, [4] the Owner shall deliver to Declarant exclusive possession of the property, and [5] Declarant shall pay the purchase price.

D. Time shall be deemed to be of the essence regarding the right of first refusal provisions contained herein. If the Right of First Refusal is not exercised by Declarant in the manner and within the time frame set out above, then and in that event Owner is free to sell and convey the property to the prospective purchaser(s) whose offer which was refused by Declarant, but only on the same terms and conditions as were communicated by Owner to Declarant, and only if closed within 60 calendar days of the date the original notice was received by Declarant. In such event Owner shall immediately provide Declarant with full and complete copies of all closing statements, consideration, deeds and other documents used by Owner and Owner's purchaser(s) relative to the sale of the property.

E. These provisions regarding the right of first refusal shall be enforceable by the North Carolina courts in equity and at law, including by specific performance. In the event of breach of the terms of this instrument the prevailing party shall be entitled to payment of reasonable attorney fees and costs by the breaching party.

Nothing herein in this Paragraph 5.18 is intended to preclude or restrict any testamentary devise, inheritance, or bona fide gift of any Lot or Unit.

ARTICLE 6 **EASEMENTS**

In addition to the easements created and shown by the Plat, the easements described in this Article 6 from each Owner to each Owner, to the Association and to the Declarant are hereby granted, reserved and established, subject to and in accordance with the following terms and conditions:

6.1 Use and Enjoyment. Every Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Areas and Facilities located throughout the Development (including the right to access, ingress, and egress to and from his Lot over those portions of the Common Areas and Facilities designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions and limitations:

6.1.1 The right of the Association to control the use and enjoyment thereof as provided by the terms of this Declaration, which shall include, but not be limited to, the right of the Association to reasonably limit the use and enjoyment thereof to the Owners and their respective Occupants, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner and his Occupants.

6.1.2 The right of the Association to suspend the Vote of an Owner for any period of time during which an Assessment against his Lot remains unpaid or for a reasonable time for infraction of any provision of the Instruments or rules and regulations.

6.2 Utilities. To the extent that any utility line, pipe, wire, or conduit serving any Lot, Lots, or the Common Areas and Facilities shall lie wholly or partially within the boundaries of another Lot or the Common Areas and Facilities, such other Lot, Lots, or the Common Areas and Facilities shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Lot, Lots or Common Areas and Facilities served by the same and the Association. Declarant, the Association and each such Owner may assign to any public or quasi-public utility some or all of the rights granted herein.

6.3 Encroachments. If any portion of the Common Areas and Facilities encroaches upon any Lot, or if any Lot encroaches upon any other Lot or upon any portion of the Common Areas and Facilities, as a result of the construction, reconstruction, repair, renovation or restoration of any portion of the Development by Declarant, an easement for the encroachment and for the maintenance, repair, and replacement thereof shall exist so long as the encroachment exists.

6.4 Maintenance and Repair. There shall be an easement in favor of the Declarant, the Association and the Owners through, under and across the Lots, and the Common Areas and Facilities as may be reasonably necessary for the installation, maintenance, repair and replacement of Common Areas and Facilities. Declarant, the Association and each such Owner may assign to any public or quasi public utility some or all of the rights granted herein. Use of this easement shall be only upon prior notice during normal business hours, except that access may be had at any time in case of emergency.

6.5 Rights of Association. There shall be a general easement to the Association, its Directors, Officers, contractors, agents, and employees (including, but not limited to, any manager employed by the Association) to enter upon the Development, or any portion thereof and to enter or take access through the Lots, and the Common Areas and Facilities as may be reasonably necessary for the installation, maintenance, repair and replacement thereof, for making emergency repairs and for other work for the proper maintenance and operation of the Development and for the performance of their respective duties. Each Owner shall afford to other Owners and to the Association, their respective contractors, agents, representatives, and employees, such access through such Lot as may be reasonably necessary to enable them to perform such work and to exercise and discharge their respective powers and responsibilities. Except in the event of emergencies, however, such easements are to be exercised only during normal business hours and upon

advance notice to the Owner or Occupant of a Lot directly affected thereby. The Association shall have the power to grant and accept permits, licenses and easements on, over, across and through the Common Areas and Facilities for the installation, maintenance or operation of the Development. An easement is hereby established for the benefit of the County of Rutherford, and any agency or utility performing any of, but not limited to, the following services over, across and through all Common Areas and Facilities for the setting, removal, and reading of water and electricity meters, the maintenance and replacement of water, electricity, telephone, sewer, cable, natural gas and drainage facilities. In addition thereto, an easement is hereby established over all of the Development for the benefit of the County of Rutherford, and all other agencies and personnel performing any, but not limited to, the following duties and services for the fighting of fire, mail delivery, private parcel delivery, collection of garbage, ambulance services, and police protection.

6.6 Rights of Declarant. So long as Declarant owns any Lot or Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents and employees shall have a transferable easement for the maintenance of signs, a sales office, a business office, promotional facilities and models within the Development, together with such other facilities as in the opinion of the Declarant may be reasonably required, convenient, or incidental to the completion, renovation, improvement, development or sale of Lots, dwellings on Lots, or Units within the Development. The Declarant may use any Lots or Units for models and/or sales offices, or dwellings on Lots within the Development, which Lots or Units may be changed from time to time. During the period that the Declarant owns any Lot or Unit, the Declarant, its duly authorized contractors, representatives, agents and employees, shall have a transferable easement on, over, through, under and across the Common Areas and Facilities for the purpose of making improvements on the Development and the Additional Property, and for the purpose of doing all things reasonably necessary and proper in connection therewith. In exercising the easements reserved by the Declarant in this Section 6.6, Declarant shall cause as little interruption and inconvenience as possible under the circumstances and further, Declarant shall remove any construction debris and repair any damage or unsightly conditions within a reasonable time. Declarant's rights shall include all other rights provided or permitted for the Declarant under the North Carolina Planned Community Act (as amended).

