

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR POPLAR RIDGE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR POPLAR RIDGE is made and entered into this the _____ day of January, 1999, by A&H DEVELOPMENT, LLC, a North Carolina limited liability company with its principal office in Buncombe County, North Carolina, hereinafter referred to as "Declarant";

W I T N E S S E T H:

Declarant is the owner and developer of that certain real property located in Buncombe County, North Carolina, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), which Property is being developed by Declarant as a residential subdivision to be known as Poplar Ridge ("Poplar Ridge" or the "Project").

Declarant desires to develop the Project into single dwelling lots of various sizes ("Single Dwelling Lots"). Declarant desires to provide for the preservation and enhancement of property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject those portions of the Property which are developed into Single Dwelling Lots to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described. Although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those herein contained) may be imposed with regard to the various phases or sections of Single Dwelling Lot Areas which may be developed in the Project and that separate owners' associations may be established for some or all of the various phases of the Project, Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Single Dwelling Lots in the Project, with the express reservation that, at the option of the Declarant, additional restrictions may be imposed with regard to the various phases or sections of the Single Dwelling Lots and Single Dwelling Lot Areas contained in the Project.

Declarant reserves the right to create, cause to be created or to permit others to create one or more Clubs to be located within the Project, which Club or Clubs shall not be subject to these covenants, conditions and restrictions except to the extent provided for herein.

NOW, THEREFORE, Declarant hereby subjects those portions of the Property which the Declarant in its sole and absolute discretion hereinafter elects to subdivide into Single Dwelling Lots and designate Single Dwelling Lot Areas by the filing of Plats in the Office of the Register of Deeds of Buncombe County, North Carolina and only those portions that the Declarant elects to subdivide into Single Dwelling Lots, to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) the portion of the Property which shall be divided into Single Dwelling Lot Areas shall be held, sold and conveyed subject to the easements, covenants, conditions, restrictions, charges and liens of this Declaration all of which are for the purpose of enhancing and

protecting the value, desirability and attractiveness of the Project. Subject to the above described rights of Declarant, such easements, covenants, conditions, restrictions, charges and liens shall run with the portion of the Property which shall be subdivided into Single Dwelling Lots and shall be binding on all parties having or acquiring any right, title or interest in the Property which shall be subdivided into Single Dwelling Lots and shall inure to the benefit of each owner of a Single Dwelling Lot located within the Property or any part thereof.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE DECLARANT HAS MADE AND MAKES NO REPRESENTATIONS OR COMMITMENTS AS TO THE USE OF THE PROPERTY DESCRIBED IN EXHIBIT A ATTACHED HERETO (PROPERTY) AND RESERVES THE RIGHT TO DEVELOP THE PROPERTY FOR SUCH USES AS THE DECLARANT SHALL, FROM TIME TO TIME DETERMINE IN ITS SOLE DISCRETION TO BE APPROPRIATE AND PROPER. NO PRELIMINARY PLAT, SCHEME, MARK UP, REPRESENTATION OR OTHER COMMUNICATION, WRITTEN OR ORAL, SHALL BIND OR OBLIGATE THE DECLARANT TO USE THE PROPERTY IN ANY MANNER UNLESS AND UNTIL A PLAT SHALL BE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF BUNCOMBE COUNTY, NORTH CAROLINA, DESIGNATING A PARTICULAR USE. NO PORTION OF THE PROPERTY SHALL BE SUBJECT TO THIS DECLARATION EXCEPT THE SINGLE DWELLING LOT AREAS WHICH SHALL BE DESIGNATED BY PLATS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF BUNCOMBE COUNTY, NORTH CAROLINA, STATING THEREON THAT THE PROPERTY SHOWN ON SAID PLAT IS SUBJECT TO THIS DECLARATION.

ARTICLE I

DEFINITIONS

The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

Section 1. "Additional Declaration" shall mean and refer to any Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Buncombe County, North Carolina with regard to a certain phase, section or portion of the Property, as more particularly described in Article II, Section 3 hereof.

Section 2. "Annual Assessments" shall have the meaning as set forth in Article V, Section 3 hereof.

Section 3. "Annual Budget" shall mean the budget prepared by the Homeowners' Association each year covering the estimated costs of operating the Homeowners' Association as more particularly described in Article V, Section 4 hereof.

Section 4. "Articles" shall mean and refer to the Articles of Incorporation of the Homeowners' Association, a copy of which is attached hereto as Exhibit B, as the same may be amended from time to time.

Section 5. "Assessment" shall mean charges by the Homeowners' Association as more particularly described in Article V hereof.

Section 6. "Association" shall mean and refer to any one of the Owners' associations which may be formed in connection with an Additional Declaration with regard to the ownership and/or maintenance of property within the various subdivisions, phases or sections developed or to be developed in the Single Dwelling Lot Areas.

Section 7. "Board" shall mean the Board of Directors of the Homeowners' Association.

Section 8. "Bylaws" shall mean and refer to the Bylaws of the Homeowners' Association, a copy of which is attached hereto as Exhibit C, as they may now or hereafter exist.

Section 9. "Club" shall mean a club or recreational area which Declarant may establish on the Property as set forth in Article XIII, Section 1 hereof.

Section 10. "Club Facilities" shall mean recreational facilities located at any Club, including without limitation a clubhouse, tennis courts and swimming pools as more particularly described in Article XIII, Section 1 hereof.

Section 11. "Club Owner" shall mean and refer to the entity owning any Club or Club Property.

Section 12. "Common Area" and "Common Areas" shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee or easement, from time to time by the Homeowners' Association for the common use and enjoyment of the Owners and the Occupants, including without limitation the Roadways, until accepted for maintenance by a public authority and that property identified and designated as "Common Area" on any recorded plat or plats of the Single Dwelling Lot Areas.

Section 13. "Corporation" shall mean POPLAR RIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation.

Section 14. "Declarant" shall mean A&H DEVELOPMENT, LLC, its successors in title and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Provided further, that upon such designation of such successor Declarant, all rights, duties and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any time.

Section 15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Poplar Ridge as it may be amended and/or supplemented from time to time as herein provided.

Section 16. "Design and Development Guidelines" shall have the meaning set forth in Article X, Section 2 hereof.

Section 17. "Entrance Monument Easements" shall mean and refer to the easements reserved by Declarant and granted to the Homeowners' Association in Article XI, Section 6 hereof over, across and under certain areas of the Property, for the installation and maintenance of entrance monuments for the Project, all as more particularly described in Article XI, Section 6 hereof.

Section 18. "Improvements" shall have the meaning as set forth in Article X, Section 3 hereof.

Section 19. "Lot" shall mean and refer to any numbered or lettered tract of land shown on any plat of a Single Dwelling Lot Area which is a part of the Property and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until a plat of the area on which the same is located is recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

Section 20. "Maintenance Areas" shall mean those portions of the property as more particularly described in Article X, Section 5 hereof.

Section 21. "Member" shall mean and refer to each Owner who is a member of an Association formed with regard to a phase of the Property in which such Owner's property is located, all as more specifically provided in Article IV, Section 1 hereof.

Section 22. "Mortgage" shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

Section 23. "Mortgagee" shall mean the owner and holder of a mortgage at the time such term is being applied.

Section 24. "Occupant" shall mean and refer to any person occupying all or any portion of a Lot, for any period of time, regardless of whether such person is a tenant of the Owner of such Lot.

Section 25. "Other Use Areas" shall mean areas within the Project which are not in Single Dwelling Lot Areas which may be established and developed by Declarant and which may contain multi-family, commercial, professional, institutional, business or other uses.

Section 26. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of a Single Dwelling Lot Area, but excluding those having such interest merely as security for the performance of an obligation.

Section 27. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), association, trust or other legal entity.

Section 28. "Phase" shall mean and refer to any phase, section or portion of Single Dwelling Lot Areas of the Property for which a separate plat or plats are recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

Section 29. "Plat" shall mean and refer to any plat of Single Dwelling Lots which are located within the Property or any part of it which has been recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

Section 30. "Project" shall mean the mixed use community to be known as Poplar Ridge into which the Property is being developed by the Declarant including the Single Dwelling Lot Areas which are subject to these Declarations.

Section 31. "Property" shall mean and refer to that certain real property located in Buncombe County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II, Section 2 hereof.

Section 32. "Homeowners' Association" shall mean POPLAR RIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation.

Section 33. "Homeowners' Association Member" shall mean and refer to any Person who is a member of the Homeowners' Association as set forth in Article IV, Section 1 hereof. Homeowners' Association Members shall include the Declarant for so long as Declarant owns any part of the Property, and all Owners of Lots.

Section 34. "Roadways" shall mean and refer to the roads, streets, entranceways and cul-de-sacs in the Single Dwelling Lot Areas as shown on the plats thereof, and where indicated any other roads, streets, entranceways and cul-de-sacs on the Property, all to be privately maintained by the Homeowners' Association or an Association until accepted for maintenance by a public authority as set forth in Article VII, Section 6 hereof.

Section 35. "Single Dwelling Lot Area" shall mean those Single Dwelling Lots and that portion of Common Areas as shall be shown on a plat of a portion of the Property recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, and specifically designated as being subject to this Declaration.

Section 36. "Single Dwelling Lots" shall mean lots of various sizes as shall be shown on plats of portions of the Property recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, and specifically designated as being subject to this Declaration upon which lots shall be located no more than one single family residence.

Section 37. "Special Assessment" shall have the meaning set forth in Article V, Section 6 hereof.

Section 38. "Special Individual Assessment" shall have the meaning set forth in Article V, Section 7 hereof.

Section 39. "Subdivision" shall mean and refer to any phase, section or portion of Single Dwelling Lot Areas of the Property for which a separate plat or plats are recorded in the Office of the Register of Deeds of Buncombe County, North Carolina.

Section 40. "Supplementary Declaration" shall mean and refer to any Supplementary Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Buncombe County, North Carolina to bring additional property within the coverage of this Declaration and the jurisdiction of the Homeowners' Association, as more particularly described in Article II, Section 3 hereof.

Section 41. "Turnover Date" shall have the meaning set forth in Article V, Section 1 hereof.

ARTICLE II

PROPERTY

Section 1. Property Made Subject to this Declaration. The property made subject to this Declaration shall be that portion of the Property and only that portion of the Property which shall hereafter be subdivided by the Declarant into Single Dwelling Lot Areas pursuant to plats of such Single Dwelling Lot Areas which shall be filed for record in the Office of the Register of Deeds of Buncombe County, North Carolina, by the Declarant from time to time. No portion of the Property shall be subject to this Declaration until such time as a plat of that portion of the Property subdividing it into Single Dwelling Lot Areas shall be filed of record. After the filing of a plat, the Single Dwelling Lots shown on the plat shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Homeowners' Association, any association, each owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration shall thereafter apply to said platted property. No person shall have any right to go upon any portion of the Property which is undeveloped and/or reserved for future development by the Declarant whether or not such undeveloped property shall be posted with "no trespass" or similar signs.

