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Prepared by and return to William F. Wolcott, III, Attorney (Box #56) (File 05-178)

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR STARVIEW HEIGHTS**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STARVIEW HEIGHTS** made and entered into this 14th day of October, 2005, by and between **L.T.K. ENTERPRISES, INC.**, a North Carolina corporation, (herein "Declarant") and all Future Owners of Lots in that development to be known as:

**STARVIEW HEIGHTS**

**WITNESSETH:**

THAT WHEREAS, Declarant is the owner of certain property in Flat Creek Township, Buncombe County, North Carolina, referred to as "Starview Heights", said property (the "Property") being more particularly described in those deeds to the Declarant recorded in Book 2042, at Page 358, Book 3122, at Page 146, and Book 3667, at Page 316, in the Buncombe Registry of Deeds, less any of said property previously conveyed by Declarant, said Property comprising the major portion of the initial phase of the Starview Heights Subdivision (the "Subdivision"); and

WHEREAS, the Declarant desires for the protection and benefit of all persons who may hereinafter become owners of Lots located within the Subdivision that the Property be developed with limitations and restrictions. These covenants are to run with the land and be binding upon all parties purchasing Lots and all persons claiming by, through or under the Declarant until December 31, 2025, at which time said covenants shall automatically be extended for successive periods of (10) years unless sixty-seven percent (67%) of the votes allocated to Members of the Association are cast in favor of amendment of this Declaration in whole or in part.

**AGREEMENT:**

**NOW, THEREFORE,** the Declarant does hereby make the following declaration as to limitations and restrictions to which the Subdivision shall be and are hereby subjected:

**ARTICLE I**  
**Definitions**

1. “Act” shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.

2. “Association” shall mean and refer to Starview Heights Property Owners’ Association, a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.

3. “Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association and shall be the same as the “executive board” as that term is used in the Act.

4. “Bylaws” shall mean and refer to Bylaws of the Association.

5. “Community Property” shall mean and refer to i) private roads designated on any Subdivision Plat hereinafter recorded by Declarant, as well as any other private road constructed by the Declarant serving the Subdivision or any property adjoining the Subdivision; ii) the entrance area as shown on such Plat; iii) any other property designated as such by the Declarant, including designations of Limited Community Property shown on a Subdivision Plat; and iv) any real estate owned by the Association, other than a Lot.

6. “Declarant” shall mean L.T.K. Enterprises, Inc., or its successors and/or assigns, including any person or entity which succeeds to any Special Declarant Rights as set forth herein and as set forth in the Act. Any consent to be obtained from Declarant pursuant to these restrictions must only be obtained from L.T.K. Enterprises, Inc., or its successor(s), in its capacity as Declarant.

7. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Declaration for Starview Heights, as same may be released, amended or changed, either in whole or in part, as provided for herein.

8. “Directors” shall mean and refer to the members of the Board of Directors of the Association.

9. “Limited Community Property” shall mean and refer to those portions of the Community Property of the Subdivision (i) designated as such on a Subdivision Plat; (ii) designated by Declarant for the exclusive use by one or more but fewer than all of the Lot Owners; or (iii) designated by Declarant, in its sole and absolute discretion, as benefiting, either

directly, or indirectly, one or more but fewer than all of the Lot Owners.

10. "Lot" shall mean and refer to any parcel of land, together with the improvements thereon, within the Subdivision and as shown on any plat hereinafter recorded by Declarant of all or any part of the Property and all other Lots which may be added pursuant to any other expansion right of Declarant as described herein, and designated for separate ownership or occupancy by a Lot Owner.

11. "Lot Owner" and/or "Owner" shall mean and refer to the Declarant or other person or entity which owns fee simple title to any Lot which is part of the Subdivision; but does not include a person or entity having an interest in a Lot solely as security for an obligation.

12. "Member" shall mean and refer to each Owner or Owners of a Lot within the Subdivision who shall also then be a Member of the Association for such period of ownership. If a Lot is owned by more than one person or entity, then such persons or entities collectively shall be the Member and shall be entitled to vote only those voting shares allocated to such Lot.

13. "Person" shall mean a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

14. "Plat" or "Subdivision Plat" shall mean the initial plat of survey of the Subdivision recorded in Plat Book 113, at Page 52, in the Buncombe County Registry of Deeds, but shall also mean and include any additional plats recorded by the Declarant pursuant to the provisions of this Declaration.

15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Declaration for Starview Heights, as same may be released, amended or changed, either in whole or in part, as provided for herein.