6.7 Expansion. In the event the Declarant exercises the option to expand set forth in Section 3.4, the Declarant, its contractors, agents and employees, shall have an easement over and through the Lots, and the Common Areas and Facilities as may be reasonably necessary for the purpose of exercising such options to expand and for constructing the improvements thereon.

6.8 General Utility Easements. Except as provided herein, each Lot shall be subject to an five-foot wide general utility easement, for the installation, maintenance, repair, and replacement of general utility lines, along the Lot's boundaries, with rear and side Lot lines being the centerline of utility easements ten feet in width. For purposes thereof, the rear and side Lot lines will be all Lot lines not adjoining or located within a road right-of-way. However, if and so long as a Lot Owner owns two or more adjoining Lots that are together used by the Lot Owner for one residence, there will be no easement along the common boundary of that Lot Owner's said adjoining Lots.

ARTICLE 7 MAINTENANCE AND REPAIR

7.1 Association. The Association shall maintain, repair and replace all portions of the Common Areas and Facilities, except as may be herein otherwise specifically provided herein. Further, the Association shall maintain the landscaping on the Common Areas and Facilities installed by Declarant, or by the Owner with approval of Declarant, or by the Owner (after the expiration of the Declarant Control Period) with approval of the Association. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the

making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority. The Association shall have all of the responsibilities as provided in GS §47F-3-107 of the Act with respect to maintenance, repair or replacement.

7.2 Lot Owner. Each Lot Owner shall maintain, repair and replace all portions of his Lot (including the dwelling unit located thereon) except those portions, if any, as have been subjected to use by the Association for the benefit of exercising one or more of the Easements contained herein above. In no event shall the Association have any responsibility for maintaining any portion of the Lot, except, that in the event that any Lot Owner shall fail to maintain any portion of his Lot so as to render same in substantial disrepair, the Association shall have the right, after reasonable notice to such Lot Owner, to go upon such property and maintain same.

7.3 Private Driveways. Each Lot Owner of a Lot served by a private driveway shall be responsible for the maintenance of that private driveway. If more than one Lot adjoins a private driveway, the Lot Owners of all Lots adjoining the private driveway shall be equally responsible for the maintenance of that private driveway, regardless of whether the Lot Owner of such Lot(s) actually uses the private driveway.

ARTICLE 8 ASSESSMENTS

8.1 Lien. Each Owner covenants and agrees to pay to the Association all Assessments (general and special) provided by this Declaration which shall be fixed, established, and collected from time to time as hereinafter provided. The proportionate liability of each Lot and its Owner for Assessments shall be proportionate, in equal shares, with the proportion of each Lot to be determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Development. All Assessments and other charges provided by this Declaration, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a charge against and a continuing lien upon the Lot against which each such Assessment or charge is made. Each Owner shall be personally liable for Assessments coming due on his Lot while he is the Owner. Any Lot shall be conveyed subject to a lien for any unpaid Assessments, subject to the provisions of Section 8.7 hereof. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Areas and Facilities or abandonment of his Lot.

8.2 General Annual Assessment. The amount of all Common Expenses not specially assessed against one or more but less than all of the Lots pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved common cash, shall be assessed against the Lots, proportionately, in equal shares, with the proportion of each Lot to be determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Development. The proposed general annual Assessment shall be established by the Board of Directors in the manner set forth in this Section. During that portion of the Association's fiscal year from the recording of this Declaration to the end of such fiscal year, the annual Assessment applicable to each Lot shall be as set forth in the estimated budget for the Development delivered to each purchaser of a Lot. Not more than sixty (60) days and not less than ten (10) days prior to the annual meeting of the Association at which such budget is to be voted upon, the Board of the Association shall prepare and submit in writing to the Owners a proposed budget of the Common Expenses for the next succeeding fiscal year to be paid by Assessments collected from the Owners, together with the amount of the annual Assessment payable by each Owner during such fiscal year. If the estimated budget proves inadequate for any reason at any time during the year, then upon the affirmative Vote of Owners having a Majority of the total Vote, the Board of Directors may levy at any time a further Assessment against the Owners and notify the Owners accordingly. If for any reason an annual budget is not approved by the Board, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new Assessment. Common Expenses of the Association to be paid through annual

Assessments shall include, but shall not necessarily be limited to, the following:

8.2.1 Management fees and expenses of administration, including management, legal and accounting fees.

8.2.2 Utility charges for utilities serving the Common Areas and Facilities and charges for other common services.

8.2.3 The cost of any master or blanket policies of insurance purchased for the benefit of all Owners and the Association and its Directors as required by this Declaration, including fire and other hazard coverage on Common Areas and Facilities, public liability coverage, umbrella liability coverage for Directors and/or their agents, and such other insurance coverage as the Board of Directors determines to be in the interest of the Association and the Owners.

8.2.4 The expense of maintenance, operation and repair of the Common Areas and Facilities as well as any maintenance upon the Lots which is the responsibility of the Association under the provisions of Article 7, if such expense is not covered by a Special Assessment.

8.2.5 Charges for any utilities provided to the Lots and not separately metered to a Lot, which shall be a Common Expense of the Association.

8.2.6 Such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against each Lot, other than ad valorem real property taxes.

