

Prepared by Gayle E. Ramsey

DECLARATION
OF
RESTRICTIVE COVENANTS

* * * * * 314 633

KNOW ALL MEN BY THESE PRESENTS, that LAKE TOXAWAY CO. (hereinafter referred to as "Developer"), is the owner and developer of that certain property (hereinafter referred to as "the Development") which is situate, lying and being in Hogback Township, Transylvania County, North Carolina, and more particularly described on the page which is attached hereto, designated as Exhibit "A" and made a part hereof by reference.

Developer intends to sell and convey the lots and parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the lots and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the lots and parcels in the Development are held and shall be held, conveyed, and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contract and estate between the owners of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

ARTICLE 1
LAND USE AND STRUCTURE TYPE

Each lot shall be used for residential purposes only. No trade or business of any kind may be conducted on any lot. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant, however, all provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners and which provide for sanctions against owners shall also apply to all occupants of any residential lot which is subject to this Declaration. Furthermore, while residences may be leased for residential purposes only, all leases shall require, without limitation, that the tenant acknowledge receipt of a copy of each of the following documents: this Declaration and all applicable amendments thereto, the bylaws of the property owners association or associations to which the lot on which the residence is constructed is subject, all use restrictions and rules and regulations to which such lot and the occupants of said lot are subject. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, Declarant and/or the Board of Directors of Lake Toxaway Property Owners Association, Inc., in addition to any other remedies available to it/them, may evict the tenant on behalf of the owner said lot and specifically assess all costs associated therewith against such owner and the owner's property.

No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed three(3) stories in height, a private garage, a boat house and, with the approval of Developer or any Architectural Control Committee which Developer may appoint, quarters for servants.

Notwithstanding anything hereinabove set forth to the contrary, Developer reserves the right to record supplemental declarations converting one or more lots or portions of lots owned by it in the Development into common area with the use of any such lot or portion of a lot subsequent to the filing and

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recordation of any such supplemental declaration in the office of the Register of Deeds for Transylvania County to be governed by the provisions of Article 38 of this Declaration rather than by the provisions of Article 1.

ARTICLE 2 ARCHITECTURAL CONTROL

In order to assure that all houses and other structures are of appropriate size and are of harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, Developer retains for itself and any architectural control committee which Developer may appoint, full architectural control in order to achieve these objectives. Accordingly, no building, dock, fence, wall, garage or structure of any kind or any alterations or additions thereto shall be erected or placed on any lot until the complete plans for such improvements including the specifically proposed design and location thereof on the lot, including colors of buildings and other proposed improvements, shall have been submitted in writing to and approved by Developer or by any architectural control committee which Developer may appoint. Such approval shall not be unreasonably withheld and shall be given or denied by Developer or by such committee in writing within thirty (30) days after any such plans and other required information have been properly submitted to Developer or to such committee. Denial of approval of plans, location, specifications and other matters requiring the approval of Developer or such committee may be based by Developer or such committee upon any reasonable ground, including purely aesthetic considerations.

No dwelling situated on any lot shall contain less than 1,000 square feet of fully enclosed floor area on the main floor nor shall any dwelling contain less than 1,500 square feet of fully enclosed living area.

A sketch plan showing the front and rear elevations may be submitted for preliminary approval before house plans are submitted. A plot plan showing the position on a lot of the house and any other proposed improvements for which approval is being requested must be presented to and approved in writing by Developer or by such architectural control committee before any clearing is done or trees removed from the lot.

The exterior of all houses and other structures must be completed within one (1) year after construction has commenced. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which have been partially or totally destroyed and not rebuilt within one (1) year, shall be deemed nuisances. Developer may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

ARTICLE 3 ARCHITECTURAL CONTROL COMMITTEE

Developer reserves the right to appoint annually an Architectural Control Committee consisting of three or more competent persons as members to serve until their successors are appointed. A majority of said committee may also designate a representative to act for it. The committee's approval or disapproval as required by Articles 2 and 4 of these covenants shall be in writing. Any approval or disapproval given or deemed to have been given pursuant to the provisions of this Declaration by said committee when acting within the scope of the authority herein granted to such committee shall likewise be deemed pursuant to the provisions of this Declaration to have been given by Developer. In the event that Developer or, if applicable, the committee or its designated representative, fails to approve or disapprove any matter properly submitted for approval hereunder within thirty (30) days after proper plans and specifications and any other required information have been submitted, or in any event, if no suit to enjoin any construction or improvement required to be submitted for approval hereunder and properly submitted and started after the expiration of said thirty (30) day period has been commenced prior to the completion thereof, approval shall not be required and the provisions of these covenants specifying the manner in which proposed improvements must be approved shall be deemed to have been fully

complied with.

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ARTICLE 4 BUILDING LOCATION

No building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on any plat which Developer may prepare and record of lots in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 35 feet from the front lot line; (b) 25 feet from the rear lot line; and (c) 10 feet from side lot lines.

The limitations contained herein shall not be applicable to any lakefront lot on which there may be constructed and maintained at or adjacent to the shoreline of said lot a boat house or boat dock which has been approved by Developer or, if applicable, the Architectural Control Committee pursuant to the provisions of Article 14 of these covenants.

Notwithstanding anything set out to the contrary in Article 2 of these covenants, in the event that Developer or, if applicable, the Architectural Control Committee shall determine that application of the setbacks contained herein to a particular lot would unreasonably limit the use thereof by the owner and effectively deprive him of an appropriate construction site upon said lot, Developer or, if applicable, the Architectural Control Committee shall have the authority to grant a variance to the owner of said lot from the provisions of these setback restrictions.

ARTICLE 5 TEMPORARY STRUCTURES

No structures of a temporary character, including, but not limited to, any travel trailer, mobile home or trailer, motor home, camper, camper trailer, tent, basement, shed, shack, garage, boat house or other outbuilding shall be used on a lot at any time as a residence, either temporarily or permanently.

With the exception of Developer and any subsidiary corporation or business owned and operated by Developer, which shall have such right at any time when Developer or any such subsidiary corporation or business owned and operated by Developer is engaged in the construction or repair of any building or any improvement on any portion of the property which is subject to this Declaration, and the further exception of those trucks, construction vehicles, and any commercial vehicles being utilized by any lot owner in connection with construction or repair of any improvement on such owner's lot (which has been properly approved pursuant to the appropriate articles of this Declaration) which may be parked in spaces designated by the appropriate entities established under this Declaration as having jurisdiction over such construction or repairs, during such times and for such periods of time that may be designated by such entities, there shall be no outside storage or parking upon any lot outside of any garage or boathouse which may be located thereon or upon any road in the Development which is owned or maintained by Developer or by Lake Toxaway Property Owners Association, Inc. or upon any common area of any commercial vehicle, truck (other than pickup trucks owned by such lot owner), tractor, travel trailer, mobile home or trailer (either with or without wheels), motor home, camper, camper trailer, or tent nor shall any overnight camping be permitted on any lot.

ARTICLE 6 SEWERAGE DISPOSAL

No sewerage system shall be permitted on any lot unless such system is located, constructed and equipped in accord with the minimum requirements of the appropriate governmental regulatory agencies having jurisdiction over the construction and operation of such system. Approval of such system shall be obtained from the governmental authority having jurisdiction. In the event that any body politic makes a public sewerage system available to a lot, sewerage disposal thereon shall be by said public sewerage system.

ARTICLE 7

CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.

All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other lots, streets and areas in the Development outside of the lot on which such items are located or from any other area owned by Developer which may be located outside of the Development. All rubbish, trash, and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon. Furthermore no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any lot in the Development in such a manner as to be visible from any street, or other lot or area located in the Development or from any area owned by Developer which may be located outside of the Development.

ARTICLE 8

NUISANCES

No noxious or offensive activity shall be carried on upon any lot, or anything be done thereon to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood.