16. "Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.

17. "Subdivision" and/or "Property" shall mean and refer only to that certain real property described on "Exhibit A" and as shown on any Plat of such real property described on "Exhibit A" as recorded by Declarant. The Declarant shall not be deemed to have subjected any other property that the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property to this Declaration is recorded in the Buncombe County Registry of Deeds. The Declarant specifically reserves the right to add and subject any other property which the Declarant may now own or which Declarant may hereafter acquire to this Declaration. It is understood that the Declarant will be recording additional plats of the Subdivision showing additional individual Lots and additional Community Property.

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## ARTICLE II

### Submission of Property to the Act and Creation of a Planned Community

1. Submission of the Property and Creation of the Subdivision: Pursuant and subject to the terms and provisions of the Act, Declarant hereby creates a planned community initially comprised of the Property. Declarant hereby submits all of such Property to the Act and to the terms of this Declaration.
2. Name: The name of the Subdivision created hereunder is Starview Heights.
3. Designation of Lots and Community Property: The Declarant does hereby designate that real property shown on the Plat as separate numbered lots as Lots in the Subdivision. The Declarant does hereby designate all that real property described in those deeds to the Declarant recorded in Book 2042, at Page 358, Book 3122, at Page 146, and Book 3667, at Page 316, less and except any Lots shown on the Plat, as the initial Community Property. Whenever the Declarant creates a Lot(s) (with or without Limited Community Property adjacent thereto) in the Subdivision by the act of recording a Plat showing said Lot(s) in the Buncombe County Registry of Deeds, then any Community Property is automatically revised and amended to reflect the creation of said Lot(s) and Limited Community Property.
4. Reservation of Special Declarant or Declarant Rights: Declarant hereby reserves unto itself and its successors in interest as Special Declarant or Declarant Rights, the following:
  - (a) Those Special Declarant Rights as set forth in the Act;
  - (b) The right, subject to the terms of Article XII, Section 3 herein, during the Declarant's Control Period, to revise, modify, amend, change, vary or release all or any part of this Declaration;
  - (c) The right to redesignate a previously designated Lot as an easement or right-of-way for access to adjoining property whether now or hereafter owned by such Declarant; and
  - (d) The right to revise, modify, amend, change, vary or remove any previously designated Lot, Community Property or Limited Community Property still owned in fee by the Declarant.

## ARTICLE III

### Community Property Ownership and Maintenance

1. Owner's Easements of Enjoyment: Every Owner shall have the right of ingress to and egress from the Community Property, together with the right of enjoyment in and to the Community Property, which rights shall be appurtenant to and shall pass with the title to every Lot.
2. Delegation of Use: Any Owner may delegate his rights of enjoyment of the

Community Property to the members of his family, his tenants, contract purchasers who reside on the Lot, or his guests. A Lot Owner who has delegated rights to the Community Property to his tenant shall not in addition to his tenant have rights to the Community Property.

3. Rules and Regulations: The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Community Property. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Community Property on behalf of the Association and available to the Members for inspection during normal business hours, or at the designated office of the Association, if there is no property manager.

4. Leasing Community Property Facilities: Subject to the ordinances of Buncombe County, the Board shall have the power to lease the use of any recreational facility for functions or special events, and may charge reasonable admission or other fees for such use.

5. Operating Community Property Facilities: The Board shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the facilities or the peace and tranquility of adjoining residents with regard to the recreational facilities located on the Community Property. The Association shall promulgate rules regarding use of the swimming pool and clubhouse, including rules regulating unsupervised use by children. No reference herein to a swimming pool and/or clubhouse is intended to commit the Declarant to construct or maintain a swimming pool or clubhouse complex as a part of the Community Property or a part of the Subdivision.

6. Declarant's Conveyance of Title to Community Property: At such time as it deems appropriate, but not later than at such time that all of the Lots of all phases of the Subdivision have been sold, Declarant shall convey fee simple title to the Community Property to the Association. The Association shall accept the conveyance of all such Community Property pursuant to this section.

7. Mortgaging Community Property: The Association shall have the power to borrow money for the purpose of improving the Community Property, and pursuant thereto, to subject the Community Property or any portion thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same approval of the membership which is required for special assessments for capital improvements.

8. Declarant Use of Swimming Pool and Clubhouse: If constructed as a part of the Subdivision, the Declarant has the right to the use of the swimming pool and clubhouse during the Declarant Control Period.