Section 2. Additional Property. Declarant shall have the right, at its election without the consent of any owner or owners, to bring within the coverage of this Declaration and the jurisdiction of the Homeowners' Association any additional property. Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Buncombe County, North Carolina, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property. Each such supplementary declaration shall extend the scheme of this Declaration and the jurisdiction of the Homeowners' Association to such additional property and thereby subject such additional property to assessment for its just share of the Homeowners' Association's expenses. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect a different character of the additional property and as are not inconsistent with the provisions of this Declaration. Nothing contained in this Section 2, however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

Section 3. Additional Declarations. In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any phase, section or portion of the Single Dwelling Lot Areas to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Buncombe County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of an Association to govern the ownership and/or maintenance of the portion of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not an Association is formed pursuant to such Additional Declaration, the Homeowners' Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines,

charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

Section 4. Merger or Consolidation. Upon any merger or consolidation of an Association with another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phase(s) or section(s) of the Property over which such Association has jurisdiction) and the applicable Additional Declarations affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Multi-family Uses of Portions of the Property. The Declarant reserves the right to develop such portions of the Property as Declarant shall from time to time desire into multi-family or other uses ("Other Use Areas") which may be subjected to separate covenants, conditions and restrictions governing the use of such portions of the Property. In the sole discretion of the Declarant, the Other Use Areas may be made subject to associations which may be formed in connection with the uses to which the Declarant shall elect to make of those portions of the Property. THOSE PORTIONS OF THE PROPERTY WHICH SHALL NOT BE SINGLE DWELLING LOTS OR WITHIN SINGLE DWELLING LOT AREAS AND THE ASSOCIATION(S) FORMED IN CONNECTION WITH OTHER USE AREAS SHALL NOT BE SUBJECT TO THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SINGLE DWELLING LOT AREAS.

Section 6. Use of Common Areas. The Declarant contemplates as a part of the development of Single Dwelling Lot Areas that it shall convey to the Homeowners' Association by deed or easement, areas of the Property or contiguous property which shall become a part of the Common Area or Common Areas which may be used for parks, trails, walking, jogging, biking, or other recreational uses. Declarant expressly reserves the right to grant to others, including the occupants or users of multi-family condominiums, planned unit developments, and apartments, the right to use the Common Areas for the purposes for which the Common Areas are designed. Declarant may, but shall not be required to, obligate the users, owners or the associations governing the Other Use Areas to which the right to use the Common Areas is granted, to make payments to the Homeowners' Association for the purpose of contributing to the maintenance and upkeep of the Common Areas as a condition of such use. The amount of the contribution to be made by such non-Member users shall be in the sole discretion of the Declarant.

Section 7. Changes to this Declaration or Additional or Supplementary Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify,

change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III

HOMEOWNERS' ASSOCIATION

A Corporation named POPLAR RIDGE HOMEOWNERS' ASSOCIATION, INC., will be formed pursuant to the rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Single Dwelling Lots in the Project (the "Homeowners' Association"). Its purposes are to own, manage, maintain, and operate the Common Areas, Maintenance Areas and facilities located upon those Areas; to enforce the restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Single Dwelling Lots, all as set forth herein.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE HOMEOWNERS' ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS IN AN ASSOCIATION

Section 1. Membership in the Homeowners' Association. Each and every Owner of a Single Dwelling Lot shall automatically become and be a Homeowners' Association Member upon the first conveyance by Declarant to an Owner of a Lot within the Property. In addition, for so long as Declarant owns any part of the Property, Declarant shall be a Homeowners' Association Member. All owners of Lots shall be Homeowners' Association Members. The Bylaws shall control with respect to the determination of the proper exercise of voting rights with respect to a Single Dwelling Lot owned by two (2) or more undivided interests.

Section 2. Voting by Homeowners' Association Members. Members of the Homeowners' Association shall be all those Owners together with the Declarant. Each Owner/Member shall be entitled to one (1) vote for each Lot in which they hold the required ownership interest. When more than one (1) person or entity holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot. The Declarant/Member shall be entitled to fifteen (15) votes for each Lot in which it holds the required ownership interest.

Section 3. Voting, Quorum and Notice Requirements for the Homeowners' Association. Except as may be otherwise specifically set forth in this Declaration or in the Articles or Bylaws, the vote of a majority of all votes entitled to be cast by the Homeowners' Association Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be the act of the Homeowners' Association Members. The number of votes present at a meeting of the Homeowners' Association Members that is properly

called and that will constitute a quorum shall be as set forth in the Bylaws. Notice requirements for all actions to be taken by the Homeowners' Association Members shall be as set forth herein or in the Bylaws. Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Homeowners' Association Members shall be required in order for the Homeowners' Association to (1) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Property or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE V

HOMEOWNERS' ASSOCIATION ASSESSMENTS

Section 1. Covenant for Assessments. Declarant, for each Lot owned by it after the Turnover Date, and each Owner of any Lot other than Declarant, by acceptance of a deed or other conveyance document creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance document, shall be deemed to covenant and agree to pay to the Homeowners' Association:

- (a) annual assessments or charges, such assessments to be fixed, established and collected from time to time as herein provided;
- (b) special assessments for capital improvements and other purposes, such assessments to be fixed, established and collected from time to time as herein provided; and
- (c) special individual assessments levied against individual Owners, as may be fixed, established and collected from time to time as herein provided.

The assessments described in (a), (b), and (c) of this Section 1 (the "Assessments") together with interest thereon, late charges, attorneys' fees, court costs and other costs of collection thereof, as herein provided shall be a charge on the land and shall be a continuing lien upon each Lot, against which each such Assessment is made and shall also be the personal obligation of the Owner, at the time when the Assessment fell due, of the Lot, against which such Assessment is made. No Owner may exempt himself from liability for such Assessment or waive or otherwise escape liability for the Assessments by non-use of the Common Area or abandonment of his property. The personal obligation to pay any such Assessment, together with interest thereon, attorneys' fees, late charges, court costs and other costs of collection thereof, as herein provided, shall pass to the successors in title of such Owner whether or not expressly assumed in writing by such successors; provided however, that such personal obligation to pay Assessments and other costs and charges shall not pass to mortgagees or trustees under mortgages of such Owner who succeed to the title of such Owner.

Section 2. Purpose of Homeowners' Association Assessments. The assessments levied by the Homeowners' Association shall be used for the purposes of the carrying out of the rights and powers of the Homeowners' Association pursuant to the terms and provisions hereof and promoting the enjoyment and welfare of the Single Dwelling Lot Areas and, in particular, but without limitation, for the following:

- (a) Until accepted for maintenance by a public authority, maintenance of the Roadways;
- (b) Maintenance of any other Common Areas within the Single Dwelling Lot Areas to the extent repair and maintenance thereof shall not have been delegated to or required of an Association having jurisdiction thereover;
- (c) Payment of all ad valorem taxes levied against the Common Areas and any other property owned by the Homeowners' Association;
- (d) Payment of all premiums on all insurance carried by the Homeowners' Association pursuant hereto or pursuant to the Bylaws;
- (e) Payment of all legal, accounting and other professional fees incurred by the Homeowners' Association in carrying out its duties as set forth herein or in the Bylaws, including all costs and expenses of the Board not paid by the collection of fees by the Board pursuant to Article X, Section 8;
- (f) Carrying out the powers and duties of the Board, as more particularly described in Article V hereof;
- (g) Carrying out all other purposes and duties of the Homeowners' Association and the Board as stated in the Articles, the Bylaws and in this Declaration;
- (h) Paying for the cost of rubbish removal services, if any, provided to the Lots.

Section 3. Payment of Annual Assessments; Due Dates. Each Owner of a Lot shall pay to the Homeowners' Association the annual assessments levied by the Homeowners' Association (the "Annual Assessments") as hereinafter set forth.

- (a) The Homeowners' Annual Assessment provided for herein as to any Lot shall commence as of the date of the conveyance by Declarant to an Owner other than Declarant of such Lot. The Homeowners' Annual Assessment for the first year in which a Lot is subject thereto shall be prorated based upon the number of days remaining in the calendar year from the date of such conveyance.
- (b) Subject to the provisions of (a) above, the Homeowners' Annual Assessments as to each Lot shall be due and payable on January 1 of each calendar year. Provided that the Board, without the approval of any Homeowners' Association Member or Owner, may provide that the Annual Assessments be paid in installments due other than annually, and thereafter the Annual Assessments shall be paid in such manner and on such dates as may be fixed by the Board, in its sole discretion.

Section 4. Amount of Annual Assessments.

(a) It shall be the duty of the Board annually to prepare a budget (the "Annual Budget") covering the estimated costs of operating the Homeowners' Association during the coming year, taking into consideration, among other things, the then current development and/or maintenance costs to be borne by the Homeowners' Association, estimated increases in development and/or maintenance costs and the future needs of the Homeowners' Association (which may include a reasonable contingency fund).

(b) The initial Annual Budget has been set by Declarant and, based upon such Annual Budget, the Annual Assessments until December 31, 1998, shall be \$200.00 per Lot owned by any Owner other than Declarant. The Annual Assessments for each and every calendar year thereafter shall be set by the Board in accordance with (c) below.

(c) The Homeowners' Annual Assessment to be levied on each Lot for a calendar year shall be in an amount as set by the Board in accordance with the following:

(i) For calendar year 1999 and thereafter, the Board, by a vote in accordance with the Bylaws, without a vote of the Homeowners' Association Members, may increase the Homeowners' Annual Assessment to be levied against each Lot by a maximum amount equal to ten percent (10%) of the previous year's Homeowners' Annual Assessment.

(ii) If the Homeowners' Annual Assessment to be levied against each Lot is not increased by the maximum amount permitted under the terms of this Section 4(c), the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Homeowners' Annual Assessment to be levied against each Lot may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board, without a vote of the Homeowners' Association Members. Provided, however, that after the Turnover Date the Homeowners' Annual Assessment to be levied against each Lot may be increased without limitation if such increase is approved by a vote of no less than a majority of all votes entitled to be cast by Homeowners' Association Members, taken at a duly held meeting of such Homeowners' Association Members in accordance with the Bylaws.

(d) The Board shall fix the amount of the Homeowners' Annual Assessment as to each Lot for any calendar year and shall send written notice of the amount of and due date of each installment of such Homeowners' Annual Assessment to each Owner at least thirty (30) days prior to January 1 of such calendar year.