8.2.7 The establishment and maintenance of an adequate reserve fund or funds, including any initial capital assessment assessed against the Owner, upon purchase of a Lot, for the periodic maintenance, repair and replacement of those Common Areas and Facilities (including Limited Common Areas and Facilities) which the Association may be obligated to maintain and of a reserve to cover operating contingencies or deficiencies arising from unpaid Assessments or liens, emergency expenditures, and other matters, as may be authorized from time to time by the Board of Directors.

8.2.8 All Other Common Expenses Permitted By The Act.

The general annual Assessment for Common Expenses described above shall be paid by and collected from the Owners in accordance with their respective proportionate liabilities for Assessment. Each Owner shall be obligated to pay such Assessments to the Association in equal installments paid no less frequently than monthly, but as specifically established by the Board of Directors. In any year in which there is an excess of Assessments and other income over expenditures, the Board of Directors, by resolution and without the necessity of a Vote of the Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments or allocate the same to one or more reserve accounts of the Association described above. Any of the foregoing provisions of this paragraph which may be construed to the contrary notwithstanding, no Assessment shall be payable under this paragraph by any Owner until this Declaration is filed of record. Therefore, the first annual Assessment payable under this Paragraph shall be prorated according to the number of days remaining in the Association's fiscal year after the date on which this Declaration is filed of record.

8.3 Special Allocation of Assessments. Any Common Expenses occasioned by the conduct of less than all the Owners or their Occupants may be specially assessed by the Board of Directors against the Lot or Lots, the conduct of any Owner or Occupant of which occasioned any such Common Expenses. Any Common Expenses benefiting less than all of the Lots may be assessed by the Board equitably among the

Lots so benefited. Except or otherwise specifically provided in this Declaration there shall be no special Assessments against any particular Lots for any Common Expenses associated with the maintenance, repair, restoration, renovation or replacement of any Limited Common Area and Facilities; rather, such expenses shall be Common Expenses. The special allocation of assessments provided for in this paragraph shall be levied by the Board of Directors in its reasonable judgment, and the amount and due date(s) of such Assessments so specially allocated by the Board shall be as specified by the Board. In no event shall the Association or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph.

8.4 Special Assessment for Capital Improvements. In addition to the special and general Assessments authorized above, and in addition to the Special Assessments for reconstruction or repair of casualty damage, the Board of Directors may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital addition to or capital improvement of the Common Areas and Facilities (including the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the Common Areas and Facilities (including the necessary fixtures and personal property related thereto), which is for the benefit of all Owners; provided, however, any special Assessment levied by the Board of Directors under and pursuant to the provisions of this Section must first have the affirmative Vote of Owners having a Majority of the total Vote at a meeting duly called and held for such purpose. Owners shall be assessed for Assessments against their respective Lots, and the due date(s) of any such special Assessments shall be specified by the Board of Directors or committee assessing same.

8.5 Non-Payment of Assessments; Remedies of Association. Any Assessment, or portion thereof, not paid when due shall be delinquent, and the Board of Directors shall have the duty to enforce the collection of all delinquent Assessments. Nothing contained herein shall be intended to create any personal liability on the part of any such Director for failure to collect such Assessments. Any Assessment, or portion thereof, not paid within thirty (30) days after the due date shall constitute a lien on such Owner's Lot when filed of record in the office of the Clerk of Superior Court, Rutherford County, in the manner provided for filing statutory liens against real property. A late charge accruing at the rate of eighteen percent (18%) per annum of the amount of each Assessment or installment thereof not paid when due, shall also be due and payable to the Association. If any Assessment or portion thereof is delinquent for a period of more than thirty (30) days, and then is not paid within ten (10) days after written notice is given to Owner to make such payment, the entire unpaid balance of the Assessment for the year in question may be accelerated at the option of the Board of Directors and be declared due and payable in full, and proceedings may be instituted to enforce such obligation and/or lien. Such notice shall be sent by certified mail, return receipt requested, to the Owner, both at the address of the Lot and at any other address or addresses the Owner may have designated to the Association in writing, specifying the amount of the Assessments then due and payable, together with authorized late charges. The Board of Directors may suspend the Vote of the Owner, as well as the right of such Owner the use of the Common Areas and Facilities, during the period in which any Assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Owner as aforesaid, and the Association may bring an action at law against the Owner obligated to pay the same or foreclose its lien against such Owner's Lot in accordance with the provisions of GS §47F-3-116, as amended, in which event late charges and costs of collection shall be added to and included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Lot and reasonable attorneys' fees. For the purposes of this Article, the amount of delinquent Assessments, if any, shall be considered an indebtedness and shall be evidenced by this Section 8.5 and therefore evidence of indebtedness shall exist hereby. All payments on account shall be applied first to the aforesaid costs of collection, then to late charges and then to the Assessment lien first due. All late charges collected shall be for the benefit of the Association. Each Owner vests in the Board of Directors the right and power to bring all actions against him personally for the collection of said Assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all

Owners. The Association, acting through the Board, shall have the power to bid in the Lot at any Foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas and Facilities or abandonment of his Lot.

8.6 Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except only (a) the lien for real estate taxes on that Lot and (b) the lien of a Mortgage securing sums unpaid to Mortgagee or other lien or encumbrance recorded prior to the perfection of said lien for Assessment. The sale or transfer of any Lot shall not affect the Assessment lien.