ARTICLE 9

MAINTENANCE OF LOTS

All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer shall have the right, through its agents, employees and contractors to do so, the cost of which shall be recoverable from and charged against the owner of the lot. If any such cost is not paid within 45 days after a written, itemized request for payment has been submitted to such owner by Developer, the cost may be levied by Developer as an assessment against the owner of such lot. Neither Developer nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work performed.

ARTICLE 10

LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot at any time with the exception of a combined total of not more than two dogs, cats or other household pets which may be kept on a lot, provided that they are not bred or maintained for commercial purposes, and that they are kept within a fence or restrained by a leash at all times.

ARTICLE 11

LAKE PRIVILEGES

The owner of each lot shall have privileges in and to the use of Lake Toxaway subject, however, to such rules and regulations regarding the use thereof as may be issued by Developer.

ARTICLE 12

WATER LEVEL AT LAKE TOXAWAY

Developer reserves the right at all times to designate and regulate the water level of Lake Toxaway.

ARTICLE 13

BOATS ON LAKE TOXAWAY

Operation of boats on Lake Toxaway will be controlled by rules and regulations from time to time established by Developer. A noisy boat will not be tolerated under any circumstances.

ARTICLE 14
BOAT HOUSES AND BOAT DOCKS

Any structure for the purpose of housing and/or docking a boat must be approved by Developer or, if applicable, the Architectural Control Committee as to design, location, size and color and shall not in any event be more than one (1) story in height or exceed twenty (20) feet in width. Any such structure shall be constructed perpendicular to the shore line of Lake Toxaway and shall not extend beyond the high water line into the lake. No such structure shall be built on any lot unless a permanent residence has been constructed thereon or is under construction.

ARTICLE 15
STORAGE OF BOATS AND OTHER WATER CRAFT

All boats, floats, rafts and other water craft and/or boat trailers which may be located on any lot shall be placed in such a manner so as to not be visible from any area outside of said lot which is located within the Development or from any other area owned by Developer which may be located outside of the Development.

ARTICLE 16
PROHIBITION OF SKATEBOARDING

No skateboarding shall be allowed on any road located in the Development which is owned or maintained by Developer or by Lake Toxaway Property Owners Association, Inc.

ARTICLE 17
MAILBOXES

All mailboxes and their support posts shall conform to the approved design(s) supplied by Developer.

ARTICLE 18
TREE REMOVAL

No trees shall be trimmed on or removed from any lot or any portion of any other lands subject to this Declaration which may be designated as common area, prior to the proper approval of such trimming or removal by Developer. Such approval shall not be unreasonably withheld and shall be given or denied by Developer in writing within thirty (30) days after written plans showing such proposed trimming or removal and any other information requested by Developer relating to such trimming or removal have been submitted to Developer. Denial or approval of such trimming or removing may be based by Developer upon any reasonable ground, including purely aesthetic considerations. In the event that Developer, or its designated representative, fails to approve or disapprove any matter properly submitted for its approval hereunder within thirty (30) days after proper plans and any other requested information have been submitted, approval shall not be required and the provisions of these covenants specifying the manner in which any such proposed trimming or removal must be approved shall be deemed to have been fully complied with.

ARTICLE 19
SIGNS

With the exception of those lots owned by Developer on which Developer may in its absolute discretion erect such signs as it may deem appropriate, no signs shall be allowed on any lot without the written permission of Lake Toxaway Property Owners Association, Inc. In no event shall any property identification sign or signs exceeding a combined total of more than three (3) square feet be erected on any lot without written permission of the Developer.

ARTICLE 20
OUTDOOR LIGHTING

All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by Developer who

shall have the right at any time to prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other lot owner and such other lot owner's use and enjoyment of his lot at any time.

ARTICLE 21
AERIALS AND ANTENNAS

No radio or television or other aerial, antenna, dish, tower, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained on any lot unless so erected, installed, placed, or maintained entirely within the enclosed portion of the individual residence or garage.

ARTICLE 22
POOLS

No pool shall be erected, constructed or installed on any lot without the express written permission of Developer who shall have the absolute right in its sole discretion to deny such permission on any reasonable grounds.

ARTICLE 23
UTILITY LINES

No overhead utility lines, including lines for cable television, shall be permitted on any lot without the written approval of Developer.

ARTICLE 24
ENERGY CONSERVATION EQUIPMENT

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of Developer.

ARTICLE 25
FIREARMS

The use of firearms within the Development is prohibited. The term "firearms" includes BB guns, pellet guns, and other firearms of all types, regardless of size.

ARTICLE 26
SUBDIVISION OF LOTS

No lot shall be subdivided or its boundary lines changed except with the prior written approval of Developer. Developer, however, hereby expressly reserves the right to replat any lot prior to conveyance of such lot by Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

ARTICLE 27
EASEMENTS AND RIGHTS OF WAY

An easement and right-of-way for travel of all kinds and with all types of vehicles are hereby expressly reserved by Developer in and over all existing access roads which extend across platted lots and an easement and right-of-way are also hereby expressly reserved by Developer over and across a strip of land five (5) feet in width along each side of the rear line, side lines, and front line of each lot for the construction and maintenance of electric light, power and telephone service lines, storm water drains, land drains, public and private sewers, pipelines supplying gas and water, or other public or quasi-public utility. Developer shall have the right to enter and permit others to enter upon said reserved roads and strip.

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ARTICLE 28
OPTION TO PURCHASE

In consideration of the agreement by Developer to restrict other lots sold by it in the Development, each lot owner agrees that if he/she/it should desire to sell the lot owned by that lot owner or any interest therein, and receives a bona fide satisfactory offer therefor, the lot owner shall, before accepting said offer, submit to Developer, in writing by certified mail, return receipt requested, the terms of said offer, the name(s) and address(es) of the offeror(s) and an offer to convey the lot to Developer at the same price and terms. Developer shall have a period of thirty (30) days after receipt of said written notice within which to exercise its right to accept said offer and shall have an additional period of not less than twenty (20) days within which to complete said transaction. In the event that Developer does not elect to purchase within said thirty (30) day period, the lot owner making such offer may sell said lot to the offeror(s) named in said notice. Acceptance of said offer by Developer shall be in writing by certified mail, return receipt requested, to the lot owner making such offer at the address given in said notice.

ARTICLE 29
RIGHT OF SALE

If any lot owner should desire to sell the lot owned by him/her/it and does not sell it directly himself/herself/itself without utilizing the services of any realtor, broker or other salesperson or agent either directly or indirectly, such lot owner shall, before selling or attempting to sell such lot, be obligated to give Developer the exclusive right of sale thereof at the prevailing rate of sales commission for a period of one (1) year from the date of such exclusive listing, and any sale made by such lot owner in violation of this Article 29 of these covenants shall be void and of no force and effect.

ARTICLE 30
LAKE TOXAWAY PROPERTY OWNERS ASSOCIATION, INC.

Each owner of a lot situated in the Development other than Developer shall, upon acquiring ownership of such lot, be obligated to become a member of Lake Toxaway Property Owners Association, Inc., and be subject to such of its rules and regulations which are not inconsistent with this Declaration of Restrictive Covenants and all subsequent amendments thereto which may appear of record in the office of the Register of Deeds for Transylvania County.