(e) Should any Lot be conveyed by Declarant during a calendar year beginning prior to the Turnover Date, then the purchaser of such Lot shall pay to the Homeowners' Association at closing the amount of the Homeowners' Annual Assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. Should any Lot be conveyed by

Declarant during a calendar year beginning after the Turnover Date or be conveyed by any Owner other than Declarant during any calendar year, then the Homeowners' Annual Assessment applicable to such Lot shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

(f) Declarant shall have the discretionary authority to reduce the Homeowners' Annual Assessment on any Lot owned by an Approved Builder on which no structure has been completed until such time as the Approved Builder sells or otherwise transfers ownership of its Lot.

Section 5. Payments by Declarant in Lieu of Annual Assessments.

Notwithstanding the provisions of this Article V, for calendar years beginning prior to the Turnover Date, in lieu of the payment of Annual Assessments, Declarant shall be responsible for paying for each such calendar year that portion of the annual expenses of the Homeowners' Association (but not including any reserves) which exceeds the total amount of the Annual Assessments paid by the Owners other than Declarant, if any. For calendar years beginning after the Turnover Date, Declarant shall be responsible for paying Annual Assessments in the same manner as any other Owner of a Lot or Tract located in the Project, as more particularly described in this Article V.

Section 6. Special Assessments. In addition to the Annual Assessments described in Sections 3 and 4 above, the Board, without a vote of the Homeowners' Association Members, may levy in any assessment year or years a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Homeowners' Association which are not paid for out of funds on hand in the Homeowners' Association or out of the Annual Assessments collected by the Homeowners' Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and the Roadways and Utilities serving Single Dwelling Lot Areas. Notwithstanding the above, all fees and costs incurred by the Homeowners' Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Homeowners' Association Members entitled to cast no less than two-thirds (2/3) of all votes entitled to be cast by the Homeowners' Association Members. Special Assessments shall be assessed pursuant to this Section 6 against the Owners of Lots. Provided, however, that Declarant shall not be obligated to pay any Special Assessments on Lots owned by Declarant except with Declarant's prior written approval. The due date of any Special Assessment levied pursuant to this Section 6 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner at least thirty (30) days prior to the date such Special Assessment is due.

Section 7. Special Individual Assessments. The Board may levy special assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas including the Roadways and other improvements occasioned by the acts of Owner(s) and not the result of ordinary wear and tear or (ii) for payment of fines, penalties or

other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including without limitation, penalties assessed by the Board pursuant to the Design and Development Guidelines, reimbursement to the Board for any sums it expends on an Owner's behalf pursuant to the Design and Development Guidelines, and reimbursement to the Homeowners' Association for all expenses incurred in connection with the enforcement of the provisions of Article IX. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 7 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 8. Omission of Homeowners' Association. The omission of the Board, before the expiration of any year, to fix the Annual Assessments hereunder for that or the next year, shall not be deemed to waive or modify in any respect any of the provisions of this Declaration, or to release any Owner from the obligation to pay the assessment due from such Owner for that or any subsequent year, and the Annual Assessments fixed for the preceding year shall continue until new Annual Assessments are fixed.

Section 9. Collection Agent. At the option of the Board, a representative of the Homeowners' Association designated by the Board may act as collection agent for any and all Assessments (whether Annual Assessments, Special Assessments or Special Individual Assessments) imposed by the Homeowners' Association against the Owners.

Section 10. Owner's Personal Obligation for Payment of Assessments. The Annual Assessments, Special Assessments, and Special Individual Assessments provided for herein shall be the personal and individual debt of the Owners (as of the due date of the applicable Assessment payment) of the Lots to which such Assessments related. No Owner may exempt himself from liability for such Assessments by non-use of his property or the Common Area or otherwise. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by the law, whichever is less, on the amount of the Assessment from the due date thereof until the date such Assessment and interest is paid, together with all costs and expenses of collection, including reasonable attorneys' fees. In addition, the delinquent Owner shall also pay such late charges as may have been theretofore established by the Board to defray the costs arising because of late payment.

Section 11. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article V but unpaid shall, together with interest and late charges as provided in this Article V and the cost of collection, including reasonable attorneys' fees, become a continuing lien and charge on the portion of the Property and improvements thereon owned by the defaulting Owner as of the Assessment due date and shall bind such property and improvements then in the hands of the Owner, and the defaulting Owner, his heirs, devisees, personal representatives, successors, and assigns. The aforesaid lien shall be superior to all other liens and charges against such property and the improvements thereon, including the lien of any mortgage. Provided,

however, that the Board shall have the power to subordinate the aforesaid assessment lien to the lien of any mortgage or to any other lien, and such power shall be entirely discretionary with the Board. To evidence the aforesaid assessment lien, the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the property and improvements thereon covered by such lien and a description of the property. Such notice shall be signed by one of the officers of the Homeowners' Association and shall be filed of record in the Office of the Clerk of Superior Court of Buncombe County, North Carolina. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's property and improvements thereon by the Homeowners' Association in like manner as a deed of trust with power of sale on real property under Article 2A of Chapter 45 of the North Carolina General Statutes subsequent to the recording of a notice of assessment lien as provided above, or the Homeowners' Association may institute suit against the Owner personally obligated to pay the assessments and/or for foreclosure of the aforesaid lien judicially or may seek any other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, or in any lawsuit, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred by the Homeowners' Association. The Homeowners' Association shall have the power to bid on the Owner's property and improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

Section 12. Reserves. The Annual Assessments shall, as determined by the Board, include reasonable amounts as reserves for the future periodic maintenance, repair and/or replacement of all or a portion of the Common Areas. All amounts collected as reserves, whether pursuant to this Section 12 or otherwise, shall be deposited by the Homeowners' Association in a separate bank account to be held in trust for the purposes for which they were collected and are to be segregated from and not commingled with any other funds of the Homeowners' Association. Assessments collected as reserves shall not be considered to be advance payments of Annual Assessments.

Section 13. Certificate Regarding Assessments. The Homeowners' Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners' Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Homeowners' Association as to the status of assessments on a Lot is binding upon the Homeowners' Association as of the date of its issuance.

ARTICLE VI

THE BOARD OF THE HOMEOWNERS' ASSOCIATION

Section 1. Members of the Board. So long as Declarant owns any Lot or other portion of the Property, the members of the Board shall be appointed by Declarant. The number of members of the Board shall be as set forth in the Bylaws. At such time as Declarant owns no Lot or other portion of the Property, then the members of the Board shall thereafter be elected by a vote of the Homeowners' Association Members in accordance with the Bylaws. Provided, however, that Declarant may choose, in its sole discretion, to relinquish its right to appoint the members of the Board prior to the time that it owns no portion of the Property, whereupon the

Homeowners' Association Members shall thereafter elect the members of the Board in accordance with the Bylaws.

Section 2. Duties of the Board. The Board, for the mutual benefit of the Homeowners' Association Members and the Owners, shall have the following specific duties:

- (a) To maintain or cause to be maintained the Common Areas including, but not limited to, planting, mowing, pruning, fertilizing, preservation, and replacement of the landscaping and the upkeep and maintenance of sidewalks, greenways, trails, pathways, foot bridges, walks, signage, lighting, irrigation, and other improvements in the Common Areas;
- (b) Until accepted for maintenance by a governmental unit to own and maintain or cause to be maintained the Roadways, storm drainage systems, and water systems to the standard of maintenance (if one is ascertainable) which is required by the applicable governmental unit before it would accept such Roadways and systems for maintenance;
- (c) To the extent not maintained by a governmental unit or separate Association, to maintain or cause to be maintained any swales, buffers and medians of the Roadways in the Property.
- (d) To make available to each Homeowners' Association Member within sixty (60) days after the end of each year an annual report of the Homeowners' Association and, upon resolution adopted by the Board or upon the written request of the Homeowners' Association Members holding at least three-fourths (3/4) of the eligible votes of the Homeowners' Association at such time, to have such report audited (at the expense of the Homeowners' Association) by an independent certified public accountant, which audited report shall be made available to each Homeowners' Association Member within thirty (30) days after completion;
- (e) To pay for the cost of street lighting services in accordance with any agreement entered into by the Declarant or the Homeowners' Association with any utility for the street lights to be located in the Property and the electricity serving any of the Common Areas;
- (f) To cause to be kept a complete record of all its acts and corporate affairs;
- (g) To supervise all officers, agents and employees of the Homeowners' Association, and to see that their duties are properly performed;
- (h) As more fully provided in this Declaration:
 - (1) To fix the amount of the Annual Assessments, Special Assessments, and Special Individual Assessments;
 - (2) To send written notice of the Annual Assessments and Special Assessments to each owner, and Special Individual Assessments to affected Owners;

- (i) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. (A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.);
- (j) To procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association;
- (k) Subject to Declarant's right to appoint the Board, all as more particularly provided in Article X of this Declaration;
- (l) To enter into agreements or contracts for rubbish removal services to be provided to Lots within the Property, and to pay for such agreements or contracts; and
- (m) To enter into agreements or contracts for the installation, maintenance and repair of utilities, if any, serving more than one Lot and to pay for such agreements or contracts.

Section 3. Powers of the Board. The Board, for the mutual benefit of the Homeowners' Association Members and the Owners, shall have the following specific powers and rights (without limitation of other powers and rights such Board may have):

- (a) To enter into agreements with the appropriate governmental authorities to enable the Homeowners' Association to improve and maintain the Common Areas or portions thereof;
- (b) To make reasonable rules and regulations for the use and operation of the Common Areas and Maintenance Areas, and to amend them from time to time;
- (c) To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Areas, Maintenance Areas and/or the Homeowners' Association;
- (d) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas, Maintenance Areas and/or the Homeowners' Association;
- (e) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Homeowners' Association Members at which quorum is present, all in accordance with the Bylaws, to borrow funds to pay costs of operation of the Homeowners' Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Homeowners' Association assets, if the Homeowners' Association Members see fit; provided, however, that until such time as Declarant no longer owns any portion of the

Property, the Board may not mortgage any portion of the Common Area without the prior written approval of Declarant;

(f) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Homeowners' Association;

(g) Subject to the provisions of Article IV, Section 3 hereof, to sue or defend in any court of law in behalf of the Homeowners' Association;

(h) To levy assessments in accordance with the provisions of Article V hereof;

(i) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property of the Homeowners' Association and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;

(j) To exercise for the Homeowners' Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws, or the Articles to the Homeowners' Association and not reserved to the Homeowners' Association Members or Declarant by other provisions of this Declaration, the Bylaws or the Articles;

(k) To declare the office of a member of the Board to be vacant in the event such member shall be absent, without the consent of the Board, from three (3) consecutive regular meetings of the Board;

(l) To employ a manager or firm to manage the affairs and property of the Homeowners' Association, to employ independent contractors or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;

(m) To retain the services of legal and accounting firms;

(n) As more fully provided in this Declaration, to foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

(o) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;

(p) To the extent permitted hereby, to enforce the provisions of this Declaration and any Additional or Supplementary Declaration and any rules made hereunder or thereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules and/or by Special Individual Assessments against any Owner for violation of such provisions or rules pursuant to the provisions of Articles IX and XII hereof;

(q) To contract with any third party or any Homeowners' Association Member (including, without limitation, Declarant) for performance, on behalf of the Homeowners' Association, of services which the Homeowners' Association is otherwise required to perform pursuant to the terms hereof, upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interests of the Homeowners' Association;

(r) To employ or retain the services of professional architects or other Persons to serve on or advise the Board;

(s) To grant all necessary easements and rights-of-way over and across the Common Areas when in its sole discretion it deems such an action to be necessary and appropriate, including but not limited to easements for the installation and maintenance of electrical, telephone, cablevision, water, and other utilities and drainage facilities and any easement to Other Use Areas where consistent with the general use of such areas. Provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

(t) To convey fee simple title to all or any part of the Common Area when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not convey any portion of the Common Area without the prior written approval of Declarant;

(u) To contract with any third party, including any other property owners association, for the sharing of costs of maintaining Maintenance Areas;

(v) To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder or for the operational protection of the Homeowners' Association.