8.7 Deed in Lieu of Foreclosure. Notwithstanding anything contained in this Declaration or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Lot by virtue of any deed in lieu of foreclosure of a First Mortgage, such First Mortgagee shall not be liable for, nor shall such Lot be subject to a lien for any Assessment chargeable to such Lot on account of any period prior to the time such First Mortgagee shall so acquire title to such Lot; provided, however, that Common Expenses collectible thereafter from all Owners, including such First Mortgagee, shall be paid as forth in this Declaration.

ARTICLE 9 ADMINISTRATION

9.1 Administration by the Association. The Association shall administer the Development, and have the rights and duties with respect thereto, as set out in and subject to the Instruments and the Act.

9.2 Control by Declarant. The Declarant shall have the right to appoint or remove all Directors and Officers or to exercise powers and responsibilities otherwise assigned to the Association, Board or Officers by the Instruments until the first to occur of: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; (ii) one hundred twenty (120) days after the date as of which Lots to which ninety-nine percent (99%) of the undivided interests in the Common Areas and Facilities appertain shall have been conveyed by Declarant to Owners; (iii) two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; or (iv) the surrender by Declarant of such rights by an express amendment to this Declaration executed and recorded by Declarant, without the need for consent or joinder by any person. (the "Declarant Control Period"). Upon the expiration of the Declarant Control Period such rights shall automatically pass to the Owners (including Declarant if Declarant then owns one or more Lots) and a special meeting of the Association shall be called as set forth in the Bylaws. At such time, Declarant shall convey to the Association, by non-warranty deed, title to the Common Areas and Facilities. The Association shall have no right or authority to consent or refuse to consent to such transfer. At such meeting, the Owners shall elect a Board of Directors, subject to the provisions of Article IX of the Articles of Incorporation attached hereto. Further, any management or other agreement or any lease entered into during the Declarant Control Period shall be subject to cancellation without cause and without penalty or termination fee upon not more than ninety (90) days prior written notice, except for any agreements established with utility companies or governmental agencies. Following the expiration of the Declarant Control Period, the Board shall consist of five (5) Directors who must each be a Lot Owner, or a member, partner or officer of a Lot Owner. In the event that Declarant shall elect to construct some portion of the Subdivision as town homes and/or condominiums, of the five (5) Board Members, two (2) shall be the Owner of a Lot, and two (2) shall be the Owner of a town home or condominium unit. The remaining Board Member shall be elected at large from all of the Owners.

9.3 Duties and Powers – Non Profit Association. Duties and powers of the Association shall be those set forth in the North Carolina Nonprofit Corporation Act, this Declaration, the Act and the other Instruments, together with those reasonably implied to affect the purposes of the Association. Except to the extent

otherwise required, the North Carolina Nonprofit Corporation Act, this Declaration, the Act, or the other Instruments, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the Officers, without any further consent or action on the part of the Owners. Subject to and in accordance with the provisions or limitations set forth in the Bylaws, each Director and each Officer shall be entitled to be indemnified by the Association in connection with any threatened, pending or completed action, suit or proceeding with respect to which such person was or is a party by reason of the fact that such person is or was a Director or Officer.

9.4 Property. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Owners as herein provided and for the purposes herein stated. The rights of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Lot. In any year in which there is an excess of Assessments over expenditures, such surplus shall be applied in accordance with the provisions of Article 8.

9.5 Rules and Regulations. Without limiting the generality of this Article, the Board of Directors shall have the power and authority to make, amend, and revoke reasonable rules and regulations concerning the use of the Lots and the Common Areas and Facilities as set forth in the Bylaws.

9.6 Professional Management. The Board of Directors may employ a professional management firm to manage the operation and affairs of the Development and the Association. Any management firm employed shall be employed pursuant to a written agreement executed on behalf of the Association by a Majority of the Board of Directors. All such management agreements shall be terminable by the Association with cause at any time upon written notice without payment of termination fee, and without cause upon sixty (60) days prior written notice and without payment of termination fee, and the term thereof may not exceed one (1) year. The management firm shall be the agent of the Board of Directors and the Association. To the extent permitted by law, the Board of Directors shall be authorized to delegate to such management firm such of the duties and powers of the Association and of its Board of Directors and Officers as the Board of Directors shall determine. The Declarant (or any person affiliated with the Declarant) may be employed as the professional management firm pursuant to this Section; provided, however, that notwithstanding the foregoing, any contract or agreement of any kind with the Declarant (or any person affiliated with the Declarant, whether for professional management or for another purpose) shall be terminable by either party thereto without cause and without payment of a termination fee upon no more than sixty (60) days prior written notice.

9.7 Enforcement of Director's Duties. In the event that the Board of Directors shall fail to perform any duty or duties which, under the terms and provisions of this Declaration or the other Instruments, are to be performed by it, any Owner or First Mortgagee who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, shall any Director have any liability to any Owner or First Mortgagee for any failure by the Board of Directors to perform any such duty or duties, except to the extent specifically provided in the North Carolina Nonprofit Corporation Act.

ARTICLE 10

INSURANCE

10.1 General Obligation and Authority. The Association shall obtain not later than the first conveyance of a Lot and maintain at all times (a) insurance for all of the insurable improvements on the Development (with the exception of improvements and betterments made and/or owned exclusively by the respective Owners or Occupants), if any, against loss or damage by fire or other hazards, including extended coverage, vandalism, malicious mischief, debris removal, cost of demolition, windstorm, and water damage, in an amount consonant with full replacement value of such insurable improvements, (b) fidelity coverage

against dishonest acts on the part of its Directors, Officers, employees, agents and volunteers responsible for handling funds belonging to or administered by the Association in an amount at least equal to the sum of three (3) months Assessments plus reserves or in such greater amount as the Board may determine, (c) comprehensive public liability insurance, in amounts established by the Board of Directors from time to time, but in no event shall such amounts be less than One Million Dollars (\$1,000,000.00) for single limit coverage, and (d) such other types of insurance either required by applicable governmental authority or law or authorized by the Board of Directors from time to time. In the event activities are conducted within a Lot such as to materially increase the premium or cost of insurance obtained pursuant to the provisions hereof, then in that event, the increased amount of such premium shall be assessed against such Lots in accordance with Section 8.3.