**ARTICLE IV**  
**Land Use**

1. Declaration: All Lots and the Community Property shall be subject to the

covenants, conditions, and restrictions herein.

2. Residential Use: All Lots shall be used for, improved for, and devoted exclusively to residential use. No Lot may be subdivided or merged into other Lots. Notwithstanding the foregoing, the Declarant reserves the right to modify the lines of Lots, to append other parcels to the Subdivision and to establish access ways to and from any such other parcels, as it deems advisable.

3. Dwelling Units: No dwelling structure shall be erected, altered, placed, or permitted to remain on any Lot that exceeds three stories (from finish grade of any ground level) in height; there may be only one story above the front entry level and only one story below the front entry level. Only one dwelling structure, which may include an attached garage built for no more than three automobiles, shall be permitted on a Lot. The overall minimum heated floor area of the dwelling structure, exclusive of any open porches, basements and garages, shall be 2,400 square feet of heated living space with a minimum of 1300 square feet on the front, main entry level.

4. Declarant Approval. All dwelling and/or improvements constructed on the property shall first be approved in writing by the Declarant. The Declarant shall have the final approval for all plans and specifications prior to any construction on the Property. The Declarant shall not withhold approval of plans unreasonably. However, the Declarant will exercise due diligence to insure that all dwellings are consistent with the size, shape, design, and aesthetic values established in the Subdivision. After the Declarant Control Period, the Association may establish additional standards for construction of improvements as the Association deems consistent with the scheme of development within the Subdivision.

5. Community Property Construction or Alteration: No alteration or construction of the external area of any improvements on any Lot or in or upon any portion of the Community Property shall be undertaken or allowed except at the direction of and with the express written consent of the Declarant during its Control Period and thereafter the Association.

6. Offensive or Annoying Activity or Nuisance: No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within the Property. In the use of the Property, all applicable governmental regulations shall be observed.

7. Fences, Mailboxes and Antennas, Etc.: The Declarant during its Control Period and thereafter the Association may regulate or prohibit the erection of antennas, ham radio towers, fences (chain-link, stockade-type or otherwise) on any Lot. Only mailboxes furnished by the Declarant or the Association may be used. No satellite dishes larger than 19 inches in diameter shall be allowed. No outside clotheslines are permitted.

8. Animals: Only dogs (a maximum of two), cats (maximum of two), birds, and fish and such other animals as approved by the Association may be kept and maintained in the dwelling unit. When outside, all pets must be on a leash, shall not be left unattended, and shall not become a nuisance. Pet owners are responsible for cleaning up their pet's solid waste.

9. Parking: No parking of unlicensed, un-inspected or inoperable vehicles shall be allowed on the Property. No overnight parking of any motor vehicles shall be allowed on streets within the Property. Campers and boats may be parked in driveways within twenty-four hours before and after such time they are used. Residents of dwelling units may wash motor vehicles in their driveways. In addition, no one shall store or keep a trail-bike, motorcycle, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the Property, except one pick-up truck and one or more operational automobiles (but in any event (a) no more than a total of four motor vehicles or (b) no more motor vehicles than can be reasonably parked in the Owner's driveway and garage, whichever is less) and except as provided in the rules and regulations enacted by the Association.

10. Motor Vehicles: All motor vehicles shall be maintained in proper operating condition and in a condition so as not to be a nuisance by noise, exhaust emissions or otherwise.

11. Trash Receptacles: Storage, collection and disposal of trash shall be in compliance with rules set by the Association.

12. Signs: Unless authorized by the Declarant or the Association in writing, no signs of any kind shall be displayed in public view on any Lot, Community Property, or Limited Community Property except one sign of not more than eight (8) square feet advertising the property for sale placed in a window and any signs placed by the Declarant.

13. Trade or Business: No part of any Lot shall be used for commercial purposes or for any type of business or store. Notwithstanding the above restriction, nothing herein shall prohibit a home occupation or office so long as such use would not, in the sole discretion of the Declarant during its Control Period, and thereafter the Association, unduly increase personal or vehicular traffic within the Subdivision whether by virtue of the delivery and pick up of goods, meetings or other gatherings of persons or vehicles related to the enterprise.

14. Rentals: No dwelling unit shall be rented for a period of less than twelve (12) months. Any owner who rents a dwelling unit has an affirmative obligation to immediately report such rental, the period of the rental and the names of the tenants to the Association. A copy of any lease shall also be provided to the Association.