(w) The right to subject the real property in Poplar Ridge to contract with Carolina Power & Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power & Light Company by each residential customer.

Notwithstanding anything contained herein to the contrary, none of the above-described rights and powers of the Board shall be obligatory on the part of the Board, and the failure or refusal by the Board to implement any such rights and powers shall not constitute a breach or default by the Board of any duties or obligations arising hereunder or otherwise owing to the Homeowners' Association Members.

Section 4. Liability Limitations. Neither Declarant, nor any Master Association Member, nor the Board, nor the Master Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Homeowners' Association or for a tort of another Homeowners' Association Member, whether or not such other Homeowners' Association Member was acting on behalf of the

Homeowners' Association or otherwise. Neither Declarant, nor the Homeowners' Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Declarant, the Homeowners' Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Homeowners' Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

Section 5. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to the Homeowners' Association. The aggregate deposits in such reserve funds shall not exceed an amount as may be reasonably determined by the Board to be necessary.

ARTICLE VII

PROPERTY RIGHTS IN THE COMMON AREA(S)

Section 1. Owners' Easements of Enjoyment. Subject to the provisions of Section 5, every Owner, and each individual who resides with such Owner and guests of such Owner, shall have a right and easement of use and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with the title to such Owner's lot or other property; PROVIDED, HOWEVER, such easement(s) shall not give such person the right to make alterations, additions or improvements to any part of any Common Area.

Section 2. Owners' Easements for Ingress and Egress. To the extent that the Roadways have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot or portion of the Single Dwelling Lot Areas, every Lot or portion of the Single Dwelling Lot Areas shall be conveyed with (and each Owner is hereby conveyed) a perpetual, non-exclusive right to use any Roadway which may be constructed by the Declarant and conveyed to the Homeowners' Association as part of the Common Area for the purpose of providing access to and from each Lot or other portion of the Single Dwelling Lot Areas.

Section 3. Title to the Common Area.

(a) Declarant shall dedicate and convey (by deed without warranty except as provided below) the fee simple title to the Common Area to the Homeowners' Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants and utility easements, and any other encumbrances and mineral interests outstanding and of record. The conveyance of any portion of the

Common Area shall occur within thirty (30) days after the date that a Plat of a Single Dwelling Lot Area is recorded showing such portion of the Common Area. Common Area may be conveyed by Declarant to the Homeowners' Association in whole or in part from time to time. Provided, that if Declarant shall not own the fee interest in an area outside of the Property but Declarant has the right to include such area in the Common Area of the Homeowners' Association by granting an easement, then the conveyance contemplated by this Section 3(a) may be by an easement.

(b) Nothing contained herein shall prevent the Declarant, by Additional Declaration or otherwise, from dedicating and conveying to any Association certain common areas to be owned by, operated by, separately maintained and improved by that Association, and to be subject to easements of use and enjoyment restricted solely to the Members of that Association.

(c) Notwithstanding the recordation of any Plat or any other action by Declarant or the Homeowners' Association, all Common Areas, excluding the Roadways, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that the Roadways shall be dedicated to the use and enjoyment of the public and offered to an appropriate public body for maintenance by an appropriate public body.

Section 4. Control of Common Areas. The Board shall have sole and exclusive control and authority over the usage of, and guidelines with respect to, the Common Areas. Provided, however, that the Board, in its sole discretion, may by resolution or guideline permit an Association, the property under the jurisdiction of which shall include or be adjacent to a Common Area, to either (a) maintain or improve, in whole or in part, the Common Area or (b) promulgate regulations with respect to its Members' usage of the Common Area. Provided further, that any such authority delegated by the Homeowners' Association may be revoked, rescinded, or otherwise terminated at any time by the Homeowners' Association. Provided further, that the Board shall not have the right or authority to limit in any manner the use by persons granted the right to use the Common Area pursuant to Article II, Sections 5 and 6 and Article XIII, Section 2 unless the same limitations shall apply to all Homeowners' Association Members.

Section 5. Extent of Owners' Easements. The rights and easements of enjoyment of the Common Areas created hereby shall be subject to the following:

(a) The right of the Homeowners' Association or an Association to prescribe regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area) subject to limitations established by Declarant or the Homeowners' Association, as applicable, on such right to impose regulations;

(b) Subject to the affirmative vote of no less than a majority of all votes present, in person or by proxy, at a duly held meeting of the Homeowners' Association Members at which a quorum is present, all in accordance with the Bylaws, the right of the Homeowners' Association, in accordance with the Articles and Bylaws, to borrow money

for the purpose of improving the Common Area and facilities thereon and in aid thereof to mortgage the Common Area, provided the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners hereunder with regard to the Common Area, and further provided that until such time as Declarant no longer owns any portion of the Property, the Homeowners' Association may not mortgage any portion of the Common Area without the prior written approval of Declarant;

(c) The right of the Homeowners' Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure; and

(d) The right of the Board to grant easements upon, over, under and across, or convey fee simple title to, all or any part of the Common Area when in its sole discretion it deems such an action to be necessary and appropriate; provided, however, that until such time as Declarant no longer owns any portion of the Property, the Board may not grant easements upon, over, under and across, or convey fee simple title to, any part of the Common Area without the prior written approval of Declarant.

Section 6. Roadways. Pursuant to the provisions of this Declaration, the Roadways will be maintained by the Homeowners' Association until the time that the Roadways are accepted for maintenance by an appropriate governmental unit. Until accepted for maintenance by an appropriate governmental unit, maintenance of the Roadways shall be to the standard of maintenance (if one is ascertainable) which would be required by an appropriate governmental unit before it would accept such Roadways for maintenance. Such maintenance shall include, but shall not be limited to, repair of damage caused by movement of construction equipment or materials and paying the costs of all bonds, bond premiums, service agreements in connection therewith and performance of all governmental requirements in connection with acceptance of all Roadways for maintenance by an appropriate governmental unit, including without limitation sedimentation, storm drainage and erosion requirements. Provided, however, the private roads shown on Plat Book 72, Page 100, Buncombe County Registry, and named Clear Spring Drive and Woodsong Drive, shall remain private roads. The Homeowners' Association may delegate the obligation to maintain said private roads to the Property Owners utilizing said private roads. The standards of maintenance shall be determined and enforced by the Homeowners' Association, consistent with the maintenance of other roadways in Poplar Ridge.

ARTICLE VIII

INSURANCE; REPAIR AND RESTORATION; CONDEMNATION

Section 1. Insurance. The Board shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below unless such insurance shall not be available at a competitive rate.

(a) **Fire.** All improvements and all fixtures and personal property included in the Common Areas and Maintenance Areas and all personal property and supplies belonging to the Association shall be insured in an amount equal to the current replacement cost (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing

coverage. The Board shall, at least annually, review the insurance coverage required herein and determine the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire or other hazards covered by a standard extended coverage endorsement, windstorm and water damage, vandalism and malicious damage and all perils covered by a standard "all risk" endorsement. In addition to the provisions and endorsements set forth in Sections 3 and 4, the fire and casualty insurance described herein shall contain the following provisions:

- (i) standard "Agreed Amount" and "Inflation Guard" endorsements;
- (ii) construction code endorsements if the Common Area becomes subject to a construction code provision which would require changes to undamaged portions of any building thereby imposing significant costs in the event of partial destruction of such building by an insured peril;
- (iii) a waiver of subrogation by the insurer as to any claims against the Homeowners' Association, any officer, director, agent or employee of the Homeowners' Association, the Owners and their employees, agents, tenants and invitees; and
- (iv) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Homeowners' Association or by any failure of the Homeowners' Association to comply with any warranty or condition regarding any portion of the Property over which the Homeowners' Association has no control.

The fire and casualty insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Homeowners' Association, the Owners or Mortgagees; (2) loss payments are contingent upon action by the carriers, directors, policy holders or members; and (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

(b) Public Liability. The Board shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use as the Project, covering each member of the Board, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Maintenance Areas, or from service on the Board; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$2,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof, nor shall the amount of such officer's and director's insurance be less than \$2,000,000 unless such coverage is determined by the Board to be unreasonably expensive. Such insurance shall

include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Homeowners' Association Members, such public liability insurance shall be in amounts of not less than \$2,000,000 per occurrence for claims for bodily injury and property damage and such officer's and director's liability insurance shall be in amounts not less than \$2,000,000.

(c) Fidelity Coverage. The Board shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Homeowners' Association. The fidelity insurance policy shall be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Homeowners' Association's estimated annual operating expenses and reserves. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverages, including flood insurance and worker's compensation, as the Board shall determine from time to time desirable.

Section 2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Members pursuant to Article V hereof.

Section 3. Special Endorsements. The Board shall make diligent efforts to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Homeowners' Association;

(b) coverage that may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the named insured, any insurance trustee and all Mortgagees; and

(c) coverage that cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Homeowners' Association, any Owner or any Mortgagee.

Section 4. General Guidelines. All insurance policies purchased by the Board shall be with a company or companies approved to do business in the State of North Carolina and holding a rating of not less than "A-" by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Homeowners' Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to the Homeowners' Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Homeowners' Association, the

Homeowners' Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

Section 5. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, the Homeowners' Association shall use the net proceeds of casualty insurance carried by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Homeowners' Association remaining after satisfactory completion of repair and replacement shall be retained by the Homeowners' Association as part of the general reserve fund for repair and replacement of the Common Area and/or Maintenance Areas.