ARTICLE 31
ASSESSMENTS FOR ROAD MAINTENANCE AND OTHER PURPOSES

Each lot in the Development is served by roads which are currently owned and maintained by Developer and which connect the Development with Cold Mountain Road and U. S. Highway 64. Each owner of a lot situated in the Development other than Developer shall, upon acquiring ownership of such lot, be obligated to pay that lot owner's fair share, as determined by Developer, of the annual cost of repairing and maintaining the roads in the Development and all other private roads which presently connect the Development with Cold Mountain Road and U. S. Highway 64. In the event that a lot owner has not paid any annual road repair and maintenance assessment levied by Developer or any other assessment levied by Developer within 60 days after said assessment is levied, said levy shall constitute a lien against such owner's lot from the date of the filing of a notice of assessment and lien in the office of the Register of Deeds for Transylvania County. All liens levied pursuant to the provisions of these covenants shall include the amount of any unpaid assessment, plus any other charges thereon, including a late charge of \$25.00 to cover administrative expenses, interest at one and one-half percent (1½%) per month from the date of delinquency and costs of collection, including attorney's fees. Each notice of assessment and lien shall state the amount of such assessment and such other charges and a description of the lot which has been assessed. Each notice of assessment and lien shall be signed by Developer or such other person or legal entity

to whom Developer has assigned the authority to file notices of assessments and liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County. Such lien shall be prior to all other liens recorded subsequent to the filing of such notice of assessment and lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in Developer or such other person or legal entity to whom Developer has assigned the authority to file notices of assessments and liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County, the right and power to bring all actions against him/her/it personally for the collection of such charges set out in said notice of assessment and lien as a debt or 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 party filing such lien. The party filing such lien shall have the power to bid on the lot in any foreclosure or to acquire, hold, lease, mortgage or convey the lot. No owner may waive or otherwise exempt himself/herself/itself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the lot owned by him/her/it. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged damage, inconvenience or discomfort arising from the completion by Developer of repairs or improvements or removal of nuisances pursuant to the provisions of Article 2 of these covenants or for any maintenance performed by Developer pursuant to the provisions of Article 9 of these covenants. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments. Upon payment of all assessments and other charges, costs and fees provided for in a particular notice of assessment and lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further notice stating satisfaction and the release of the lien thereof.

ARTICLE 32 TERM

With the exception of the option to purchase reserved by Developer in Article 28 of these covenants which shall terminate on January 1, 2025, all of the restrictions, conditions, covenants, charges, easements and agreements contained herein shall run with the land and be binding on all parties and all persons claiming under them in perpetuity.

ARTICLE 33 AMENDMENT

These restrictions may be amended at any time and from time to time by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of a majority of the lots in the Development and by Developer, so long as Developer owns any lot which is subject to this Declaration or owns any roads which are either located in the Development or serve as a primary means of access to the Development from Cold Mountain Road or U. S. Highway 64. The signatures of such lot owners shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a later effective date is specified therein.

ARTICLE 34 ENFORCEMENT

Developer and each person to whose benefit these restrictions inure, including Lake Toxaway Property Owners Association, Inc., and other lot owners in the Development, may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these restrictions, either to restrain violation, to recover damages, or both.

ARTICLE 35
SEVERABILITY

Invalidation of any one of these restrictions by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 36
DELEGATION OF USE

Any lot owner may delegate in accordance with the bylaws of any property owners association to which he may belong by virtue of owning a lot, and subject to reasonable rules, regulations and limitations as may be adopted in accordance therewith, his or her right of enjoyment to any common areas or other facilities which he is entitled to use by virtue of being a lot owner and/or a member of any such association or associations, to the members of his or her family, tenants and social invitees and shall be deemed to have made a delegation of all such rights to the occupant of any leased building which may be situated on a lot which is subject to this declaration.

ARTICLE 37
ASSIGNMENT OF DEVELOPER'S RIGHTS

Developer's rights under these restrictions may be assigned at any time, in whole or in part, to any other person, persons or legal entity, including, but not limited to, Lake Toxaway Property Owners Association, Inc.

ARTICLE 38
USE OF COMMON AREA

No planting or gardening shall be done upon any portion of any area within the Development which may be designated as common area in any supplemental declaration placed on record in the office of the Register of Deeds for Transylvania County by Developer pursuant to the provisions of Article 1 of this Declaration or upon any portion of any area within the Development which may be designated as common area on any of the recorded plats referred to in Exhibit "A" which is incorporated by reference in this Declaration except for such as may be approved by Developer or its designated representatives, nor shall any fences, hedges, or walls be erected or maintained upon any common area except in accordance with the initial construction of the improvements located thereon or as approved by Developer or its designated representatives. Except for the right of ingress and egress, the owners of lots may use the property outside their respective lots only in accordance with such reasonable regulations as may be adopted by Developer or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this article is for the mutual benefit of all owners and is necessary for the protection of all owners.

ARTICLE 39
AIR CONDITIONING UNITS

Except as may be permitted by Developer, no window air conditioning units may be installed in any house or other structure which is located on any lot which is subject to these covenants.

ARTICLE 40
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS

No artificial vegetation shall be permitted on any lot. Exterior sculptures, fountains, flags, and similar items must be approved in writing by Developer before being placed on any lot.

ARTICLE 41
PLAYGROUND

Any playground or other play areas or equipment furnished by Developer or erected within the Development shall be used at the risk of the user, and Developer shall not be held liable to any person for any claim, damage, or injury occurring thereon or

related to use thereof.

ARTICLE 42 DRAINAGE

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves a perpetual easement across each lot for the purpose of altering drainage and water flow.

ARTICLE 43 IRRIGATION

No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals, or other waterways within the Development shall be installed, constructed, or operated within the Development unless prior written approval has been received from Developer.

ARTICLE 44 PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any common area or upon any lot not owned by Developer, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

ARTICLE 45 PROHIBITION OF MOTORCYCLES

No motorcycles other than mopeds (or other motor powered bicycles) less than or equal to one horsepower shall be permitted on private roads within the Development. Mopeds with less than or equal to one horsepower shall be limited to operation only on the paved roads designed for automobile traffic within the Development and on trails specifically designated for moped use by Developer and the use of such mopeds on bicycle trails, nature trails and recreation areas is prohibited.

ARTICLE 46 WILLFUL DESTRUCTION OF WILDLIFE

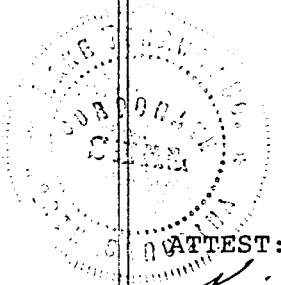
No hunting shall be allowed in the Development except upon controlled conditions approved by Developer and appropriate governmental wildlife authorities for the purpose of protecting property owners, the public and other animals against health hazards, disease and other anomalies resulting from species over-population, significant wildlife predation and outbreaks of contagious wildlife diseases. Any violation of this provision with respect to common areas shall constitute both a breach of these covenants and a trespass against property owned by Developer. Since the Development is not intended to be maintained as a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this section.

IN WITNESS WHEREOF, LAKE TOXAWAY CO. has caused this instrument to be signed in its name by its President and its corporate seal to be hereto affixed and attested by its (Assistant) Secretary, all by order of its Board of Directors duly given, this the 1st day of March, 1989.

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LAKE TOXAWAY CO.

By: R. McNeill Jr.

ATTEST:

Kimberly A. Maurer
 (Assistant) Secretary

STATE OF NORTH CAROLINA,
 COUNTY OF TRANSYLVANIA.

I, Cindy M. McNeill, a Notary Public of said State and County, do hereby certify that REGINALD D. HEINITSH, JR., personally came before me this day and acknowledged that he is the President and that Kimberly A. Maurer is the (Assistant) Secretary of LAKE TOXAWAY CO., a corporation described in and which executed the foregoing instrument, that he knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by its President and that the said President and (Assistant) Secretary subscribed their names thereto and the said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 1st day of March, 1989.

Cindy M. McNeill
 Notary Public

My Commission expires

03/03/93.

STATE OF NORTH CAROLINA,

COUNTY OF TRANSYLVANIA.

The foregoing certificate(s) of Cindy M. McNeill, Notary (ies)

Public, is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 314, page 633.

This 2 day of March, 1989, at 12:30 o'clock p. M.

Jack W. Krall
 Register of Deeds

By: _____
 Deputy Register of Deeds

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EXHIBIT "A"

Being all of Lots 1 through 24 of Phase II of Toxaway Mountain Subdivision of a portion of the property of Lake Toxaway Co. as shown on a plat thereof recorded in Plat File 3, Slides 329-330, Records of Plats for Transylvania County in the office of the Register of Deeds for Transylvania County, North Carolina.