## **ARTICLE V**

### **Membership and Voting Rights**

1. Every owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. The Association shall have two (2) classes of voting membership:

A. Class A: Class A Members shall be all Owners, with the exception of Declarant, who shall be entitled to one (1) vote for each Lot owned. When more than one person

holds an interest in any Lot, all such persons shall be Members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If multiple Owners owning any Lot are unable to agree on their vote, their vote shall not be counted.

B. **Class B:** The Class B Member shall be Declarant and Declarant shall be entitled to three (3) votes for each Lot Declarant owns within the Subdivision. The Class B membership shall cease when the Declarant has sold and conveyed the last Lot designated as such by the Declarant by amendment to this Declaration.

**ARTICLE VI**  
**Assessments**

1. **Creation of the Lien and Personal Obligation of Assessments:** Every Owner of any Lot subject to this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association:

- (a) Annual assessments or charges, as determined by the Board;
- (b) Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Lot together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot. In addition, the Association shall have all those powers provided for in the Act, including the ability to impose fines.

2. **Declarant Exclusion:** Declarant shall not be required to pay assessments for Lots or Community Property owned by Declarant.

3. **Purpose of Assessments:** The Assessments levied by the Association may be used for the following purposes:

- (a) for the promotion of the recreation and welfare of the residents of the Property;
- (b) for the payment of ad valorem taxes and public assessments levied on the



Community Property or Limited Community Property, if any;

(c) for the maintenance and operation of any utility systems owned by the Association;

(d) for the maintenance of private streets, roads, walkways, fences, and retaining walls within the Property, as well as all signs and lighting located thereon and adjacent thereto;

(e) for the Subdivision's share of the maintenance for the portion of Red Maple Drive and Starview Knoll (as located within Little Flat Creek Subdivision) used by the Lot Owners for access to the public road;

(f) for the maintenance of the Community Property or Limited Community Property and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Community Property or Limited Community Property, including any swimming pool, clubhouse, and/or furnishings therein;

(g) for the exterior maintenance of all improvements on each Lot within the Property, including painting, repairing, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces, locks or heating and air conditioning equipment. In the event that the need for maintenance or repair of a Lot or improvements thereon is caused by the willful or negligent acts of the owner of any Lot or through the willful or negligent act of any family member, guest, or invitees of the owner of any Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added and become part of the assessment to which such Lot is subject. The Association, in its sole discretion, determines what maintenance is required;

(h) for landscape and yard work maintenance, including mowing of grass for all Property within the Subdivision;

(i) for snow removal regarding all streets and sidewalks within the Property;

(j) for maintenance of the entrance area, which may include a secured gate; provided, that it is understood that any entrance gate is not to be construed as any representation or guaranty of security to residents of the Property;

(k) for the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws and the regulations of the Federal National Mortgage Association, such liability insurance to insure the Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Association requires;

(l) for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Association when necessary;

- (m) to maintain a reasonable reserve for the foregoing purposes;
- (n) maintenance of any swimming pool and/or the clubhouse complex.

4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Community Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven (67%) percent of the vote of Class A and Class B Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

5. Annual Assessments: Annual assessments shall be fixed by the Board of Directors of the Association. Prior to the beginning of each Fiscal Year, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot and send written notice of such assessment to every Owner subject thereto. The due dates of such assessments shall be as established by the Declaration, subject to modification by action of the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Declaration, subject to modification by action of the Board. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due. Assessments shall begin as to any Lot Owner the month following closing of the purchase of the Lot from Declarant. The initial annual assessment is \$2,100.00 and is due and payable on the first day of each month in the amount of \$175.00 per month. The first month's payment (or prorated portion thereof for the month of closing) shall be collected and paid at the closing of the purchase of the Lot from the Declarant. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating forth whether the assessment for a specified Lot have been paid.

6. Uniform Rate of Assessments: Both annual and special assessments must be fixed at a uniform rate for all Lots.

7. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days of the due date, the assessment shall bear interest from the date of delinquency at a rate not to exceed 18% per year or the maximum interest rate then permitted by the Act, whichever is greater. Additionally, a late fee of twenty-five and no/100ths (\$25.00) shall be assessed after ten (10) days from the due date of any assessment. The Board may, at its sole discretion, waive the imposition of interest to any delinquent assessment. The Association may bring an action in law against the owner personally obligated to pay the assessment and interest or file a claim of lien and foreclose the lien created therein in the same manner as allowed under the Act. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment

provided for herein by non-use of the Community Property, or abandonment of his dwelling unit or Lot. In the event that an action at law results in a judgment being entered against the owner of any Lot and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed property manager.

