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*William J. Lee*  
Register of Deeds

LAND USE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE MOUNTAIN AIR COUNTRY CLUB COMMUNITY  
A DEVELOPMENT BY  
MOUNTAIN AIR DEVELOPMENT CORPORATION  
BURNSVILLE, NORTH CAROLINA  
AND CREATION AND FUNCTIONS OF  
THE MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC.

May 30, 1990

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Durham, North Carolina  
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## INTRODUCTION

These Covenants, Conditions and Restrictions pertain to property located in Yancey County, North Carolina, being developed by Mountain Air Development Corporation, the Declarant. The Covenants are intended to include in one document a variety of restrictions and obligations designed to protect the character of the property. In addition, the Covenants provide for the establishment of a property owners association, the Mountain Air Property Owners Association, Inc. with broad authority to provide for maintenance, care and services related to use and enjoyment of the property.

The recitals at the beginning of the document set forth the history of the property and the purpose of Declarant in subjecting the property to these Covenants.

Article I describes the property subjected to these Covenants and Article II describes the particular land uses permitted on the property and provides a mechanism for subjecting any particular tract to a given land use. The listing of a permitted land use within Article II does not, however, mean that all of the permitted land uses will be developed or implemented on the land; rather, it means that if land within the Property is subjected to a given land use, it may be subject to special covenants which apply only to that land use.

Article III establishes general restrictions which apply to all land uses within the property whereas Article IV applies only to open space areas, Article V pertains only to residential areas, Article VI pertains only to guest lodges, Article VII pertains to commercial and recreational areas, and Article VIII pertains to maintenance, service, airport utility areas.

### ARTICLE IX PERTAINS TO RIGHTS RESERVED BY DECLARANT.

Articles X, XI, XII and XIII define the functions of the Mountain Air Property Owners Association, the membership duties and rights of property owners, use and enjoyment by property owners of the common properties owned by the Mountain Air Property Owners Association, Inc. and the liability of all property owners for assessments and charges.

Part Four also contains numerous general provisions. Article XIV explains the duration of the Covenants, and the nature of property owners obligations under these Covenants with respect to the land, lessees, mortgagees and other encumbrances. Article XV explains how the Covenants may be enforced.

Article XVI provides rules for interpreting these Covenants. In addition, Article XVII provides definitions of terms identified by initial capital letters throughout the Covenants. A detailed Table of Contents has also been provided to facilitate easy access to particular provisions in the Covenants.

**PURCHASING PROPERTY WITHIN THE MOUNTAIN AIR DEVELOPMENT DOES NOT DIRECTLY, INDIRECTLY, OR AUTOMATICALLY PROVIDE THE PROPERTY OWNER ANY MEMBERSHIP RIGHTS OR PRIVILEGES IN OR WITH RESPECT TO THE MOUNTAIN AIR COUNTRY CLUB.**

**ATTENTION IS DIRECTED TO SECTIONS 5-6.5, 9-1, 9-2, 10-2, 10-24(d), 10-24(e), 10-25, and 16-6 PERTAINING TO LIMITATIONS OF LIABILITY OF THE ASSOCIATION AND DECLARANT, TO ARTICLE XIII PERTAINING TO ANNUAL ASSESSMENTS, TO SECTION 13-11(a) PERTAINING TO INTEREST RATES ON OVERDUE ASSESSMENTS, AND TO SECTIONS 3-10, 3-11, 4-4.1, 5-4, 9-4, 9-7, 9-8, 9-12, 9-16, 10-13, 10-18, 10-20(d)(e), 10-24(b), 12-1 AND 13-9 PERTAINING TO FEES, CHARGES AND EXPENSES WHICH MAY BE IMPOSED FOR TRANSFER OF PROPERTY, OR FOR USE OF FACILITIES AND SERVICES PROVIDED BY THE MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION.**

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STATE OF NORTH CAROLINA	)	DECLARATION OF COVENANTS,
	)	CONDITIONS AND RESTRICTIONS
COUNTY OF YANCEY	)	RUNNING WITH CERTAIN LANDS OF
	)	MOUNTAIN AIR DEVELOPMENT CORPORATION,
	)	IN YANCEY COUNTY, NORTH CAROLINA,
	)	AND PROVISIONS FOR MEMBERSHIP
	)	IN THE MOUNTAIN AIR PROPERTY
	)	OWNERS ASSOCIATION, INC.