Section 6. Insufficient Proceeds. If the insurance proceeds received by the Homeowners' Association are insufficient to reimburse, to repair and/or to replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

Section 7. Owners' Personal Property. The Homeowners' Association, the Associations or the Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or his family, guests or invitees, located on or used at the Common Areas. Further, neither the Homeowners' Association, the Associations nor the Declarant shall be responsible or liable for any damage or loss to or of any personal property of any Owner, his family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property.

Section 8. No Obligation to Insure Owners' Property. By virtue of taking title to a Lot, each Owner acknowledges that neither the Homeowners' Association nor Declarant has any obligation to provide any insurance for any portion of such Lot or any Dwelling Unit or other property located thereon.

Section 9. Security. The Homeowners' Association may, in its sole discretion, but shall not be obligated to, provide certain security and fire protection measures and maintain or support certain other activities within the Project designed to make the Project safer than it might otherwise be. Provided, however, that should the Homeowners' Association provide, maintain, or support any such measures or activities, then neither the Homeowners' Association, Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Project, and neither the Homeowners' Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason or failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner and Occupant of any Lot or Dwelling and each tenant, guest and invitee thereof acknowledges and understands that neither the Homeowners' Association, Board, Declarant nor any successor of Declarant are insurers, and each such Owner and Occupant of a Lot or Dwelling and their tenants, guests and invitees hereby assume all risks for loss or damage to persons, property or contents belonging to any such persons.

Section 10. Condemnation. Whenever all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of such taking shall be paid to the Homeowners' Association. The Homeowners' Association, acting through the Board, shall have the right to negotiate and litigate the issues with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot hereby appoints the Homeowners' Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Area. All compensation and damages paid to the Homeowners' Association on account of such a taking shall be used to restore the Common Area, provided such restoration is possible, with the excess, if any, to be retained by the Homeowners' Association and applied to future operating expenses by the Board, in its sole discretion. Nothing herein is to prevent Owners whose Lots or other property are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots or other property, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Area. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Common Area or Lots without such allocation, the award shall be divided between affected Owners and the Board, as their interests may appear, by the Board in its sole discretion. Provided, however, this Section 10 shall not apply to those portions of the Common Area which are not in the Property but are included in the Common Area by easement from the Declarant. As to those portions of the Common Area not located in the Property, neither the Homeowners' Association nor any Lot Owner shall have any interest in any condemnation award except to the extent that the award shall be specifically for improvements located on the Common Area Easement by the Homeowners' Association.

ARTICLE IX

RESTRICTIONS

By Additional Declarations, Declarant may impose and file in regard to various subdivisions, phases, and/or sections of Single Dwelling Lot Areas, controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens relating to, without limitation, types of permissible uses, types of improvements, general development and improvement standards and other matters. Without limiting the provisions that may be included in such Additional Declarations, the Single Dwelling Lot Areas and each Lot situated therein and Common Areas therein shall be occupied and/or used subject to the following:

Section 1. Restricted Actions on Common Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered or constructed or planted in or removed from the Common Areas, without the prior written consent of the Homeowners' Association. Each Lot Owner shall be liable to the Homeowners' Association and/or Declarant for any damage to any Common Area caused by the negligence or willful misconduct of the Lot Owner or Occupant or his family, tenants, guests, agents, employees, or invitees. Provided, however, that the provisions

of this Section 1 shall not apply to Declarant in connection with Declarant's construction activities on the Property.

Section 2. Restricted Actions by Lot Owners and on Lots.

(a) Compliance. Each Lot Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other governmental rules and restrictions in regard to the Lot(s), construction of homes on the Lot(s), and the use of public facilities (roads, utilities and other facilities or properties) within the Single Dwelling Lot Areas.

(b) Residential Use. All Lots shall be used, improved, and devoted exclusively to residential use. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling with attached or detached garage. No rental of less than the entire single family dwelling for less than six (6) months is permitted.

(c) Restriction on Further Subdivision. No Lot may be subdivided by sale or otherwise as to reduce the total area of the Lot as shown on the recorded plat of the Subdivision. However, a platted Lot may be eliminated by its division among the adjoining Lots. The divided portion of the eliminated Lot shall become part of each adjoining Lot and be shown on a revised plat. Where a residence has been erected on a plot consisting of two or more Lots, the Lots shall thereafter be considered for all purposes as one lot.

(d) Waste. No Lot shall be used or maintained as a dumping ground for rubbish, grass clippings, leaves, landscape trimmings, trash or garbage, and no such materials shall be kept on any part of a Lot except on a temporary basis or for composting in sanitary containers which containers shall be screened from public view.

(e) Signs. No sign of any kind shall be displayed on any Lot except for sign(s) provided by the Declarant, or approved in writing by the Board. The Board shall have the power but not the obligation to adopt and issue from time to time sign guidelines, as part of the Design and Development Guidelines, to assist the Board in reviewing and approving proposed signs to be erected in the Single Dwelling Lot Areas. Provided, however, that the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property or portions thereof, or for any other purpose, on any portion of the Property owned by Declarant or in the Common Areas, or to restrict or prohibit the Homeowners' Association or an Association from posting signs in the Common Areas designed to aid in vehicular or pedestrian access and control and containing related information.

(f) Nuisances. It shall be the responsibility of each Owner and Occupant of a Lot to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No Lot within a Single Dwelling Lot Area shall be used, in whole or in part, for the deposit, storage or burial of any property or thing that will cause such property to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupancy of surrounding property. No noxious or offensive activity shall be carried on any Lot, nor shall anything be done tending to

cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Project. There shall not be maintained on any Lot any plants or animals or device or thing of any sort whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Project. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

(g) Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot other than in enclosed garages.

(h) Rules of the Board. All Owners and Occupants of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner or Occupant determined by judicial action to have violated said rules and regulations shall be liable to the Homeowners' Association and/or the Declarant for all damages and costs, including attorneys' fees.

(i) New Construction. Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing new or used building onto a Lot. Provided, however, that nothing herein shall prohibit Declarant from moving an existing new or used building or trailer onto a Lot to be used for storage or for use as construction or sales offices.

(j) Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist of any Lot, except during such reasonable time period as is necessary for completion. All construction must be completed within one (1) year after the date upon which it commenced, unless a longer time is approved by the Board. Any damage to the streets, curbs or sidewalks or any part of any Common Area, or any utility system caused by an Owner or Owner's builder or his subcontractors, suppliers, or vendors shall be repaired by such responsible Owner. Any builder of Improvements and his subcontractors on any portion of any Single Dwelling Lot Areas shall keep such portion of the Single Dwelling Lot Areas free of unsightly construction debris in accordance with the construction rules established by the Board (or, in the absence of such rules, in accordance with standard construction practices), and shall similarly keep contiguous public and private areas free from any dirt, mud, garbage, trash, or other debris which is occasioned by construction of Improvements. The Board may levy a Special Individual Assessment against an Owner's property in a Single Dwelling Lot Area to pay for the cost of repairing any damage to streets, curbs or sidewalks or any part of any Roadway, Common Area, or utility system, to pay for the cost of cleaning public and private areas, including the Roadways in the Project, and to pay for the costs of the removal of garbage, trash or other debris, which

are occasioned by the activities of an Owner or Owner's builder or his subcontractors during the construction of Improvements.

(k) Parking.

(1) No vehicles, trucks, vans, cars, trailers, construction equipment, etc., may be parked overnight on any street within the Single Dwelling Lot Areas.

(2) Commercial-use vehicles and trucks not involved with construction activity on the Single Dwelling Lots and with carrying capacity and/or size designation greater than or equal to three-fourths (3/4) ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Single Dwelling Lot Areas unless stored in an enclosed garage. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Single Dwelling Lot Areas at any time. No vehicles that are not in a condition to be normally operated or that do not have a current registration tag may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage.

(3) The Owner of each Lot will be responsible for providing on each Lot sufficient paved parking area for all vehicles normally parked and/or situated on or in regard to such lot.

(4) No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of a Single Dwelling Lot Area except in enclosed garages or in an enclosure specifically approved for such maintenance or storage by the Board.

(5) All vehicles must be parked so as not to impede traffic or damage vegetation.

(6) No construction office trailers may be placed, erected, or allowed to remain on any Lots during construction, except as approved in writing by the Board. Provided, however, that nothing herein shall prohibit Declarant from erecting or moving temporary buildings onto Lots owned by Declarant to be used as construction or sales offices. Other construction vehicles (trucks, vans, cars, construction equipment, equipment trailers, etc.) may be left overnight in the Single Dwelling Lot Areas (including any Lot or street) only in accordance with such rules as may be established by the Board.

(l) Governmental Requirements. Nothing contained herein shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot or other part of the Single Dwelling Lot Areas and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot or portion of the Single Dwelling Lot Areas shall continue to be applicable and shall be complied with in regard to each Lot or portion of the Single Dwelling Lot Areas.

(m) Occupants Bound. All provisions of this Declaration, and any Additional Declaration, the Bylaws, and of any rules and regulations, use restrictions or Design and Development Guidelines promulgated pursuant hereto or thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

ARTICLE X

DESIGN AND DEVELOPMENT CONTROL

Section 1. General. Notwithstanding anything contained in this Declaration to the contrary, no Improvements (as defined in Section 4), including without limitation site preparation on any Lot, change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any buildings situated upon any Lot, erection of or changes or additions in fences, hedges, walls and other structures, any landscaping, or any cutting of trees on any Lot, shall be commenced, erected or maintained on any portion of the Single Dwelling Lots, subject to the provisions of Section 7 hereof, until: (a) the Board, appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements and has given its written approval for commencement of construction; (b) the fees set forth in this Article X have been paid; and (c) the agreements set forth in this Article X have been executed. In addition to any standards established pursuant to this Declaration, Declarant may establish, by Additional Declarations, architectural and landscaping control standards, guidelines and restrictions in regard to various phases or sections of the Property. The provisions of this Article X shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas.

Section 2. Design and Development Guidelines.

(a) The Board shall, from time to time, publish and promulgate architectural, design and landscape guidelines. Such architectural, design and landscape guidelines shall be explanatory and illustrative of the general intent of the development of the Single Dwelling Lot Areas and are intended to guide Lot Owners and their home designers and builders and to assist the Board in reviewing plans and specifications for Improvements. Such architectural, design and landscape guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Board and the fees to be imposed by the Board, as more specifically described in Section 8 hereof. In any event, such architectural, design and landscape guidelines shall not be binding upon the Board, may be revised and amended at any time by the Board, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Board for approval.

(b) The architectural, design and landscape guidelines described in (a) above shall herein collectively be referred to as the "Design and Development Guidelines." The Board may publish and promulgate different Guidelines for different phases of the Single Dwelling Lot Areas.