ARTICLE 11

RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

In the event of damage by fire or other casualty to the Common Areas and Facilities or any part thereof, the provisions of this Article shall govern the repair and reconstruction. The terms "repair" or "reconstruction" as used herein shall mean repairing or restoring the Common Area and Facilities to substantially the same condition in which it existed prior to the fire or other casualty (excluding improvements and betterments made by an Owner or Occupant) with each Lot and the Common Areas and Facilities having the same boundaries as before. Any repair or reconstruction may reasonably take into account changes in construction and design techniques and materials and the cost or availability thereof. The portion of the Common Area and Facilities so damaged shall be repaired or replaced promptly by the Association unless (1) the Common Area and Facilities is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Owners of Lots located within the Development decide not to rebuild by a Vote of at least eighty percent (80%). The cost of any such repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense with respect to the Development. If the entire Development is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Areas and Facilities shall be used to restore the damaged area to a condition compatible with the remainder of the Development, and (2) the remainder of the proceeds shall, in the discretion of the Association, either be retained by the Association or be distributed in accord with law.

11.1 Damage and Destruction.

11.1.1 Claims, Adjustments and Repair Estimates. Immediately after any damage or destruction to all or any part of the Common Areas and Facilities covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Owners and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damaged or destroyed property.

11.1.2 Responsibility for Repair or Reconstruction. All work regarding the repair or reconstruction of any portion of the Common Areas and Facilities, the damage to or destruction of which resulted in the payment of any insurance proceeds under any insurance policy maintained by the Association, shall be the responsibility of the Association and shall be performed under the supervision of the Board of Directors. In discharging such supervisory responsibility, the Board of Directors shall be authorized, but shall not be obligated, to re-employ as its agent or consultant such building supervisors or architects as the Board of Directors shall determine. Any fees which shall be payable to any such building supervisor or architect as shall be employed by the Board of Directors, shall be a Common Expense.

ARTICLE 12

GENERAL PROVISIONS

12.1 Amendment. During the Declarant Control Period the Declarant may amend this Declaration, in its discretion, in any manner not substantially inconsistent with the Development's common scheme and plan of development. After the Declarant Control Period this Declaration may be amended by the affirmative Vote of Owners having at least sixty-seven percent (67%) of the total Vote of the Association. Notwithstanding anything to the contrary, so long as the same shall not (a) adversely affect the title to any Lot, or (b) materially alter or change any Owner's right to the use and enjoyment of his Lot and/or the Common Area And Facilities as set forth in this Declaration, each Owner and Mortgagee agrees that, if requested to do so by Declarant during the Declarant Control Period, such Owner and Mortgagee shall consent to the amendment of the Instruments, (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation, the provisions a judicial determination which shall be in conflict therewith, (ii) if such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a governmental lender or purchaser of mortgage loans, or (iii) if such amendment is necessary to obtain permanent financing from a Mortgagee relative to any Lot. Amendments to this Declaration or the other Instruments may be proposed by Declarant, by the Board of Directors, or by petition signed by Owners having at least thirty percent (30%) of the total Votes of the Association. Agreement of the required majority of Owners to any amendment of the Instruments shall be evidenced by their execution of the amendment. Any such amendment of the Instruments, including this Declaration, shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any Mortgagee required with respect to such amendment shall also be recorded in such amendment. During the Declarant Control Period, Declarant may amend the provisions hereof in any manner reasonably necessary to carry out the provisions of Article 3 or Sections 6.5, 6.6 or 6.7.

12.2 Eminent Domain. In the event that all or part of the Development shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation and all related matters, such as the reallocation of undivided interests in the Common Areas and Facilities, liabilities for Assessments and Votes, shall be handled as follows:

12.2.1 If any Lot or portion thereof or the Common Areas and Facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration will entitle the Owner or other person to priority over any Mortgagee with respect to the distribution of the proceeds of any award or settlement relating to such Lot.

12.2.2 In the event all or any part of the Common Areas and Facilities shall be taken in condemnation or by eminent domain, each Owner hereby grants an irrevocable power of attorney to the Association to represent such Owner in any and all condemnation proceedings, negotiations, settlements, and agreement with the condemning authority. The award for such taking shall be payable to the Association for the use and benefit of the Owners and their respective Mortgagees as their interest may appear and shall be distributed by the Board of Directors as hereinafter provided.

12.2.3 If part of the Common Areas and Facilities is acquired by eminent domain, the award must be paid to the Association for the benefit of the Owners. Any portion of the award attributable to the acquisition of a portion of the Common Areas and Facilities must be apportioned among the Owners of the Lots, to which that portion of the Common Areas and Facilities was allocated at the time of acquisition.

12.2.4 The court decree relative to such eminent domain shall be recorded in the Office of the Clerk of Superior Court, Rutherford County, North Carolina.

12.3 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners and their Mortgagees as herein provided, and by such recording, no adjoining property owner or other person shall have any right, title or interest whatsoever in the Development or in the operation of continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and such Mortgagees as herein provided, the Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third person.