THIS DECLARATION, made this 3rd day of August, 1990, by Mountain Air Development Corporation, a North Carolina corporation authorized to do business in North Carolina, hereinafter referred to as "Declarant".

RECITALS:

WHEREAS, Declarant holds title in fee simple to the certain lands in Yancey County, North Carolina (hereinafter referred to as "the Property") described in Section 1-1 of this Declaration; and

WHEREAS, the Declarant finds that private controls over the use of land are an effective means of establishing, preserving, maintaining and, in some instances, enhancing, the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, the Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as these "Covenants") and,

WHEREAS, the primary purpose of these Covenants and the foremost consideration in the origin of the same is to facilitate, through appropriate land use controls and through provision of financial support raised through assessments as provided herein, the creation and maintenance of areas within and facilities on the Property which will make parcels within the Property and the Property as a whole desirable for use and enjoyment as a place for human habitation and human activities; and

WHEREAS, the Declarant deems it desirable to provide a mechanism whereby the owners of property within the Property may benefit the Property by creating a nonprofit entity (The Mountain Air Property Owners Association, Inc.) which shall undertake certain services, activities and functions pertaining to and benefitting the Property, which are traditionally undertaken or provided by nonprofit entities such as neighborhood property owners associations, park districts, chambers of commerce, governmental agencies, civic groups, convention bureaus and merchant's associations; and

WHEREAS, the Declarant deems it beneficial to the use and enjoyment of the Property to establish an entity which may own, operate and maintain important facilities which are desirable to establish and maintain the Property as a center of vacations, conferences, seminars, rest, education, leisure, recreation, family dwellings and sports; and

WHEREAS, the Declarant deems it desirable, for the efficient preservation of the values and amenities in the community, for the Declarant to create a corporation to which the Declarant hereby delegates and assigns authority to carry out the Functions set forth herein including the Functions of maintaining and administering the Common Properties, enforcing the Covenants governing the same and

collection and disbursement of all assessments and charges necessary for such maintenance, administration, enforcement and other mandatory and discretionary Functions set forth herein; and

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of North Carolina a nonprofit corporation, The Mountain Air Property Owners Association, Inc. ("Association"), for the purpose of exercising the aforesaid Functions, and which are hereinafter more fully set forth; and

NOW THEREFORE, the Declarant hereby declares that the Property hereof, is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the land herein referred to as the Property. These Covenants are intended to be covenants and servitudes burdening and benefitting all persons now or hereafter deriving a real property estate in the Property, whether by assignment, succession or inheritance or other method of conveyance or acquisition.

**PART ONE: GENERAL REFERENCES****ARTICLE I: PROPERTY DESCRIPTION**

**SECTION 1-1: THE PROPERTY.** The real property (the "Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants is described in Exhibit A to these Covenants. The Property shall also include the lands described in Sections 1-2 to the extent that such lands are subjected to these Covenants. Any such supplemental Declaration may contain such additions and/or modification in the Declaration as may be necessary, in the sole judgment of Declarant, to reflect the different character, if any, of the additional properties as are not inconsistent with this Declaration. See Section 9-13 with respect to certain rights of Declarant to amend these Covenants.

**SECTION 1-2: ADDITIONS TO THE PROPERTY.** The Declarant may subject to these Covenants: (1) all or a part of the land described in Exhibit B by Recording a supplemental declaration executed by Declarant; (2) all or a part of the lands described in Exhibit C by Recording a supplemental Declaration executed by Declarant and the owners thereof; or (3) any or all of the parcels of land, any point of which is within fifteen hundred feet (1500) of any lands described in Exhibits A, B, or C, by Recording a supplemental declaration executed by Declarant and the owners thereof.