Section 3. Definition of "Improvements." The term "Improvement" or "Improvements" shall mean and include any and all man-made changes or additions to a Lot, including but not limited to the location, materials, size and design of all buildings (including any exterior devices attached to or separate from buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes and clothes lines) storage sheds or areas, roofed structures, parking areas, fences, "invisible" pet fencing, pet "runs," lines and similar tethers or enclosures, walls, landscaping (including cutting of trees), hedges, mass plantings, poles, driveways, changes in grade or slope, site preparation, swimming pools, hot tubs, jacuzzis, tennis courts, treehouses, basketball goals, skateboard ramps, and other sports or play apparatus, signs, exterior illumination and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements. The definition of Improvements, however, does not include the replacement or repair of Improvements previously approved by the Board, provided that such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved by the Board.

Section 4. Enforcement.

(a) It is Declarant's intent that the architectural control provisions of this Declaration and any additional Declarations are to permit control of the architectural design and landscaping and to establish quality standards for construction and construction activity in the Single Dwelling Lot Areas and to help preserve values of properties in the Single Dwelling Lot Areas. All Owners by purchasing property subject to this Declaration acknowledge that a violation of any such provisions could result in irreparable harm and damage to Owners of property in the Single Dwelling Lot Areas and Declarant, and to the values of their properties, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Homeowners' Association shall have the specific right (but no obligation) to enforce and/or to prevent any violation of the provisions contained in this Article X by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants unto the Board and any agent or member thereof, the right of entry and inspection upon any Lot or portion of the Property for the purpose of determination by the Board whether there exists any construction of any Improvement which violates the terms of any approval by the Board, the terms of the Design and Development Guidelines, the terms of this Declaration or any Additional Declaration, or any amendments hereto or thereto.

(b) As to nonconforming or unapproved Improvements, the Homeowners' Association may require any Lot Owner to restore such Owner's Lot or Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved Improvement) if such Improvements were commenced or constructed in violation of this Article X. In addition, the Homeowners' Association may, but has no obligation to, cause such restoration, demolition and removal and levy the amount of the cost thereof as a Special Individual Assessment against the Lot upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation

of the Design and Development Guidelines, the Homeowners' Association shall be entitled to the recovery of court costs, attorneys' fees and expenses incurred by the Homeowners' Association and/or the Board in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot upon which such Improvement was commenced or constructed.

Section 5. Exterior Maintenance. The exterior maintenance of Dwelling Units, Lots, and Improvements constructed thereon shall be the duty of the Owners of such Lots (except where specifically provided otherwise) and shall not normally be interfered with by the Homeowners' Association. If, however, in the opinion of the Homeowners' Association, any Owner shall fail to maintain any Dwelling Unit or Lot in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, the Homeowners' Association, at its discretion, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made repairs to such Improvement and perform such maintenance on the Dwelling Unit or Lot such as, but not limited to, the removal of trash, cutting of grass, pruning of shrubbery and seeding for erosion control. The Homeowners' Association or its agents shall have an easement for the purpose of accomplishing the foregoing. The costs incurred by the Homeowners' Association in rendering all such services plus a service charge of twenty percent (20%) of such costs shall be added to and become a part of such other assessments to which such Dwelling Unit or Lot is subject.

Section 6. Failure of Board to Act. If the Board fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Design and Development Guidelines, of all items that were to have been submitted to the Board, it shall be conclusively presumed that the Board has approved such conforming plans and specifications and other submittals, EXCEPT that the Board has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Additional Declaration, and EXCEPT FURTHER, that the Board shall not be deemed to have waived any of the requirements set forth in Sections 7, 8 and 9 below. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Board may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance. The Board is authorized to request the submission of samples of proposed construction materials for the Committee's review and approval.

Section 7. Variances. Upon submission of a written request for same by Lot Owners which shall include all maps, drawings or other information required by the Board, the Board may, from time to time, in its sole discretion, permit Lot Owners to construct, erect or install Improvements which are at variance with restrictions, requirements or provisions of this Declaration or any Additional Declaration from which a variance is permitted, pursuant to the terms hereof or thereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be disapproved in the event the Board has not expressly and in writing approved such request within thirty (30) business days of the submission of such request.

No member of the Board shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Lot Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Lot Owner shall not constitute a waiver of the Board's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder or under any Additional Declaration, against any other Lot Owner.

Section 8. Fees Required by Board. The Board, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the Board pay one or more fees to the Board or to Declarant as a condition to commencement or construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof, shall be established and set forth in the Design and Development Guidelines.

Section 9. No Construction Without Payment of Fees. Notwithstanding anything contained in this Article X to the contrary, plans and specifications for Improvements to be constructed on a Lot in a Single Dwelling Lot shall not be deemed to have been properly submitted unless and until any and all fees required by the Board to be paid in connection with such Improvements, as provided in Section 8 above, shall have been paid to the Board or Declarant as required.

Section 10. Notices and Submittals. Notices and submittals to the Board shall be in accordance with the notice provisions set forth from time to time in the Design and Development Guidelines.

Section 11. Limitation of Liability.

(a) Submission of plans, designs, specifications and materials by Lot Owners to the Board and the approval of these submissions by the Board are for the sole purpose of adherence with these Restrictive Covenants and the Design and Development Guidelines. The Board's review and approval is not for the purpose of, nor shall it be construed as, a review of the adequacy of structural or utility design, construction, operation or performance or to indicate compliance with any codes or other laws or regulations of any municipality, state, federal, or other governmental agency.

(b) No member of the Board shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article X.

(c) Neither the Board, nor the Homeowners' Association, nor any Association, nor Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Lot Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

(d) Every person who submits plans or specifications, and every Lot Owner, agrees that he will not bring any action or suit against Declarant, the Homeowners' Association,

the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

(e) Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

ARTICLE XI

EASEMENTS AND OTHER RIGHTS

Declarant, in addition to any other easements granted or reserved herein, hereby reserves unto itself, its successors and assigns, and grants to the Homeowners' Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Single Dwelling Lot Areas. In addition, Declarant hereby reserves unto itself, its successors and assigns, the right, on behalf of itself and the Homeowners' Association, to grant additional easements on, upon, over, across, through, and under the Common Areas and any portion of the Single Dwelling Lot Areas owned by Declarant as deemed to be in the best interests of and proper for the Project, including but not limited to, easements in favor of Declarant, the Homeowners' Association, the Associations, any designees of the foregoing, the Owners, and all their family members, guests, invitees and lessees and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified and to the individuals or entities referred to in Article II, Sections 5 and 6 and Article XIII, Section 2.

Section 1. Easements and Cross Easements on Common Areas. Declarant, for itself, its designees and the Homeowners' Association, reserves the right to impose upon the Common Areas henceforth and from time to time such easements and cross-easements for:

(a) Ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, surveillance services, governmental and quasi-governmental purposes, water, gas, drainage, irrigation, lake/pond maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for the Project or any portion thereof.

(b) Landscaping and maintaining entryways and erecting and maintaining entrance monument(s) and signage over, across, and under those portions of Single Dwelling Lot Areas and subdivisions shown and designated as "Reserved" or as "Future Development" or as property of the Declarant on any Plats of Single Dwelling Lot Areas which may be

recorded from time to time. Declarant and/or the Homeowners' Association shall have the right to landscape and maintain the areas of the Project including other Use Areas and Single Dwelling Lot Areas and subdivisions so designated as entryways to the Project and subdivisions, to erect and maintain entrance monument(s) and signage thereon bearing the name of Poplar Ridge and subdivisions, and to erect and maintain lighting for such monument(s), plantings, landscaping and other improvements typically used for entryways.

(c) Installation, maintenance, repair and removal of sidewalks over, across, and under those portions of the Single Dwelling Lot Areas and subdivisions shown and designated as "Sidewalk Easements" on the Plats (herein referred to as the "Sidewalk Easements").

(d) Installation, maintenance, repair and removal of trailways, stream and wet area crossings and other facilities and improvements typically used in trailways over, across and under those portions of the Single Dwelling Lot Areas and subdivisions shown and designated as "Reserved" or Property of the Declarant on the Plats.

Section 2. Use of Common Areas. Declarant declares that the Common Areas are subject to a perpetual nonexclusive easement in favor of Declarant, the Homeowners' Association and their designees, the Associations, the Owners and all their family members, guests, invitees and lessees and others granted the right pursuant to Article II, Sections 5 and 6 and Article XIII, Section 2 and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as the same are reasonably intended in accordance with the terms of this Declaration and any Additional Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such area is subject to this easement.

Section 3. Right of Way Over Roadways. Declarant hereby reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Homeowners' Association, the Associations, their agents, employees, lessees, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, guests, invitees, successors and assigns, and to each Occupant of a Lot and to all governmental and quasi-governmental agencies and service entities having jurisdiction over the Single Dwelling Lot Areas while engaged in their respective functions, a perpetual non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, over and across the Roadways for the purpose of providing access, ingress and egress to and from, through and between the Single Dwelling Lot Areas and between the Single Dwelling Lot Areas and Other Use Areas.

Section 4. Right of the Homeowners' Association and Declarant to Enter Upon Common Areas. Declarant hereby reserves for the benefit of itself, its successors in interest and assigns, and grants to the Homeowners' Association and all agents, employees or other designees of Declarant or the Homeowners' Association an easement for ingress, egress and access to enter upon or over the Common Areas for the purposes of inspecting any construction, proposed construction, or improvements or fulfilling the rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Homeowners' Association, as appropriate. Such easement includes an easement in favor of the Homeowners' Association and

Declarant to enter upon the Common Areas now or hereafter created to use, repair, maintain and replace the same for the purposes for which they are initially designated or for such purposes as they hereafter may be redesignated or as Declarant otherwise determines them to be reasonably suited.

Notwithstanding the foregoing, nothing contained herein shall be interpreted as imposing any obligation upon the Homeowners' Association or Declarant to maintain, repair, or construct improvements which an Owner or Association is required to maintain, construct or repair.

Section 5. Easement for Encroachments. Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Homeowners' Association, the Associations, the Owners, their successors and assigns, and to the Occupants of Lots, easements for encroachments, to the extent necessary, in the event any portion of the Improvements located on any portion of the Single Dwelling Lot Areas now or hereafter encroaches upon any of the remaining portions of the Single Dwelling Lot Areas as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching improvements in favor of Declarant, the Homeowners' Association, the Associations, the Owners and all their designees.

Section 6. Maintenance Areas.