8. Annual Budget: By majority vote of the Directors, the Board shall adopt an annual budget for the each year of operation which shall provide for the allocation of expenses in such a manner that the obligations imposed by this declaration and any and all amendments hereto shall be met.

9. Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any owner from the obligations to pay any assessments.

10. Subordination of Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to any mortgage or deed of trust which is a first lien on a Lot within Starview Heights. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a Lot Owner. Declarant or Association shall notify by certified mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an owner prior to taking any action against such owner which would affect the mortgagee.

## **ARTICLE VII**

### **Insurance**

All owners of Lots on which dwelling units are located are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost thereof. All owners of Lots on which units are located shall have an affirmative obligation to provide the Declarant or the Association with a copy of the declaration page of their current fire and extended coverage insurance policy. In the event of damage to or destruction of any dwelling unit which would be covered by a standard fire and extended coverage insurance policy, the owner of such dwelling unit shall have the affirmative responsibility of reconstructing or repairing it regardless of whether such owner has such a standard fire and extended coverage insurance policy. In the event of the owner's failure to repair or reconstruct such dwelling unit, the Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the assessment against the Lot upon which said dwelling unit is located, and collect such assessments pursuant to the provisions of Article VI.

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## ARTICLE VIII

### Easements

1. Easements Established: All Lots and Community Property within the Subdivision shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television, electric power lines, and other utility services and ingress and egress and for other purposes as shall be established by Declarant or the Association.

2. Road Rights-of-Way: All Lots within the Subdivision are serviced by certain road and/or road rights-of-way described on the Plat and such other plats to be recorded. Declarant does hereby dedicate said roads and rights of way as shown as private roadways for the use of the Lot Owners, their licensees, invitees, tenants, heirs, successors and assigns, and is constructing such roads in accordance with current Buncombe County specifications. As such, and pursuant to North Carolina General Statutes Section 136-102.6, all future Lot Owners acknowledge that the roads as shown on these plats are intended to be and remain private roads dedicated to the aforesaid private use and will not be developed in accordance with the minimum right-of-way and construction standards established by the North Carolina Department of Transportation for acceptance on the State highway system.

All Lots within the Subdivision will initially gain access to the public road sometimes known as North Buncombe Road over and upon those existing road right-of-ways known as Red Maple Drive and Starview Knoll as such right-of-ways are shown on plats of Little Flat Creek Subdivision, which are recorded in the Buncombe County Public Registry. Both Red Maple Drive and Starview Knoll are currently privately maintained by the lot owners of Little Flat Creek Subdivision, but Red Maple Drive has been constructed to North Carolina Department of Transportation specifications and will be submitted to the State for public maintenance. Starview Knoll will remain a private road. By agreement with Little Flat Creek Subdivision, the Lot Owners of Starview Heights will share prorata in the maintenance and upkeep of the portions of Red Maple Drive and Starview Knoll used by the Lot Owners of Starview Heights for access to the Subdivision. As such, all future Lot Owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of Red Maple Drive, Starview Knoll, and the Subdivision roads unless at such time in the future the Department of Transportation may assume the obligation for the maintenance of said roads and road rights of way.

3. Encroachments and Declarant's Easements to Correct Drainage: All Lots and the Community Property shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a phase, the Declarant reserves a blanket easement on, over and under the ground within that phase to maintain and to correct drainage or surface water

in order to maintain reasonable standards of health, safety, and appearance, expressly including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant. Nothing in this section shall be deemed to impose an obligation upon Declarant to maintain and correct drainage and surface water conditions.

4. Easements to Buncombe County and Public or Private Utilities: A perpetual easement is hereby established for county, state or public or private utilities serving the area, and their agents and employees, over all Community Property hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

5. Easement for Construction Purposes: Declarant shall have full rights of ingress and egress to and through, over and about the Community Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No owner, his guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Declarant or its contractors or subcontractors, so far as practical, shall not interfere with the quiet enjoyment of Lots within the Property.

6. Progress Energy Contract: The Declarant reserves the right to subject the Property to a contract with Progress Energy for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy by the Association.

7. Encroachments Upon Adjoining Land of Declarant: All other adjoining land of the Declarant which is not expressly subject to this Declaration shall be subject to a perpetual easement for any improvements, roads, and utilities created, placed, or constructed for the benefit of the Subdivision, which may now or in the future encroach upon the said land of the Declarant. This easement shall run with the land of the Declarant for the benefit of the Lot Owners and the Association.