**PART TWO: LAND USE CLASSIFICATIONS  
APPLICABLE TO ALL OF THE PROPERTY****ARTICLE II: CLASSIFICATIONS OF PERMITTED LAND USES**

**SECTION 2-1: LAND USE CLASSIFICATIONS.** By Recorded Declaration, or by inclusion of references in the initial instrument of conveyance for each unit of land or improvements within the Property, Declarant shall designate one or more of the following Land Use Classes to which the parcel is exclusively restricted. Such declaration or initial instrument of conveyance may make such dedication by reference to a Recorded plat. Such designation of land use class shall extend for the duration of these covenants (including any renewals) unless the Declarant has specified a shorter period of time in its instrument of conveyance or recordation. Upon the expiration of such shorter period, these covenants shall still apply to the land subjected to the expired designation except for those sections which relate only to the Land Use Class designation which lapsed. Upon the termination of such shorter period, the Declarant shall have the right to designate a new Land Use Class for the subject property.

These classifications shall also be used in all Development and Survey Plats, and may be used in Concept Research Plans and Master Plans pertaining to the Property.

The designation of land in a deed of conveyance as Open Space does not make such lands a Common Property. Property Owners have no rights in lands designated as Open Space except to the extent that an express easement has been reserved or dedicated for the benefit of Property Owners or the Association, the Open Space is designated as Community Open Space, or the property is itself transferred to the Association. See Section 4-1. It is possible for an individual Property Owner to designate land it owns as Community Open Space. See Section 4-2.

Land which is within the Property but which has not been designated as subject to a given Land Use Class and land which has been previously designated for a given land use for a limited period which has expired is "Undesignated Land."

Declarant may also assign a Development Unit Parcel to another developer, and in the Instrument of conveyance Declarant shall specify the Land Use Classes or Classes to which the property is subjected as well as the number and size of Community Dwelling Lots, Community Dwelling Units, Guest Lodging Units, Retail Units, Restaurant Units, Professional Service Units and Trade Oriented Service units which may be established upon the Development Unit Parcel.

The Land Use Classes within the Property shall be as follows:

A. OPEN SPACE:

A-1: GENERAL OPEN SPACE. Used for general open space including stream beds, gardens, picnic areas, nature trails, footbridges, observation stands, fields and woods.

A-2: PONDS. Used for ponds.

A-3: ROADS. Used for roads.

A-4: ROADSIDE SCENIC CORRIDORS. Used for roadside scenic corridors, including grassy greenswards, stands of trees, shrubbery, berms, and other natural or man made landscaping features which make traversing the adjacent roads a pleasant aesthetic experience.

*See Article IV for Special Covenants Applicable to Open Space, Community Open Space and Private Open Space.*

B. SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL DWELLING UNITS:

B-1: DETACHED COMMUNITY DWELLING UNITS. Used for Single Private Household and Residential purposes with a maximum of one (1) Community Dwelling Unit located upon each Community Dwelling Lot.

B-2: TOWNHOUSE OR CLUSTER HOME COMMUNITY DWELLING UNITS. Used for Single Private Household and Residential purposes with a maximum of one (1) Community Dwelling Unit located upon each Community Dwelling Lot, which Community Dwelling Unit may share the use or common ownership of a common wall, common walkways and common parking areas or zero lot line (i.e., a common property line with no set back requirement) with any Community Dwelling Unit located upon any adjoining Community Dwelling Lot within a Class B-2 Area.

B-3: STRUCTURES WITH TWO (2) OR MORE COMMUNITY DWELLING UNITS. Used for structures which include two (2) or more attached Community Dwelling Units not located upon a Community Dwelling Lot, which are condominium units or rental units and which are used for Single Private household and Residential purposes.

*See Article V for Special Covenants Applicable to Single Private Household and Residential Units.*

## C. GUEST LODGE FACILITIES:

C-1: GUEST LODGE. Used for guest lodging including any or all of the following associated activities and uses: laundry facilities, food and beverage facilities; small retail shops; central meeting or gathering rooms; necessary support, utility, waste disposal and maintenance facilities; and any use within Land Class D-1, D-2, D-3 and D-4.