(a) Declarant hereby reserves, for the benefit of itself, its successors in interest and assigns, and grants to the Homeowners' Association, its successors and assigns, the following nonexclusive perpetual easements over certain areas of the Property as hereinafter described for the purposes hereinafter described:

(i) Easements for the purposes of landscaping and maintaining entryways and erecting and maintaining entrance monument(s) for the Project, over, across and under those portions of the Property shown and designated as "Entry Easement" on plats hereafter recorded in the Office of the Register of Deeds of Buncombe County, North Carolina (the "Plats") (herein referred to as the "Entrance Monument Easements"). Declarant and/or the Homeowners' Association shall have the right to landscape and maintain the areas of the Property so designated as entryways to the Project, to erect and maintain entrance monument(s) thereon bearing the name of the Project, and to erect and maintain lighting for such monument(s), plantings, landscaping and other improvements typically used for entryways.

(ii) Easements for the installation, maintenance, repair and removal of landscaping and landscaping amenities, including signage, monuments and irrigation systems, over, across and under those portions of the Property shown and designated as "Landscape Easements" on the Plats (herein referred to as "Landscape Easements").

(iii) Easements for the installation, maintenance, repair and removal of sidewalks, over, across and under those portions of the Property shown and

designated as "Sidewalk Easements" on any Plat filed for registry (herein referred to as the "Sidewalk Easements").

(b) Declarant hereby provides that, in addition to the Common Areas and Roadways within the Single Dwelling Lot Areas (prior to being accepted for maintenance by a public authority), the Homeowners' Association will be responsible for maintaining the following areas and items inside and outside the Property and Single Dwelling Lot Areas:

- (i) Entrance Monument Easements;
- (ii) Landscape Easements;
- (iii) Sidewalk Easements;
- (iv) Any street medians, shoulders and other unpaved areas within the rights-of-way of Roadways which are not otherwise maintained by a public authority;
- (v) Any sidewalks located on the Property or within the rights-of-way of Roadways which are not otherwise maintained by a public authority;
- (vi) Any signage and street lighting located on the Property.

All of the above-described areas and items shall herein be referred to as the "Maintenance Areas." The Homeowners' Association shall maintain the Maintenance Areas to a consistent standard of maintenance typical of a first-class development, and any and all Maintenance Areas on or in the vicinity of the Other Use Areas shall be maintained to the standard of maintenance typical of a first-class development.

Section 7. Private Streets and Limited Common Areas. Private streets and Limited Common Areas may be created upon any Lot or Lots to serve the needs of multiple Lots. Such private streets and Limited Common Areas shall be subject to an easement in favor of every Lot which they are designed to serve and shall be deemed appurtenant to each Lot whereby the Owner of such Lot shall be entitled to use them as a means of ingress, egress and regress, and such other uses as shall have been designated. Each easement for such private street and Limited Common Area shall be specific for that street and Area and shall contain specific rights and responsibilities for use and maintenance of that street and Area by the designated Owners. Unless otherwise specified by the Declarant at the time Lots are conveyed with rights to use private streets, the maintenance of all private streets shall be allocated equally among the users of the private street. Thus, if three Lots utilize a private street, each Lot, regardless of the usage of the street, will pay one-third of the maintenance costs.

Section 8. Utility and Drainage Easements. The Single Dwelling Lots and Single Dwelling Lot Areas shall be subject to all easements and rights-of-way for utilities and drainage shown on the Single Dwelling Lot Area plats including but not limited to those certain easements shown and designated on said plats as:

- a. "Utility Easement";

- b. "Public Storm Drainage Easement";
- c. "Waterline Easement"; and
- d. "Cable TV and Other Communication Lines."

Such easements are hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Homeowners' Association, its successors and assigns,

Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Homeowners' Association, its successors and assigns, a non-exclusive easement and right-of-way over, under and along a 10-foot strip of land adjacent to the front, side and rear boundary lines on all Lots within the Single Dwelling Lot Areas for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone services, cable service, water, and drainage facilities, storm drainage and/or other utilities or services. Within the above-described easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation of utilities or which may change the direction or flow of drainage channels in the easements. This reservation of easements shall not prohibit the construction of driveways, at locations approved by the Board, over such easements.

Section 9. Declarant's Right to Assign Easements; Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder. The areas burdened by the easements and rights of way reserved by Declarant on each Lot or other portion of the Single Dwelling Lot Areas pursuant hereto, including any improvements in such areas, which are not to be maintained by the Homeowners' Association, an Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Homeowners' Association may exercise the rights reserved in Article XII, Section 2 hereof for the purpose of enforcing the provisions of this Article XI, Section 9. Notwithstanding the above, the Homeowners' Association, an Association and/or Declarant shall have the right but not the obligation to maintain the landscaping in the easement areas on any Lot.

Section 10. Easement Reserved for the Homeowners' Association, the Associations and Declarant. Full rights of access, ingress and egress are hereby reserved by Declarant for itself and the Homeowners' Association at all times over and upon any Lot or other portion of the Single Dwelling Lot Areas for the exercise of the easement rights described in this Article XI as well as the maintenance and repair rights described in Article XII below and for the carrying out by Declarant or the Homeowners' Association of the rights, functions, duties and obligations of each hereunder; provided, that any such entry by Declarant or the Homeowners' Association upon any Lot or portion of the Single Dwelling Lot Areas shall be made with the minimum inconvenience to the Owner of such property as is reasonably practical, and any damage

caused as a result of the gross negligence of Declarant, the Homeowners' Association or their employees or agents shall be repaired by Declarant or the Homeowners' Association, as the case may be, at the expense of Declarant or the Homeowners' Association as the case may be.

Section 11. Additional Easements. Declarant shall have the right to grant over, under, across and upon any portion of the Single Dwelling Lot Areas owned by Declarant, and the Board shall have the authority, in its sole discretion, to grant over, under, across and upon the Common Areas, such easements, rights-of-way, licenses and other rights in accordance with or to supplement the provisions of this Declaration or as may otherwise be desirable for the development of the Single Dwelling Lots, the Single Dwelling Lot Areas and the Other Use Areas by the execution, without further authorization, of such grants of easement or other instruments as may from time to time be necessary or desirable. Such easements may be for the use and benefit of persons who are not Homeowners' Association Members or Owners. After such time as the members of the Board are no longer appointed by Declarant, the Board shall cooperate with Declarant and execute such grants of easements over the Common Areas as may be desirable to Declarant for the development of the Project and the preservation and enhancement of Declarant's interest therein.

Section 12. No Merger of Easements. The easements hereby established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

ARTICLE XII

MAINTENANCE BY OWNERS

Section 1. Duty of Maintenance. Except for those portions, if any, of a Lot which the Homeowners' Association or an Association may elect to maintain or repair hereunder or under any applicable Additional Declaration, the Owner of any Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Lot(s) owned by such Owner, including Improvements thereon and ground and drainage easements or other rights-of-way incident thereto, in compliance with the covenants, conditions, restrictions and development standards contained in this Declaration (to the extent applicable), and in any applicable Additional Declaration, in accordance with the provisions of the Design and Development Guidelines, and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance, as to unimproved and improved Lots, shall include, but shall not be limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Keeping land, including any lawns and shrub beds, well maintained and free of trash, uncut grass and weeds;
- (c) Keeping all sediment resulting from land disturbance or construction confined to the respective Owner's property; and
- (d) Complying with all governmental health and police requirements.

In addition, such maintenance, as to improved Lots, shall include, but shall not be limited to, the following:

- (a) Lawn mowing on a regular basis
- (b) Tree and shrub pruning;
- (c) Watering by means of a lawn sprinkler system and/or hand watering as needed;
- (d) Keeping exterior lighting and mechanical facilities in working order;
- (e) Keeping lawn and garden areas alive;
- (f) Removing and replacing any dead plant material;
- (g) Maintenance of natural areas and landscaping in accordance with the Design and Development Guidelines;
- (h) Keeping parking areas and driveways in good repair;
- (i) Repainting of Improvements; and
- (j) Repair of damage and deterioration to Improvements, it being understood and agreed that if any Improvements are damaged or destroyed by fire or other casualty, then within six (6) months following the date such damage or destruction occurs, the Owner of the Lot on which such Improvements are situated, must repair and restore such damaged Improvements (in accordance with plans and specifications approved by the Board and otherwise in accordance with the terms and provisions of this Declaration and of each Additional Declaration applicable thereto) or remove such damaged Improvements and restore the Lot to its condition existing prior to the construction of such Improvements.

Notwithstanding anything contained herein to the contrary, the above-described maintenance responsibilities as to any Lot shall commence only upon a plat showing such Lot being recorded in the Office of the Register of Deeds of Buncombe County and upon the conveyance of such Lot by Declarant.

Section 2. Enforcement. If an Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth in this Article XII, then the Board, and Declarant, jointly and severally, may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner as described in this Article XII. Provided, however, that this cure period shall be extended for a time not to exceed sixty (60) days so long as Owner shall have commenced to cure such nonconformity and shall diligently prosecute the same. Should any such Owner fail to fulfill this

duty and responsibility within such period, then the Homeowners' Association, acting through its authorized agent or agents, or Declarant (so long as it owns any portion of the Property), acting through its authorized agent or agents, jointly or severally, shall have the right and power, but not the obligation, to enter onto the premises of such Owner and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work, together with interest on the amounts expended by the Homeowners' Association or Declarant in performing such work computed at the highest lawful rate as shall be permitted by law from the date(s) such amounts are expended until repayment to the Homeowners' Association or Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder including an administration fee not to exceed twenty (20%) percent, and such Owner shall reimburse the Homeowners' Association or Declarant, as the case may be, on demand for such costs and expenses (including interest as above provided). If such Owner shall fail to reimburse the Homeowners' Association or Declarant, as the case may be, within thirty (30) days after the mailing to such Owner of a statement for such costs and expenses, then, without limitation of any other rights of the Homeowners' Association or Declarant, the Homeowners' Association may impose a Special Individual Assessment against such Owner. Declarant has the right to assign to the Homeowners' Association the rights of Declarant under this Section 2.

ARTICLE XIII

CLUB AND RECREATIONAL AREA

Section 1. Reservation of Right to Establish Club(s). Declarant reserves unto itself, its successors and assigns the right to establish one or more clubs or recreational areas ("Club" or "Club Areas") in the Project which shall not be a part of the Single Dwelling Lot Areas or the Common Areas. The Club(s) may be for the purpose of providing recreational facilities including, without limitation, a clubhouse, tennis courts and swimming pools (the "Club Facilities"). The determination of whether there shall be developed one or more Clubs and the location of any Club Facilities within the Project shall be made in the sole discretion of Declarant. In the event that any Club Facility shall be developed, the Declarant or the Club owner at any particular time shall have the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom the Club Facilities shall be used, if at all. By way of example, but not limitation, the Club owner shall have the right to approve users and determine eligibility for use of the Club Facilities, to reserve use rights for future purchasers of Property in the Project, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Facilities, to transfer any or all of the Club Facilities or the operation thereof to anyone (including without limitation a member-owned or equity club) and on any terms, to limit the availability of use privileges, and to require the payment of a purchase price, a membership contribution, an initiation fee, dues or other charges for said privileges.