Prepared by: *Wayne E. Ramsey*

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AMENDMENT TO DECLARATION
OF
RESTRICTIVE COVENANTS RECORDED IN
BOOK 314, PAGE 633
RECORDS OF DEED FOR TRANSYLVANIA COUNTY

This amendment is made this 15th day of August, 1989, by
LAKE TOXAWAY CO. (hereinafter referred to as "Developer").

W I T N E S S E T H:

THAT WHEREAS, Developer has recorded on March 2, 1989, in
Book 314, page 633, Records of Deeds for Transylvania County,
North Carolina, a certain Declaration of Restrictive Covenants;
and

WHEREAS, Article 33 of said Declaration of Restrictive
Covenants provides that said covenants made be amended at any
time and from time to time by the recordation in the office of
the Register of Deeds for Transylvania County, North Carolina, of
a written amendment to said covenants signed by the owners of the
majority of the lots in the Development and by Lake Toxaway Co.
so long as Lake Toxaway Co. owns any lot which is subject to said
Declaration or owns any roads which are either located in the
Development or serve as a primary means of access to the
Development from Cold Mountain Road or U. S. Highway 64; and

WHEREAS, Lake Toxaway Co. is now the owner of a majority of
the lots in the Development, being currently the owner of all of
the lots in the development, and now wishes to amend said
Declaration of Restrictive Covenants as hereinafter set forth.

NOW, THEREFORE, Developer does hereby amend said Declaration
of Restrictive Covenants as follows:

(1) By striking all of Article 2 as set out therein and
substituting in lieu thereof a new Article 2 which shall read as
follows:

ARTICLE 2
ARCHITECTURAL CONTROL

In order to ensure that all driveways and all houses and
other structures are of appropriate size and are of harmonious
design, properly located in relationship to neighboring
structures and adapted to the terrain of each lot, Developer
retains for itself and any architectural control committee which
Developer may appoint, full architectural control in order to
achieve these objectives. Accordingly, no driveway, building,
dock, fence, wall, garage or structure of any kind or any
alterations or additions thereto shall be erected or placed on
any lot until the complete plans for such improvements, including
the specifically proposed design and location thereof on the lot
and colors of buildings and other proposed improvements, shall
have been submitted in writing to and approved by Developer or by
any architectural control committee which Developer may appoint.
Such approval shall not be unreasonably withheld and shall be
given or denied by Developer or by such committee in writing
within thirty (30) days after any such plans and other required
information have been properly submitted to Developer or to such
committee. Denial of approval of plans, location, specifications
and other matters requiring the approval of Developer or such
committee may be based by Developer or such committee upon any
reasonable ground, including purely aesthetic considerations.

No dwelling situated on any lot shall contain less than
1,000 square feet of fully enclosed floor area on the main floor
nor shall any dwelling contain less than 1,500 square feet of
fully enclosed living area.

A sketch plan showing the front and rear elevations may be
submitted for preliminary approval before house plans are
submitted. A plot plan showing the position on a lot of the
driveway, house and any other proposed improvements for which

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approval is being requested must be presented to and approved in writing by Developer or any architectural control committee which Developer may appoint before any clearing is done or trees removed from the lot. In order to ensure that the driveway to be constructed on each lot in the Development will not cause a drainage or erosion problem on the lot on which it is being constructed or elsewhere in the Development, either prior to, during or subsequent to the completion of the construction thereof, no construction of any building, dock, fence, wall, garage or structure of any kind shall be commenced on a lot until either (1) a completed permanent driveway has been constructed thereon and approved by Developer or by any architectural control committee which Developer may appoint, or (2) in the event that a permanent driveway on such lot has not been fully completed in accordance with the plans previously submitted for approval to Developer or to such architectural control committee, the owner of such lot has given Developer or such architectural control committee such guarantees (which may include, but not be limited to, the posting of a cash performance bond) as Developer or such architectural control committee may require in order to ensure that such driveway will be constructed within a manner and within a time period which will be acceptable to Developer or to such architectural control committee.

The exterior of all houses and other structures must be completed within one (1) year after construction has commenced. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which have been partially or totally destroyed and not rebuilt within one (1) year, shall be deemed nuisances. Developer or Lake Toxaway Property Owners Association, Inc. may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

(2) By striking all of Exhibit "A" as set out therein and substituting in lieu thereof a new Exhibit "A" which shall read as follows:

EXHIBIT "A"

Being all of Lots 1 through 24 of Phase II of Toxaway Mountain Subdivision of a portion of the property of Lake Toxaway Co. as shown on a plat thereof recorded in Plat File 3, Slides 326-329, Records of Plats for Transylvania County in the office of the Register of Deeds for Transylvania County, North Carolina.

IN WITNESS WHEREOF, LAKE TOXAWAY CO. has caused this instrument to be signed in its name by its President and its corporate seal to be hereto affixed and attested by its (Assistant) Secretary, all by order of its Board of Directors duly given, this the day and year first above written.

LAKE TOXAWAY CO.

By: R.D. Henrich

President

ATTEST:

Kimberly A. Maures
(Assistant) Secretary

STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

I, Cindy M. McMill, a Notary Public of said State and County, do hereby certify that R.D. Henrich personally came before me this day and acknowledged that he is the President and that Kimberly A. Maures is the (Assistant) Secretary of LAKE TOXAWAY CO., a corporation described in and which executed the foregoing instrument, that he knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by its President and that

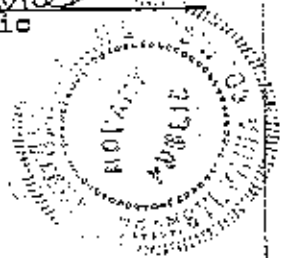
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the said President and (Assistant) Secretary subscribed their names thereto and the said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 15th day of August, 1989.

Cindy M. Murrell
Notary Public

My Commission expires 03/03/93.



STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA .

The foregoing certificate _____ of Cindy M. Murrell _____

Notar(y) Public is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 320, Page 53

This 16 day of August, 1989, at 10:30 o'clock A.M.

John W. Small
Register of Deeds

By: _____
Deputy Register of Deeds

Prepared by: Gayle E. Ramsey

AMENDMENT TO DECLARATION
OF
RESTRICTIVE COVENANTS RECORDED IN
BOOK 302, PAGE 339
RECORDS OF DEED FOR TRANSYLVANIA COUNTY

This amendment is made this 15th day of August, 1988, by LAKE TOXAWAY CO. (hereinafter referred to as "Developer").

W I T N E S S E T H:

THAT WHEREAS, Developer has recorded on January 26, 1988, in Book 302, page 339, Records of Deeds for Transylvania County, North Carolina, a certain Declaration of Restrictive Covenants; and

WHEREAS, Article 33 of said Declaration of Restrictive Covenants provides that said covenants made be amended at any time and from time to time by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to said covenants signed by the owners of the majority of the lots in the Development; and

WHEREAS, Lake Toxaway Co. is now the owner of a majority of the lots in the Development, being currently the owner of all of those lots described on the page which is attached hereto, designated as Exhibit "A" and incorporated herein by reference, and now wishes to amend said Declaration of Restrictive Covenants as hereinafter set forth.