12.4 Enforcement. Each Owner shall comply strictly with the provisions of the Instruments and rules and regulations of the Association. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or, in a proper case, any aggrieved Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, the Declarant or Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Lot(s) or Unit(s) where a violation exists and, at the expense of the violating Owner, abate or remove any structure, thing or condition that may be or exist contrary to the intent and meaning of the Instruments or rules and regulations, if after notice and hearing as set forth in the Bylaws, it shall not have been corrected by such Owner. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the Declarant or the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of the Association, all costs incurred in such enforcement, including a reasonable fee for counsel shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of the Instruments and rules and regulations is essential for the protection of present and future Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association or, in any proper case, any aggrieved Owner or Owners, in addition to all other remedies may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. No delay, failure or omission on the part of the Association, or any aggrieved Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter, as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association or its Officers or Directors for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulations, however long continued, or for the imposing of provisions which may be unenforceable.

12.5 Exhibits. All exhibits referred to in and attached to this Declaration or any other Instruments are hereby incorporated in this Declaration or such other Instruments in full by this reference.

12.6 Duration. The provisions of this Declaration shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and Mortgagees, their heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of twenty (20) years, from the date this Declaration is recorded, after which time this Declaration shall be automatically extended perpetually for successive periods of ten (10) years, to the extent permitted by North Carolina law, unless amended or terminated in accordance with the provisions hereof.

12.7 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Declarant or the Board of Directors, will best effect the intent of the general plan of the Development. The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implications as to make them fully effective. The effective date of this Declaration shall be the date it is filed of record. In the event of any conflicts or inconsistencies between the Act, this Declaration or the Bylaws, the terms and provisions of this Declaration, in that order, shall prevail.

12.8 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

12.9 Rights of Mortgagees and Owners. In addition to the rights of Mortgagees elsewhere provided, each Mortgagee and each Owner shall: (a) be entitled to written notice from the Association of any default by an Owner in the performance of his obligations under the Instruments which is delinquent for a period of more than thirty (30) days specifically including any delinquency in payment of an Assessment; (b) be entitled to receive notice of and to designate a representative to attend and observe all meetings of Owners, but not meetings of the Board of Directors; (c) be entitled to receive written notice of any condemnation loss or any casualty loss which affects a material portion of the Development or any Lot on which a Mortgagee holds a Mortgage; (d) be entitled to receive thirty (30) days prior written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (e) be entitled to receive written notice of any proposed action which would require the consent of a specified percentage of the Mortgagees; and (f) be furnished copies of annual financial reports within one hundred twenty (120) days after the end of the Association's fiscal year; provided, however, that such Owner or Mortgagee shall first file with the Association a written request (setting forth the name of such Owner or Mortgagee and the Lot Designation of the Lot with respect to which such request is made) that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of the Mortgagee or Owner at an address stated in such notice. Further, each Mortgagee and Owner shall, upon request, be entitled to inspect the books, records and financial statement of the Association (including the Instruments and other documents) during normal business hours. Any First Mortgagee shall, upon written request, be entitled to an audited financial statement of the Association for the immediately preceding fiscal year, free of charge to the First Mortgagee so requesting it.

12.10 Responsibility for Maintenance of Private Streets, Signage and Parking Areas. The maintenance responsibility for the private streets and parking areas which comprise a portion of the Common Areas and Facilities shall rest with the Association.

12.11 Contract for Installation of Utilities. Declarant reserves the right to subject the Development to a contract with a public utility, quasi-public utility or governmental entity for the installation of underground electric, telephone, cable, water, sewer or other utility lines, pipes, conduit or cables and/or installation of street lighting, the latter of which may require a continuing monthly payment to such entity by the Association. To the extent possible, all lines, pipes, conduit, cables or equipment shall be installed underground within and throughout the Development.

12.12 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any portion of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

12.13 Captions. The captions of each Article and Section hereof as to its contents are inserted only for convenience and are in no way to be construed as defining, extending or otherwise modifying or adding to the particular Article or Section.

IN WITNESS WHEREOF, Bill's Mountain, LLC, has authorized and caused this instrument to be executed by duly authorized representative, Eduardo Nunez, on this the day and year above.

BILL'S MOUNTAIN, LLC

by: Eduardo Nunez
Eduardo Nunez

STATE OF NORTH CAROLINA

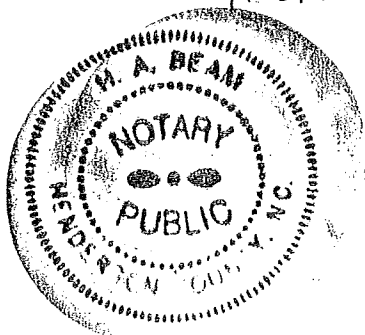
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Eduardo Nunez, authorized representative of Bill's Mountain, LLC, personally came before me this day acknowledged his execution of the foregoing instrument on behalf of Bill's Mountain, LLC. Witness my hand and official stamp or seal, this 12 day of August, 2005.