Section 2. Club Property Separate Area. The Club property if one or more Clubs shall be established shall not be a part of the Single Dwelling Lot Areas and shall not be subject to this Declaration but may be subject to such covenants, conditions, restrictions, easements, charges and liens as shall be contained in any declaration that the Declarant from time to time determines

appropriate to impose upon a Club or Club Facility. The Club, the members of the Club, their visitors, guests and invitees may be granted by the Declarant, the right to go upon and use the Common Areas. The Declarant may, in its sole discretion, require a Club to contribute to the Homeowners' Association for the purpose of defraying a portion of the cost of the maintenance of the Common Areas as a condition of such use of Common Areas.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, NO CLUB AND NO CLUB FACILITY SHALL BE COMMON AREA UNDER THIS DECLARATION, AND OWNERSHIP OF A LOT AND/OR MEMBERSHIP IN THE Homeowners' ASSOCIATION OR ANY ASSOCIATION SHALL NOT IN ANY WAY CONFER ANY OWNERSHIP INTEREST OR ANY EASEMENT OR RIGHT TO USE THE CLUB, THE CLUB PROPERTY OR ANY CLUB FACILITIES OR AMENITIES, AND NO SUCH INTEREST, RIGHT, EASEMENT OR RIGHT OF USE IS CREATED UNDER THIS DECLARATION BY IMPLICATION. A CLUB MAY HAVE MEMBERS WHO ARE NOT OWNERS OR MEMBERS OF THE HOMEOWNERS' ASSOCIATION OR ANY ASSOCIATION.

ARTICLE XIV

RIGHT OF FIRST REFUSAL

Section 1. Applicability. Except for sales and conveyances by the Declarant, no unimproved Lot in the Property may be sold by any Owner except in compliance with the provisions of this Article XIV.

Section 2. Right of First Refusal. Before any unimproved Lot (or any ownership interest therein) may be sold to any Person other than Declarant or its successors, the Owner or Owners of such Lot shall first offer in writing to sell the Lot to the Declarant or its successors at a price equal to: (a) the contract purchase price paid by such Owner for such Lot (excluding all finance charges related to the purchase) increased by the percentage increase, from the closing date of such Owner's purchase of such Lot to the date of such written offer to sell the Lot to the Declarant or its successors, in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) issued by the U.S. Bureau of Labor Statistics (hereinafter the "CPI"), less (b) the costs of removing all liens and encumbrances on the Lot and customary seller's closing costs. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. For the purposes of this Article XIV, a Lot shall be considered as unimproved unless and until any proposed Improvements to such Lot have been approved by the Board and the good faith commencement of the construction of such Improvements (i.e. at a minimum, completion of footings and foundation of the approved residence and bona fide evidence of total expenditures for Improvements to the Lot of at least \$50,000.00) shall have occurred. Upon receipt by an Owner of a bona fide offer to purchase an unimproved Lot, such Owner shall send to Declarant a copy of such bona fide offer along with written notification that such Owner is offering the Lot for sale to Declarant pursuant to this right of first refusal at the price computed pursuant to (a) and (b) above. If the Declarant or its successor does not accept or reject in writing said offer of sale within thirty (30) days from the date of receipt of the same, then the Owner or Owners of

such Lot shall have the right to sell the Lot to the third party making such bona fide offer pursuant to such bona fide offer, without any further additional obligation to offer the Lot to Declarant. Declarant shall have this right of first refusal with regard to each bona fide offer which an Owner receives for the purchase of an unimproved Lot. Any Owner who buys an unimproved Lot from another Owner shall be governed by the provisions of this Article XIV and the waiver of the right of first refusal with respect to any sale shall not limit Declarant's rights of first refusal with respect to any subsequent sale of any unimproved Lot. Provided, however, that the right of first refusal reserved by Declarant pursuant to this Section 2 shall be valid and enforceable with respect to any unimproved Lot only for a period of fifteen (15) years from the date of the first conveyance of such Lot from Declarant to an Owner other than the Declarant, and upon the expiration of said fifteen (15) year period, the Owner or Owners of such Lot shall have the right to sell the unimproved Lot to any third party without the obligation to offer the Lot to Declarant. Further provided that this Section 2 shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage on an unimproved Lot or deed in lieu thereof which is made and delivered in good faith. In each instance where an offer to purchase an unimproved Lot is presented to Declarant by an Owner pursuant to the right of first refusal granted herein, Declarant shall determine in its sole discretion and on a case by case basis whether to exercise its right of first refusal, and such determination may be made on such basis and for such reason as Declarant in its sole discretion shall choose. Should an Owner fail to comply with the provisions of this Section 2 and sell an unimproved Lot without first offering said Lot to Declarant in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the right of first refusal herein granted, and Declarant shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Section 2, and shall also be entitled to any other rights and remedies available at law or in equity for the violation of this Section 2.

Section 3. Death of an Owner; Gift. The personal representative, heirs, successors and assigns of any Owner who dies while owning any unimproved Lot, or the donee of a gift of a Lot from an Owner, shall become an Owner subject to the terms and conditions of this Declaration and any subsequent sale, transfer and conveyance of such Lot shall be governed by the provisions of this Article XIV.

Section 4. Transfers to Declarant. In the event that Declarant exercises its right of first refusal pursuant to Section 2 hereof, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant or its successors that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make payment to such Owner of the purchase price as described in Section 2 above, in cash or cash equivalent. The Owner shall deliver to Declarant a general warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and any other exceptions which may be approved by Declarant. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant's rights as a purchaser of said Lot.

Section 5. No Further Documentation Required. The right of first refusal reserved by the Declarant in this Article XIV shall run with the title to each Lot in Poplar Ridge and be binding upon each purchaser of a Lot from Declarant and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Declarant or from a third party. The provisions of this Article XIV shall constitute record notice to all purchasers of Lots in Poplar Ridge of the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots in Poplar Ridge subject to the provisions of this Article XIV.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and any Owner, and shall inure to the benefit of every Owner of a Lot in the Property and every Owner of any other portion of the Property including Declarant, and their respective heirs, successors, and assigns, for a term of thirty (30) years beginning on the date this Declaration is recorded in the Office of the Register of Deeds of Buncombe County, North Carolina. At the end of such thirty (30) year period, the easements, covenants, conditions and restrictions set forth herein shall automatically be extended for successive period(s) of ten (10) additional years, unless prior to the expiration of a respective period, by two-thirds (2/3) vote of the Homeowners' Association Members, there shall be adopted a resolution to terminate these covenants and restrictions. Owners may vote in person or by proxy at a meeting duly called for such purpose at which a quorum is present, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such meeting, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right in favor of Declarant is described in Section 2 below.

Section 2. Amendment. Subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than fifty-one percent (51%) of all votes entitled to be cast by the Homeowners' Association Members, which vote is taken at a duly held meeting of the Homeowners' Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, that if fifty-one percent (51%) of all votes entitled to be cast by the Homeowners' Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of fifty-one percent (51%) of all votes present at a duly held meeting of the Homeowners' Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Homeowners' Association Members holding a sufficient number of votes to comprise, along with such voting Homeowners' Association Members, a total of fifty-one percent (51%) of all votes entitled to be cast by Homeowners' Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Homeowners' Association Members is required pursuant to this Section 2 shall

become effective when an instrument executed by the Homeowners' Association Members voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Buncombe County, North Carolina; provided, however, that such an amendment or modification, in lieu of being executed by the Homeowners' Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Homeowners' Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Homeowners' Association Members, as provided in this Section 2. In addition, Declarant, without obtaining the approval of any Homeowners' Association Member or any Owner or Owners other than Declarant, may make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially affects the rights, duties or obligations specified herein. In addition to the foregoing rights, Declarant may, at Declarant's option, amend and modify this Declaration and any additional Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such Additional Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency.

Section 3. Enforcement. The Homeowners' Association, an Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Additional Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Homeowners' Association, an Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

Section 4. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that the remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 5. Notice. Except as otherwise set forth herein expressly, whenever written notice to an Owner, Homeowners' Association Member or Member (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner, Homeowners' Association Member or Member appearing on the records of Declarant, the Homeowners' Association or the Association of which such Owner is a Member. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. Declarant's address as of the date of recording of this Declaration is P.O. Box 5883, Asheville, North Carolina 28813.

Section 6. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used on construing this Declaration or any part thereof

Section 7. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or other property located within a Single Dwelling Lot Area or the Common Areas.

Section 8. Changes to Plans for the Project. Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the development of the Project, and Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration, reserves the right to change any plans for the Project at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions, and any plans for the Project shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof. In addition, Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion(s) of the Property owned by Declarant, subject to the covenants, conditions and restrictions contained in this Declaration and any Additional Declaration applicable to Single Dwelling Lot Areas.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE DECLARANT HAS MADE AND MAKES NO REPRESENTATIONS OR COMMITMENTS AS TO THE USE OF THE PROPERTY DESCRIBED IN EXHIBIT A ATTACHED HERETO (PROPERTY) AND RESERVES THE RIGHT TO DEVELOP THE PROPERTY FOR SUCH USES AS THE DECLARANT SHALL, FROM TIME TO TIME DETERMINE IN ITS SOLE DISCRETION TO BE APPROPRIATE AND PROPER. NO PRELIMINARY PLAT, SCHEME, MARK UP, REPRESENTATION OR OTHER COMMUNICATION, WRITTEN OR ORAL, SHALL BIND OR OBLIGATE THE DECLARANT TO USE THE PROPERTY IN ANY MANNER UNLESS AND UNTIL A PLAT SHALL BE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF BUNCOMBE COUNTY, NORTH CAROLINA, DESIGNATING A PARTICULAR USE. NO PORTION OF THE PROPERTY SHALL BE SUBJECT TO THIS DECLARATION EXCEPT THE SINGLE DWELLING LOT AREAS WHICH SHALL BE DESIGNATED BY PLATS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF BUNCOMBE COUNTY, NORTH CAROLINA STATING THEREON THAT THE PROPERTY SHOWN ON SAID PLAT IS SUBJECT TO THIS DECLARATION.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed and sealed as of the day and year first above written.

A&H DEVELOPMENT, LLC
a North Carolina limited liability company

BY: _____(SEAL)
Stephen D. Rice, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, a Notary Public for said County and State, do hereby certify that Stephen D. Rice, Member/Manager of A&H DEVELOPMENT, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this _____ day of January, 1999.

(SEAL)

Notary Public

My Commission expires:

EXHIBIT A

BEING all of that property as shown on a plat of APoplar Ridge Subdivision≡ recorded in Plat Book 72, Page 100, Buncombe County Registry; reference to said plat being made for a more particular description.