NOW, THEREFORE, Developer does hereby amend said Declaration of Restrictive Covenants by striking all of Article 2 as set out therein and substituting in lieu thereof a new Article 2 which shall read as follows:

ARTICLE 2
ARCHITECTURAL CONTROL

In order to ensure that all driveways and all houses and other structures are of appropriate size and are of harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, Developer retains for itself and any architectural control committee which Developer may appoint, full architectural control in order to achieve these objectives. Accordingly, no driveway, building, dock, fence, wall, garage or structure of any kind or any alterations or additions thereto shall be erected or placed on any lot until the complete plans for such improvements including the specifically proposed design and location thereof on the lot and colors of buildings and other proposed improvements shall have been submitted in writing to and approved by Developer or by any architectural control committee which Developer may appoint. Such approval shall not be unreasonably withheld and shall be given or denied by Developer or by such committee in writing within thirty (30) days after any such plans and other required information have been properly submitted to Developer or to such committee. Denial of approval of plans, location, specifications and other matters requiring the approval of Developer or such committee may be based by Developer or such committee upon any reasonable ground, including purely aesthetic considerations.

No dwelling situated on any lot shall contain less than 1,000 square feet of fully enclosed floor area on the main floor nor shall any dwelling contain less than 1,500 square feet of fully enclosed living area.

A sketch plan showing the front and rear elevations may be submitted for preliminary approval before house plans are submitted. A plot plan showing the position on a lot of the driveway, house and any other proposed improvements for which approval is being requested must be presented to and approved in writing by Developer or any architectural control committee which Developer may appoint before any clearing is done or trees removed from the lot. In order to ensure that the driveway to be constructed on each lot in the Development will not cause a drainage or erosion problem on the lot on which it is being

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Prepared by Gayle E. Rensley

DECLARATION
OF
RESTRICTIVE COVENANTS

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KNOW ALL MEN BY THESE PRESENTS, that LAKE TOXAWAY CO. (hereinafter referred to as "Developer"), is the owner and developer of that certain property (hereinafter referred to as "the Development") which is situate, lying and being in Hogback Township, Transylvania County, North Carolina, and more particularly described on the page which is attached hereto, designated as Exhibit "A" and made a part hereof by reference.

Developer intends to sell and convey the lots and parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the lots and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the lots and parcels in the Development are held and shall be held, conveyed, and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contract and estate between the owners of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

ARTICLE I
LAND USE AND STRUCTURE TYPE

Each lot shall be used for residential purposes only. No trade or business of any kind may be conducted on any lot. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant, however, all provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners and which provide for sanctions against owners shall also apply to all occupants of any residential lot which is subject to this Declaration. Furthermore, while residences may be leased for residential purposes only, all leases shall require, without limitation, that the tenant acknowledge receipt of a copy of each of the following documents: this Declaration and all applicable amendments thereto, the bylaws of the property owners association or associations to which the lot on which the residence is constructed is subject, all use restrictions and rules and regulations to which such lot and the occupants of said lot are subject. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, Declarant and/or the Board of Directors of Lake Toxaway Property Owners Association, Inc., in addition to any other remedies available to it/them, may evict the tenant on behalf of the owner said lot and specifically assess all costs associated therewith against such owner and the owner's property.

No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed three(3) stories in height, a private garage, a boat house and, with the approval of Developer or any Architectural Control Committee which Developer may appoint, quarters for servants.

Notwithstanding anything hereinabove set forth to the contrary, Developer reserves the right to record supplemental declarations converting one or more lots or portions of lots owned by it in the Development into common area with the use of any such lot or portion of a lot subsequent to the filing and

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recordation of any such supplemental declaration in the office of the Register of Deeds for Transylvania County to be governed by the provisions of Article 38 of this Declaration rather than by the provisions of Article 1.

ARTICLE 2 ARCHITECTURAL CONTROL

In order to assure that all houses and other structures are of appropriate size and are of harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, Developer retains for itself and any architectural control committee which Developer may appoint, full architectural control in order to achieve these objectives. Accordingly, no building, dock, fence, wall, garage or structure of any kind or any alterations or additions thereto shall be erected or placed on any lot until the complete plans for such improvements including the specifically proposed design and location thereof on the lot, including colors of buildings and other proposed improvements, shall have been submitted in writing to and approved by Developer or by any architectural control committee which Developer may appoint. Such approval shall not be unreasonably withheld and shall be given or denied by Developer or by such committee in writing within thirty (30) days after any such plans and other required information have been properly submitted to Developer or to such committee. Denial of approval of plans, location, specifications and other matters requiring the approval of Developer or such committee may be based by Developer or such committee upon any reasonable ground, including purely aesthetic considerations.

No dwelling situated on any lot shall contain less than 1,000 square feet of fully enclosed floor area on the main floor nor shall any dwelling contain less than 1,500 square feet of fully enclosed living area.

A sketch plan showing the front and rear elevations may be submitted for preliminary approval before house plans are submitted. A plot plan showing the position on a lot of the house and any other proposed improvements for which approval is being requested must be presented to and approved in writing by Developer or by such architectural control committee before any clearing is done or trees removed from the lot.

The exterior of all houses and other structures must be completed within one (1) year after construction has commenced. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which have been partially or totally destroyed and not rebuilt within one (1) year, shall be deemed nuisances. Developer may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

ARTICLE 3 ARCHITECTURAL CONTROL COMMITTEE

Developer reserves the right to appoint annually an Architectural Control Committee consisting of three or more competent persons as members to serve until their successors are appointed. A majority of said committee may also designate a representative to act for it. The committee's approval or disapproval as required by Articles 2 and 4 of these covenants shall be in writing. Any approval or disapproval given or deemed to have been given pursuant to the provisions of this Declaration by said committee when acting within the scope of the authority herein granted to such committee shall likewise be deemed pursuant to the provisions of this Declaration to have been given by Developer. In the event that Developer or, if applicable, the committee or its designated representative, fails to approve or disapprove any matter properly submitted for approval hereunder within thirty (30) days after proper plans and specifications and any other required information have been submitted, or in any event, if no suit to enjoin any construction or improvement required to be submitted for approval hereunder and properly submitted and started after the expiration of said thirty (30) day period has been commenced prior to the completion thereof, approval shall not be required and the provisions of these covenants specifying the manner in which proposed improvements must be approved shall be deemed to have been fully

complied with.

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ARTICLE 4 BUILDING LOCATION

No building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on any plat which Developer may prepare and record of lots in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 35 feet from the front lot line; (b) 25 feet from the rear lot line; and (c) 10 feet from side lot lines.

The limitations contained herein shall not be applicable to any lakefront lot on which there may be constructed and maintained at or adjacent to the shoreline of said lot a boat house or boat dock which has been approved by Developer or, if applicable, the Architectural Control Committee pursuant to the provisions of Article 14 of these covenants.

Notwithstanding anything set out to the contrary in Article 2 of these covenants, in the event that Developer or, if applicable, the Architectural Control Committee shall determine that application of the setbacks contained herein to a particular lot would unreasonably limit the use thereof by the owner and effectively deprive him of an appropriate construction site upon said lot, Developer or, if applicable, the Architectural Control Committee shall have the authority to grant a variance to the owner of said lot from the provisions of these setback restrictions.

ARTICLE 5 TEMPORARY STRUCTURES

No structures of a temporary character, including, but not limited to, any travel trailer, mobile home or trailer, motor home, camper, camper trailer, tent, basement, shed, shack, garage, boat house or other outbuilding shall be used on a lot at any time as a residence, either temporarily or permanently.

With the exception of Developer and any subsidiary corporation or business owned and operated by Developer, which shall have such right at any time when Developer or any such subsidiary corporation or business owned and operated by Developer is engaged in the construction or repair of any building or any improvement on any portion of the property which is subject to this Declaration, and the further exception of those trucks, construction vehicles, and any commercial vehicles being utilized by any lot owner in connection with construction or repair of any improvement on such owner's lot (which has been properly approved pursuant to the appropriate articles of this Declaration) which may be parked in spaces designated by the appropriate entities established under this Declaration as having jurisdiction over such construction or repairs, during such times and for such periods of time that may be designated by such entities, there shall be no outside storage or parking upon any lot outside of any garage or boathouse which may be located thereon or upon any road in the Development which is owned or maintained by Developer or by Lake Toxaway Property Owners Association, Inc. or upon any common area of any commercial vehicle, truck (other than pickup trucks owned by such lot owner), tractor, travel trailer, mobile home or trailer (either with or without wheels), motor home, camper, camper trailer, or tent nor shall any overnight camping be permitted on any lot.