My Commission Expires:

H. A. Bean
Notary Public

11-24-07



STATE OF NC - RUTHERFORD CO

The foregoing certificate(s) of: _____

H. A. Bean NP(s)
is/are certified to be correct at the date of recordation shown on the first page thereof.

Faye H. Huskey, Register of Deeds

By: Faye H. Huskey -Deputy-

Exhibit A

Beginning at an existing one-inch iron pipe located at a corner of the original boundary of the approximately 688.5-acre property described as Tract One in that deed to Bill's Mountain, LLC recorded in Deed Book 872, Page 42, Rutherford County Registry, said beginning point also being located North 58 deg. 19 min. 20 sec. West 202.79 feet from N.C.G.S. monument "Bill's Mountain", N-629,408.34, E-1,063,795.61, and N.A.D. 83, said point of beginning also being located South 22 deg. 23 min. 38 sec. East 2,045.57 feet from the northernmost corner of that 693.65-acre tract depicted on the plat recorded in Plat Book 17, Page 101, and running thence from said beginning point in a clockwise direction with the boundary of the 653.65-acre tract depicted in Plat Book 17, Page 101, North 68 deg. 59 min. 55 sec. East (passing a rock marked with paint spot at 182.34 feet) a total distance of 3,896.16 feet to an existing stone, thence South 34 deg. 33 min. 47 sec. East 630.16 feet, thence South 03 deg. 01 min. 32 sec. West 2,553.61 feet, thence South 53 deg. 30 min. 19 sec. East 393.12 feet to an existing nail in rock, thence South 18 deg. 20 min. 32 sec. East 1,099.84 feet to a 3/4-inch iron pipe at stone, thence South 14 deg. 55 min. 31 sec. East 221.73 feet to existing bent 1/2-inch iron pipe, and thence South 15 deg. 04 min. 12 sec. East 315.19 feet to an existing 1-inch axle located at the easternmost corner of the said 653.65-acre tract; continuing thence in a westerly direction with the boundary of the 653.70-acre tract depicted on plat recorded in Plat Book 17, Page 101, North 86 deg. 17 min. 44 sec. West 1,658.66 feet and South 57 deg. 57 min. 58 sec. West 3,069.47 feet to an existing rebar located at the intersection of the boundary of the 653.70-acre tract depicted at Plat Book 17, Page 101, and the eastern boundary of the northern part of Tract One of that property conveyed to The Great Outdoors Land Company, LLC by deed recorded in Deed Book 787, Page 431; thence leaving the boundary of the 653.70-acre tract and running in a southerly direction with the eastern boundary of the northern part of Tract One described in Deed Book 787, Page 431, South 06 deg. 26 min. 38 sec. West 1,168.38 feet to the centerline of U.S. Highway 64/74; running thence in a westerly direction with the centerline of U.S. Highway 64/74, South 89 deg. 31 min. 02 sec. West 273.92 feet and South 88 deg. 00 min. 23 sec. West 189.35 feet; thence leaving the right-of-way of U.S. Highway 64/74 and running in a westerly direction with the boundary of Tract One described in Deed Book 787, Page 431, North 11 deg. 21 min. 33 sec. East 42.00 feet, North 60 deg. 38 min. 27 sec. West 88.00 feet, North 57 deg. 38 min. 27 sec. West 80.00 feet, North 50 deg. 38 min. 27 sec. West 108.00 feet, North 64 deg. 38 min. 27 sec. West 78.00 feet, South 79 deg. 21 min. 33 sec. West 266.00 feet, North 78 deg. 38 min. 27 sec. West 129.00 feet, South 57 deg. 21 min. 33 sec. West 94.00 feet, North 44 deg. 08 min. 27 sec. West 159.00 feet, North 18 deg. 08 min. 27 sec. West 106.90 feet, South 66 deg. 15 min. 59 sec. West 109.07 feet, South 03 deg. 14 min. 40 sec. East 110.21 feet, South 66 deg. 09 min. 22 sec. West 117.39 feet, North 86 deg. 50 min. 38 sec. West 203.00 feet, and South 37 deg. 09 min. 17 sec. West 332.00 feet to the centerline of U.S. Highway 64/74; running thence in a westerly direction with the centerline of U.S. Highway 64/74, North 87 deg. 34 min. 15 sec. West 124.76 feet and North 75 deg. 12 min. 39 sec. West 343.89 feet; thence leaving the right-of-way of U.S. Highway 64/74 and running with the western boundary of the northern part of Tract One described in Deed Book 787, Page 431, North 29 deg. 45 min. 57 sec. East 346.90 feet, and North 76 deg. 08 min. 02 sec. West 190.08 feet to the centerline of a branch; running thence with the centerline of the branch, North 19 deg. 27 min. 06 sec. East 34.89 feet, North 59 deg. 50 min. 06 sec. East 18.74 feet, North 22 deg. 06 min. 36 sec. West 23.18 feet, North 36 deg. 45 min. 02 sec. East 44.46 feet, North 36 deg. 37 min. 59 sec. East 19.85 feet, North 29 deg. 16 min. 02 sec. West 55.30 feet, North 40 deg. 09 min. 20 sec. West 45.32 feet, North 55 deg. 51 min. 43 sec. West 105.53 feet, North 47 deg. 04 min. 22 sec. West 65.00 feet, North 49 deg. 57 min. 48 sec. West 60.55 feet, and North 38 deg. 28 min. 05 sec. West 53.46 feet; thence leaving the branch and running North 10 deg. 07 min. 56 sec. East 352.12 feet to the northwest corner of Tract One described in Deed Book 787, Page 431; thence leaving the boundary of Tract One described in Deed Book 787, Page 431 and running in a westerly direction with the southern boundary of the 8.29-acre tract described as Tract Four in that deed recorded in Deed Book 846, Page 714, North 74 deg. 54 min. 15 sec. West 319.80 feet and North 74 deg. 53 min. 58 sec. West 304.89 feet; continuing thence, North 13 deg. 45 min. 23 sec. East 90.02 feet, South 67 deg. 12 min. 55 sec. East 174.94 feet and North 15 deg. 13 min. 37 sec. East 405.88 feet to the centerline of the branch; running thence with the centerline of the branch, North 67 deg. 08 min. 41 sec. East 30.05 feet, North 68 deg. 00 min. 59 sec. East 33.23 feet, North 76 deg. 16 min. 29 sec. East 163.18 feet, North 30 deg. 05 min. 42 sec. East 171.22 feet, and North 84 deg. 23 min. 56 sec. East 31.71 feet to the western boundary of the 10.31-acre tract described as Tract Three in that deed recorded in Deed Book 872, Page 47; running thence with the boundary of the said 10.31-acre tract, North 12 deg. 29 min. 23 sec. West 44.92 feet, North 77 deg. 55 min. 42 sec. East 305.96 feet, North 60 deg. 01 min. 42 sec. East 318.02 feet, South 22 deg. 47 min. 03 sec. East 661.53 feet, South 22 deg. 52 min. 46 sec. East 213.70 feet, and South 46 deg. 27 min. 09 sec. West 164.19 feet to a common corner in the southern boundary of the said 10.31-acre tract and the northern boundary of Tract One described in Deed Book 787, Page 431; continuing thence in an easterly direction with the said northern boundary of Tract One described in Deed Book 787, Page 431, South 85 deg. 36 min. 32 sec. East 288.84 feet to a southwest corner of the 653.70-acre tract depicted on plat recorded