**ARTICLE IX**  
**Party Walls**

1. General Rules of Law to Apply: Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence

or willful acts or omissions shall apply therein.

2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of dwelling units adjoining such party wall.

3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall equally contribute to the cost of restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Weatherproofing: Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. Right to Contribution Runs with the Land: The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, and such dispute cannot be resolved by voluntary mediated settlement conference by the parties, then each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators pursuant to arbitration rules to be established by the arbitrators.

## **ARTICLE X**

### **Obligations to Mortgagees**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include Deeds of Trust or other security instruments) encumbering any Lots located within the Property:

(a) Declarant or Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any of such Owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;

(b) First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Community Property;

(c) No provision herein shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in Starview Heights pursuant to their

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mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Community Property.

## **ARTICLE XI**

### **Starview Heights Property Owners' Association**

To provide for the continuing management of the Subdivision as contemplated in Article 3 of the Act, the Declarant does hereby establish a non-profit corporation that shall be known as the Starview Heights Property Owners' Association (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of this Declaration, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Subdivision and of any Community Property or any other matter or area determined by the Association to be a common element or other area of common interest. The Board of Directors as established in the Bylaws of the Association shall constitute the Executive Board as defined in North Carolina General Statutes Section 47E-3-103 and shall be subject to the provisions of such statute, except as set forth in this Declaration or the terms of the Bylaws of the Association.

## **ARTICLE XII**

### **General Matters**

1. Adjoining Properties and Governmental Actions: All purchasers of Lots do hereby acknowledge that Declarant has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot with the Subdivision, such Purchasers do hereby understand and agree that Declarant is not responsible for any activities or actions conducted on any property adjoining the Subdivision, or in any way relating to or arising out of any use of any property adjoining the Subdivision. The purchaser of any Lot acknowledges that they have investigated on their own accord how such uses may affect the Subdivision and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot.

2. Enforcement: Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Association or any Lot Owner. Except for actions to recover past due assessments from a Lot Owner or actions that may require immediate injunction relief, The Association will attempt to resolve disputes with Lot Owners or the Declarant by voluntary mediated settlement conference before filing an action to enforce this Declaration. In addition, the Association may impose reasonable fines pursuant to the Act against any Lot Owner for violation of this Declaration. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of

them shall not be deemed to exclude the rights of other Lot Owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fee as a part of such action.

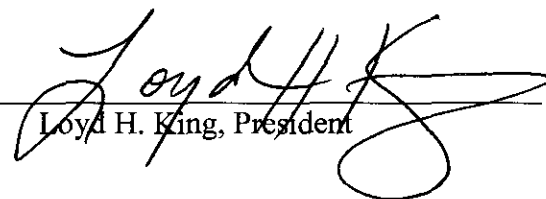
3. Amendment and Modification. The Declarant does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in this Declaration, during the Control Period, the Declarant hereby reserves the absolute right to modify and/or to amend this Declaration in whole or in part in Declarant's sole and absolute discretion as the Declarant deems proper and appropriate. After the Control Period, an amendment to this Declaration shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the Members sixty-seven percent (67%) of the votes allocated to Members of the Association are cast in favor of such amendment and once made, shall become effective when recorded in the Buncombe County, North Carolina, Register's Office. Whenever herein the Declarant has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Declarant. Nothing herein shall require or shall be construed so as to require the Declarant or its related persons or entities to subject all or any part of its remaining adjoining property to this Declaration.

4. Declarant Control. The "Control Period" or "Declarant Control Period" shall mean that period of time from the date of the recording of these restrictions through the earlier of 1) January 1, 2020, or 2) that date upon which Declarant conveys the last Lot as shown on the plat or any subsequent recorded plat adding property as an additional phase of the Subdivision.

5. Additional Property. Declarant may add other contiguous property, including subsequently acquired contiguous property, to the Subdivision which will be developed in a similar manner as this first phase and will be made subject to these covenants, conditions and restrictions.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal the day and year first above written.

L.T.K. ENTERPRISES, INC.

By:   
Lloyd H. King, President



STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, William F. Wolcott, III, a Notary Public of the County and State aforesaid, certify that Loyd H. King personally came before me this day and acknowledged that he is the President of L.T.K. Enterprises, Inc., a North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing as the act of and on behalf of the corporation.

Witness my hand and official seal, this 14th day of October, 2005.

William F. Wolcott III  
NOTARY PUBLIC

My commission expires: 3/12/10