ARTICLE 6 SEWERAGE DISPOSAL

No sewerage system shall be permitted on any lot unless such system is located, constructed and equipped in accord with the minimum requirements of the appropriate governmental regulatory agencies having jurisdiction over the construction and operation of such system. Approval of such system shall be obtained from the governmental authority having jurisdiction. In the event that any body politic makes a public sewerage system available to a lot, sewerage disposal thereon shall be by said public sewerage system.

ARTICLE 7
CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.

All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other lots, streets and areas in the Development outside of the lot on which such items are located or from any other area owned by Developer which may be located outside of the Development. All rubbish, trash, and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon. Furthermore no bedding or clothing of any type, nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any lot in the Development in such a manner as to be visible from any street, or other lot or area located in the Development or from any area owned by Developer which may be located outside of the Development.

ARTICLE 8
NUISANCES

No noxious or offensive activity shall be carried on upon any lot, or anything be done thereon to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood.

ARTICLE 9
MAINTENANCE OF LOTS

All lots, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer shall have the right, through its agents, employees and contractors to do so, the cost of which shall be recoverable from and charged against the owner of the lot. If any such cost is not paid within 45 days after a written, itemized request for payment has been submitted to such owner by Developer, the cost may be levied by Developer as an assessment against the owner of such lot. Neither Developer nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work performed.

ARTICLE 10
LIVESTOCK AND POULTRY

No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot at any time with the exception of a combined total of not more than two dogs, cats or other household pets which may be kept on a lot, provided that they are not bred or maintained for commercial purposes, and that they are kept within a fence or restrained by a leash at all times.

ARTICLE 11
LAKE PRIVILEGES

The owner of each lot shall have privileges in and to the use of Lake Toxaway subject, however, to such rules and regulations regarding the use thereof as may be issued by Developer.

ARTICLE 12
WATER LEVEL AT LAKE TOXAWAY

Developer reserves the right at all times to designate and regulate the water level of Lake Toxaway.

ARTICLE 13
BOATS ON LAKE TOXAWAY

Operation of boats on Lake Toxaway will be controlled by rules and regulations from time to time established by Developer. A noisy boat will not be tolerated under any circumstances.

ARTICLE 14
BOAT HOUSES AND BOAT DOCKS

Any structure for the purpose of housing and/or docking a boat must be approved by Developer or, if applicable, the Architectural Control Committee as to design, location, size and color and shall not in any event be more than one (1) story in height or exceed twenty (20) feet in width. Any such structure shall be constructed perpendicular to the shore line of Lake Toxaway and shall not extend beyond the high water line into the lake. No such structure shall be built on any lot unless a permanent residence has been constructed thereon or is under construction.

ARTICLE 15
STORAGE OF BOATS AND OTHER WATER CRAFT

All boats, floats, rafts and other water craft and/or boat trailers which may be located on any lot shall be placed in such a manner so as to not be visible from any area outside of said lot which is located within the Development or from any other area owned by Developer which may be located outside of the Development.

ARTICLE 16
PROHIBITION OF SKATEBOARDING

No skateboarding shall be allowed on any road located in the Development which is owned or maintained by Developer or by Lake Toxaway Property Owners Association, Inc.

ARTICLE 17
MAILBOXES

All mailboxes and their support posts shall conform to the approved design(s) supplied by Developer.

ARTICLE 18
TREE REMOVAL

No trees shall be trimmed on or removed from any lot or any portion of any other lands subject to this Declaration which may be designated as common area, prior to the proper approval of such trimming or removal by Developer. Such approval shall not be unreasonably withheld and shall be given or denied by Developer in writing within thirty (30) days after written plans showing such proposed trimming or removal and any other information requested by Developer relating to such trimming or removal have been submitted to Developer. Denial or approval of such trimming or removing may be based by Developer upon any reasonable ground, including purely aesthetic considerations. In the event that Developer, or its designated representative, fails to approve or disapprove any matter properly submitted for its approval hereunder within thirty (30) days after proper plans and any other requested information have been submitted, approval shall not be required and the provisions of these covenants specifying the manner in which any such proposed trimming or removal must be approved shall be deemed to have been fully complied with.

ARTICLE 19
SIGNS

With the exception of those lots owned by Developer on which Developer may in its absolute discretion erect such signs as it may deem appropriate, no signs shall be allowed on any lot without the written permission of Lake Toxaway Property Owners Association, Inc. In no event shall any property identification sign or signs exceeding a combined total of more than three (3) square feet be erected on any lot without written permission of the Developer.

ARTICLE 20
OUTDOOR LIGHTING

All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by Developer who

shall have the right at any time to prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other lot owner and such other lot owner's use and enjoyment of his lot at any time.

ARTICLE 21
AERIALS AND ANTENNAS

No radio or television or other aerial, antenna, dish, tower, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained on any lot unless so erected, installed, placed, or maintained entirely within the enclosed portion of the individual residence or garage.

ARTICLE 22
POOLS

No pool shall be erected, constructed or installed on any lot without the express written permission of Developer who shall have the absolute right in its sole discretion to deny such permission on any reasonable grounds.

ARTICLE 23
UTILITY LINES

No overhead utility lines, including lines for cable television, shall be permitted on any lot without the written approval of Developer.

ARTICLE 24
ENERGY CONSERVATION EQUIPMENT

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of Developer.

ARTICLE 25
FIREARMS

The use of firearms within the Development is prohibited. The term "firearms" includes BB guns, pellet guns, and other firearms of all types, regardless of size.

ARTICLE 26
SUBDIVISION OF LOTS

No lot shall be subdivided or its boundary lines changed except with the prior written approval of Developer. Developer, however, hereby expressly reserves the right to replat any lot prior to conveyance of such lot by Developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

ARTICLE 27
EASEMENTS AND RIGHTS OF WAY

An easement and right-of-way for travel of all kinds and with all types of vehicles are hereby expressly reserved by Developer in and over all existing access roads which extend across platted lots and an easement and right-of-way are also hereby expressly reserved by Developer over and across a strip of land five (5) feet in width along each side of the rear line, side lines, and front line of each lot for the construction and maintenance of electric light, power and telephone service lines, storm water drains, land drains, public and private sewers, pipelines supplying gas and water, or other public or quasi-public utility. Developer shall have the right to enter and permit others to enter upon said reserved roads and strip.

ARTICLE 28
OPTION TO PURCHASE

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In consideration of the agreement by Developer to restrict other lots sold by it in the Development, each lot owner agrees that if he/she/it should desire to sell the lot owned by that lot owner or any interest therein, and receives a bona fide satisfactory offer therefor, the lot owner shall, before accepting said offer, submit to Developer, in writing by certified mail, return receipt requested, the terms of said offer, the name(s) and address(es) of the offeror(s) and an offer to convey the lot to Developer at the same price and terms. Developer shall have a period of thirty (30) days after receipt of said written notice within which to exercise its right to accept said offer and shall have an additional period of not less than twenty (20) days within which to complete said transaction. In the event that Developer does not elect to purchase within said thirty (30) day period, the lot owner making such offer may sell said lot to the offeror(s) named in said notice. Acceptance of said offer by Developer shall be in writing by certified mail, return receipt requested, to the lot owner making such offer at the address given in said notice.

ARTICLE 29
RIGHT OF SALE

If any lot owner should desire to sell the lot owned by him/her/it and does not sell it directly himself/herself/itself without utilizing the services of any realtor, broker or other salesperson or agent either directly or indirectly, such lot owner shall, before selling or attempting to sell such lot, be obligated to give Developer the exclusive right of sale thereof at the prevailing rate of sales commission for a period of one (1) year from the date of such exclusive listing, and any sale made by such lot owner in violation of this Article 29 of these covenants shall be void and of no force and effect.