in Plat Book 17, Page 101; running thence with the western boundary of that 653.70-acre tract, North 24 deg. 07 min. 46 sec. East 565.36 feet, North 16 deg. 22 min. 38 sec. East 250.10 feet, North 16 deg. 21 sec. 38 sec. East 623.19 feet, and North 19 deg. 27 min. 17 sec. East 815.58 feet to an existing pile of stones; continuing thence with the western boundary of the said 653.70-acre tract, North 32 deg. 49 min. 50 sec. West 868.38 feet to an existing pile of stones, and North 23 deg. 17 min. 21 sec. West 962.83 feet; continuing thence with the western boundary of the said 653.70-acre tract and the southwestern boundary of the 34.95-acre tract as both are depicted at Plat Book 17, Page 101, North 86 deg. 35 min. 29 sec. West 1,648.91 feet to an existing nail in rock, and North 50 deg. 19 min. 38 sec. West 578.31 feet to the centerline of Bill's Creek Road, S.R.1008, said point being the westernmost corner of the 34.95-acre tract depicted on the plat recorded in Plat Book 17, Page 101; running thence in a northerly direction with the centerline of Bill's Creek Road, North 06 deg. 03 min. 09 sec. East 31.86 feet, North 05 deg. 20 min. 57 sec. East 66.48 feet, North 05 deg. 27 min. 14 sec. East 64.37 feet, North 05 deg. 54 min. 59 sec. East 54.17 feet, North 06 deg. 37 min. 12 sec. East 23.94 feet, North 08 deg. 21 min. 36 sec. East 44.36 feet, North 12 deg. 08 min. 49 sec. East 42.67 feet, North 18 deg. 54 min. 27 sec. East 57.78 feet, North 31 deg. 28 min. 28 sec. East 70.43 feet, North 38 deg. 36 min. 13 sec. East 30.65 feet, North 41 deg. 19 min. 08 sec. East 58.13 feet, North 42 deg. 17 min. 14 sec. East 55.62 feet, North 41 deg. 18 min. 37 sec. East 57.69 feet, North 38 min. 51 min. 24 sec. East 33.26 feet, North 36 deg. 07 min. 43 sec. East 55.67 feet, North 32 deg. 47 min. 19 sec. East 50.61 feet, North 28 deg. 44 min. 02 sec. East 60.37 feet, North 24 deg. 49 min. 28 sec. East 60.20 feet, North 23 deg. 10 min. 32 sec. East 61.26 feet, North 22 deg. 52 min. 56 sec. East 66.84 feet, North 22 deg. 48 min. 14 sec. East 58.80 feet, and North 22 deg. 54 min. 49 sec. East 35.58 feet to the northernmost corner of the 34.95-acre tract depicted in Plat Book 17, Page 101; thence leaving the right-of-way of Bill's Creek Road and running with the boundary line of the said 34.95-acre tract, South 80 deg. 28 min. 58 sec. East 535.82 feet, and South 44 deg. 30 min. 48 sec. East 374.49 feet; continuing thence with the boundary line of the said 34.95-acre tract and then the boundary line of the 653.70-acre tract, North 00 deg. 12 min. 12 sec. West 181.53 feet, North 21 deg. 11 min. 23 sec. West 247.04 feet to an existing 1-inch iron pipe, and North 21 deg. 11 min. 23 sec. West 455.30 feet; continuing with the boundary line of the said 653.70-acre tract, North 56 deg. 38 min. 20 sec. East 239.19 feet, North 54 deg. 46 min. 24 sec. East 471.19 feet, North 52 deg. 41 min. 36 sec. East 1,046.53 feet, North 64 deg. 03 min. 10 sec. East 259.55 feet and South 22 deg. 23 min. 38 sec. East 2,045.57 feet to the point and place of Beginning. Being all of that 769.29-acre tract depicted on that survey by David H. Hill, PLS, entitled "Plat of Boundary for Vista At Bill's Mountain" dated April 1, 2005.

Expressly excepting from the 769.29-acre tract [1] all that .23-acre tract that was conveyed by Catexor, Inc. to Blue Ridge Tower Company, LLC, by deed recorded in Deed Book 860, Page 167, [2] all of Lots 4, 5, 6 and 7 of Phase One of Bill's Mountain as depicted at Plat Book 23, Page 63, and [3] all of Lot 16 and 17 of Phase Three of Bill's Mountain as depicted at Plat Book 23, Page 142, all of the Rutherford County Registry.