ARTICLE 30
LAKE TOXAWAY PROPERTY OWNERS ASSOCIATION, INC.

Each owner of a lot situated in the Development other than Developer shall, upon acquiring ownership of such lot, be obligated to become a member of Lake Toxaway Property Owners Association, Inc., and be subject to such of its rules and regulations which are not inconsistent with this Declaration of Restrictive Covenants and all subsequent amendments thereto which may appear of record in the office of the Register of Deeds for Transylvania County.

ARTICLE 31
ASSESSMENTS FOR ROAD MAINTENANCE AND OTHER PURPOSES

Each lot in the Development is served by roads which are currently owned and maintained by Developer and which connect the Development with Cold Mountain Road and U. S. Highway 64. Each owner of a lot situated in the Development other than Developer shall, upon acquiring ownership of such lot, be obligated to pay that lot owner's fair share, as determined by Developer, of the annual cost of repairing and maintaining the roads in the Development and all other private roads which presently connect the Development with Cold Mountain Road and U. S. Highway 64. In the event that a lot owner has not paid any annual road repair and maintenance assessment levied by Developer or any other assessment levied by Developer within 60 days after said assessment is levied, said levy shall constitute a lien against such owner's lot from the date of the filing of a notice of assessment and lien in the office of the Register of Deeds for Transylvania County. All liens levied pursuant to the provisions of these covenants shall include the amount of any unpaid assessment, plus any other charges thereon, including a late charge of \$25.00 to cover administrative expenses, interest at one and one-half percent (1½%) per month from the date of delinquency and costs of collection, including attorney's fees. Each notice of assessment and lien shall state the amount of such assessment and such other charges and a description of the lot which has been assessed. Each notice of assessment and lien shall be signed by Developer or such other person or legal entity

to whom Developer has assigned the authority to file notices of assessments and liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County. Such lien shall be prior to all other liens recorded subsequent to the filing of such notice of assessment and lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in Developer or such other person or legal entity to whom Developer has assigned the authority to file notices of assessments and liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County, the right and power to bring all actions against him/her/it personally for the collection of such charges set out in said notice of assessment and lien as a debt or 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 party filing such lien. The party filing such lien shall have the power to bid on the lot in any foreclosure or to acquire, hold, lease, mortgage or convey the lot. No owner may waive or otherwise exempt himself/herself/itself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the lot owned by him/her/it. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged damage, inconvenience or discomfort arising from the completion by Developer of repairs or improvements or removal of nuisances pursuant to the provisions of Article 2 of these covenants or for any maintenance performed by Developer pursuant to the provisions of Article 9 of these covenants. All payments shall be applied first to costs and attorney's fees; then to late charges, then to interest, then to delinquent assessments. Upon payment of all assessments and other charges, costs and fees provided for in a particular notice of assessment and lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further notice stating satisfaction and the release of the lien thereof.

ARTICLE 32 TERM

With the exception of the option to purchase reserved by Developer in Article 28 of these covenants which shall terminate on January 1, 2025, all of the restrictions, conditions, covenants, charges, easements and agreements contained herein shall run with the land and be binding on all parties and all persons claiming under them in perpetuity.

ARTICLE 33 AMENDMENT

These restrictions may be amended at any time and from time to time by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of a majority of the lots in the Development and by Developer, so long as Developer owns any lot which is subject to this Declaration or owns any roads which are either located in the Development or serve as a primary means of access to the Development from Cold Mountain Road or U. S. Highway 64. The signatures of such lot owners shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Transylvania County, North Carolina, unless a later effective date is specified therein.

ARTICLE 34 ENFORCEMENT

Developer and each person to whose benefit these restrictions inure, including Lake Toxaway Property Owners Association, Inc., and other lot owners in the Development, may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these restrictions, either to restrain violation, to recover damages, or both.

ARTICLE 35
SEVERABILITY

Invalidation of any one of these restrictions by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

ARTICLE 36
DELEGATION OF USE

Any lot owner may delegate in accordance with the bylaws of any property owners association to which he may belong by virtue of owning a lot, and subject to reasonable rules, regulations and limitations as may be adopted in accordance therewith, his or her right of enjoyment to any common areas or other facilities which he is entitled to use by virtue of being a lot owner and/or a member of any such association or associations, to the members of his or her family, tenants and social invitees and shall be deemed to have made a delegation of all such rights to the occupant of any leased building which may be situated on a lot which is subject to this declaration.

ARTICLE 37
ASSIGNMENT OF DEVELOPER'S RIGHTS

Developer's rights under these restrictions may be assigned at any time, in whole or in part, to any other person, persons or legal entity, including, but not limited to, Lake Toxaway Property Owners Association, Inc.

ARTICLE 38
USE OF COMMON AREA

No planting or gardening shall be done upon any portion of any area within the Development which may be designated as common area in any supplemental declaration placed on record in the office of the Register of Deeds for Transylvania County by Developer pursuant to the provisions of Article 1 of this Declaration or upon any portion of any area within the Development which may be designated as common area on any of the recorded plats referred to in Exhibit "A" which is incorporated by reference in this Declaration except for such as may be approved by Developer or its designated representatives, nor shall any fences, hedges, or walls be erected or maintained upon any common area except in accordance with the initial construction of the improvements located thereon or as approved by Developer or its designated representatives. Except for the right of ingress and egress, the owners of lots may use the property outside their respective lots only in accordance with such reasonable regulations as may be adopted by Developer or as is expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this article is for the mutual benefit of all owners and is necessary for the protection of all owners.

ARTICLE 39
AIR CONDITIONING UNITS

Except as may be permitted by Developer, no window air conditioning units may be installed in any house or other structure which is located on any lot which is subject to these covenants.

ARTICLE 40
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE AND SIMILAR ITEMS

No artificial vegetation shall be permitted on any lot. Exterior sculptures, fountains, flags, and similar items must be approved in writing by Developer before being placed on any lot.

ARTICLE 41
PLAYGROUND

Any playground or other play areas or equipment furnished by Developer or erected within the Development shall be used at the risk of the user, and Developer shall not be held liable to any person for any claim, damage, or injury occurring thereon or

related to use thereof.

ARTICLE 42
DRAINAGE

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Developer hereby reserves a perpetual easement across each lot for the purpose of altering drainage and water flow.

ARTICLE 43
IRRIGATION

No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals, or other waterways within the Development shall be installed, constructed, or operated within the Development unless prior written approval has been received from Developer.

ARTICLE 44
PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any common area or upon any lot not owned by Developer, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

ARTICLE 45
PROHIBITION OF MOTORCYCLES

No motorcycles other than mopeds (or other motor powered bicycles) less than or equal to one horsepower shall be permitted on private roads within the Development. Mopeds with less than or equal to one horsepower shall be limited to operation only on the paved roads designed for automobile traffic within the Development and on trails specifically designated for moped use by Developer and the use of such mopeds on bicycle trails, nature trails and recreation areas is prohibited.

ARTICLE 46
WILLFUL DESTRUCTION OF WILDLIFE

No hunting shall be allowed in the Development except upon controlled conditions approved by Developer and appropriate governmental wildlife authorities for the purpose of protecting property owners, the public and other animals against health hazards, disease and other anomalies resulting from species over-population, significant wildlife predation and outbreaks of contagious wildlife diseases. Any violation of this provision with respect to common areas shall constitute both a breach of these covenants and a trespass against property owned by Developer. Since the Development is not intended to be maintained as a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this section.

IN WITNESS WHEREOF, LAKE TOXAWAY CO. has caused this instrument to be signed in its name by its President and its corporate seal to be hereto affixed and attested by its (Assistant) Secretary, all by order of its Board of Directors duly given, this the 1st day of March, 1989.



314 643

LAKE TOXAWAY CO.

By: R. Heinitsh Jr.

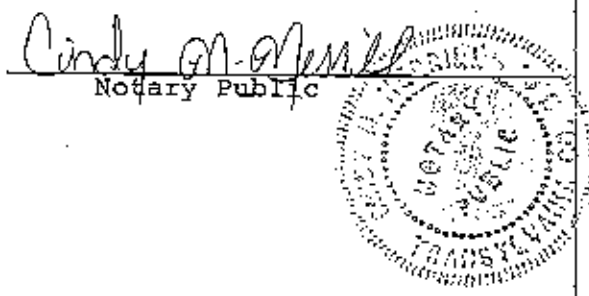
ATTEST:

Kimberly A. Maurer
(Assistant) Secretary

STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

I, Cindy M. Merrill, a Notary Public of said State and County, do hereby certify that REGINALD D. HEINITSH, JR., personally came before me this day and acknowledged that he is the President and that Kimberly A. Maurer is the (Assistant) Secretary of LAKE TOXAWAY CO., a corporation described in and which executed the foregoing instrument, that he knows the common seal of said corporation, that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by its President and that the said President and (Assistant) Secretary subscribed their names thereto and the said common seal was affixed, all by order of the Board of Directors of said corporation, and that the said instrument is the act and deed of said corporation.

WITNESS my hand and notarial seal, this the 1st day of March, 1989.



My Commission expires

03/03/93

STATE OF NORTH CAROLINA,
COUNTY OF TRANSYLVANIA.

The foregoing certificate(s) of Cindy M. Merrill Notary(ies) Public, is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book 314, page 633.

This 2 day of March, 1989, at 12:30 o'clock p.M.

Jack H. Merrill
Register of Deeds

By: _____
Deputy Register of Deeds

314

64*

EXHIBIT "A"

Being all of Lots 1 through 24 of Phase II of Toxaway Mountain Subdivision of a portion of the property of Lake Toxaway Co. as shown on a plat thereof recorded in Plat File 3, Slides 329-330, Records of Plats for Transylvania County in the office of the Register of Deeds for Transylvania County, North Carolina.

2009006358

TRANSLYVANIA CO, NC FEE \$23.00
PRESENTED & RECORDED:
11-04-2009 03:46:04 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY: BETH C LANDRETH
ASSISTANT
BK:DOC 519
PG:54-57

STATE OF NORTH CAROLINA

COUNTY OF TRANSYLVANIA

GER

**SECOND AMENDMENT TO DECLARATION OF
RESTRICTIVE AND PROTECTIVE COVENANTS**

**Recorded in Document Book 11, page 149,
as Modified in Document Book 139, page 189,
and Amended in Document Book 470, page 644**

This amendment to the Declaration of Restrictive and Protective Covenants (sometimes hereinafter referred to as "the Declaration") recorded in the office of the Register of Deeds for Transylvania County in Document Book 11, page 149, as modified in Document Book 139, page 189, and amended in Document Book 470, page 644, is made and entered into by the undersigned property owners, developer and Lake Toxaway Community Association, Inc.

WITNESSETH:

THAT WHEREAS, Article 31 of the Declaration, as modified and subsequently amended, provides that the Declaration may be amended at any time and from time by recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment signed (1) by the owners of a majority of the lots in the 69 acre parcel which is subject to the Declaration, (2) by the developer of the 69 acre parcel so long as such developer owns any lot which is subject to the Declaration or owns any roads which are located in the 69 acre parcel, (3) by Lake Toxaway Co. so long as it owns any roads which serve as a primary means of access to the development from Cold Mountain Road or U. S. Highway 64, and (4) by Lake Toxaway Community Association, Inc.; and

WHEREAS, Lake Toxaway Co. is no longer an owner of any roads which serve as a primary means of access to the development from Cold Mountain Road or U. S. Highway 64, said roads having been conveyed to Lake Toxaway Community Association, Inc.; and

WHEREAS, the undersigned property owners who constitute the owners of a majority of the lots in the 69 acre parcel which are now subject to the Declaration, the developer of the 69 acre parcel and Lake Toxaway Community Association, Inc., desire to amend the Declaration in the manner hereinafter set forth.

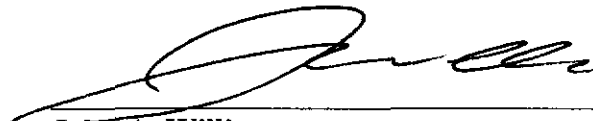
NOW, THEREFORE, the undersigned property owners, developer and Lake Toxaway Community Association, Inc., do hereby amend the Declaration by deleting all of Article 25 thereof and substituting in lieu thereof a new Article 25 which shall read as follows:

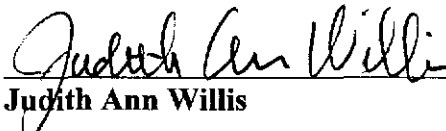
ARTICLE 25 SUBDIVISION OF LOTS

The 69 acre parcel may be subdivided by the developer thereof into eleven (11) lots each having a minimum size which shall not be less than 5 acres per lot (none of which may be further subdivided or its boundary lines changed except with the prior written approval of the developer of such subdivision and the Architectural Control Committee). Notwithstanding anything herein to the contrary, the developer of the 69 acre parcel hereby expressly reserves the right to replat any lot prior to conveyance of such lot by such developer. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Furthermore, the parties hereto hereby consent to the combination of Lots 8 and 9 as shown on plats recorded in Plat File 10, Slides 200-201, and Plat File 10, Slide 395, Records of Plats for Transylvania County, into a single lot which shall be known hereafter as Lot 8 (Revised) and shall constitute but one of the 11 lots into which the 69 acre parcel may be subdivided.

IN WITNESS WHEREOF, the owners of Lots 8 and 9 who constitute the owners of a majority of the lots in the 69 acre parcel which are now subject to the Declaration, the developer of the 69 acre parcel, and Lake Toxaway Community Association, Inc., have executed this amendment to said Declaration which shall become effective upon its recordation in the office of the Register of Deeds for Transylvania County.

OWNERS OF LOT 8:

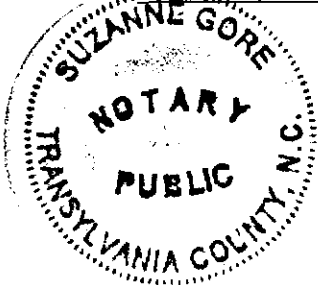
 (SEAL)
John A. Willis


 (SEAL)
Judith Ann Willis

TRANSYLVANIA COUNTY, NORTH CAROLINA

I certify that the following persons personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **John A. Willis** and wife, **Judith Ann Willis**.

Date: 11/3/09




Suzanne Gore, Notary Public

My commission expires: 10-17-2011

DEVELOPER AND OWNER OF LOT 9:

Preserve Partners of North Carolina, LLC

By: Robert L. Saunders III, Manager
Robert L. Saunders, III, Manager

ORANGE COUNTY, FLORIDA

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Robert L. Saunders, III.**

Date: Oct. 30, 2009

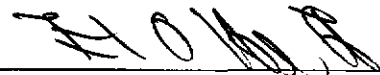
Janet Hulcher
Signature of Notary Public

JANET Hulcher
Notary Public's printed or typed name



My commission expires: 11/16/2011

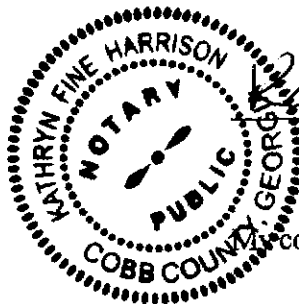
Lake Toxaway Community Association, Inc.

By: 
Frank O. Hendrick, III, President

Fulton COUNTY, GEORGIA

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **Frank O. Hendrick, III.**

Date: Nov 2, 2009 
Signature of Notary Public



Kathryn F. Harrison
Notary Public's printed or typed name

commission expires: April 1, 2011