*See Article VI for Special Covenants Applicable to Guest Lodge Facilities.*

## D. COMMERCIAL AND RECREATIONAL:

D-1: RECEPTION CENTER OR PROFESSIONAL SERVICE UNIT. Used for a reception center, real estate development management office, or Professional Service Units which are used for sale or rental of real estate or sale of real estate securities.

D-2: CLUBHOUSE. Used for clubhouses, including associated food and beverage facilities, game rooms, meeting rooms, swimming pools, ice rinks, exercise rooms, laundry facilities, real estate sales and marketing offices, ski lockup facilities, golf pro shop, locker rooms, golf cart storage, golf bag storage, administrative offices, associated parking, and maintenance facilities.

D-3: OUTDOOR RECREATION FACILITIES. Used for outdoor recreation facilities and grounds including but not limited to those of following general nature: tennis, racquetball, squash, handball, shuffleboard, and other similar courts; swimming pools; picnic and game tables; horseback riding stables; archery ranges; water parks; ice skating rinks; music gardens; and basketball courts.

D-4: GENERAL STORE OR SMALL VILLAGE CENTER. Used for general store or small village center which contains Retail Units, Restaurant Units and Professional Service Units.

D-5: GOLF COURSE. Used for golf course, pro shop, golf course maintenance facilities, golf cart pathways and golf cart maintenance facilities, outdoor snack shop and restroom facilities along fairways, irrigation, pumping stations, reservoirs, and cross country skiing.

*See Article VII for Special Covenants Applicable to Commercial and Recreational Areas.*

## E. UTILITY, TRANSPORTATION AND SERVICE AREAS:

E-1: GROUND AND MAINTENANCE CENTERS. Used for Trade Oriented Services, grounds and maintenance centers, snow making and utility service and support installations (subject to Section 9-4) including but not limited to telephone facilities and communications equipment, cable television facilities, satellite earth stations, cellular radio facilities, microwave and light communications stations, off course golf maintenance facilities, and similar maintenance, repair, communications, security and utility areas.

E-2: WATER TANKS AND SOLID AND LIQUID WASTE COLLECTION. Used for Solid and liquid waste collection, pumping, treatment, disposal and storage areas, water tanks, wells, and other similar utility, waste control and resource recover facilities.

E-3: TRANSPORTATION. Used for taxi, bus, shuttle, tramway or other transportation facilities.

**E-4: UTILITY CORRIDORS.** Used for utility corridors, including overhead or underground power lines, telephone lines, water and sewage lines, natural gas pipelines, cable television conduits, and similar utility, communications and public works conduits and infrastructure. But see Section 9-4.

**E-5: AIRPORT AND HELICOPTER PADS.** Used for runways, fuel tanks, look-out towers, communications and navigational facilities, airplane parking, airplane hangers and maintenance facilities, airport service areas, and helicopter pads.

*See Article VIII for Special Covenants Applicable to Utility, Transportation and Service Areas.*

Special Covenants within Articles IV, V, VI, VII, and VIII shall apply to subclasses (e.g. Land Use Class B-1, B-2, etc.) within a general Land Use Class (e.g. Land Use Class "B") unless the language specifically indicates application is only to a specific subclass or group of subclasses (e.g. "Land in Land Use Class B-3 shall...", or "Except for Land Use Class B-3, all...").

**SECTION 2-2: RECORDING AND ENFORCEMENT OF LAND USE CLASS USES.** No Land Use Class may be restrictive, valid, binding, operative or enforceable under these Covenants until such time as the Land Use Class or Classes for a particular parcel is designated in a Recorded deed or Recorded Development or Survey Plat conforming with Section 2-3. In no event shall a use designated in a Concept Research Plan or Master Plan as defined in Section 17-1.7 be enforceable, be considered an implied land use restraint, servitude, covenant or restriction, or be construed to be a sales commitment of the Declarant to any buyer or Property Owner by the Declarant or the Association.

**SECTION 2-3: LIMITATION ON THE USE OF DEVELOPMENT OR SURVEY PLATS.** No Development or Survey Plat may establish use classifications or restrictions on any land or improvements within the Property unless such Development or Survey Plat: (a) is prepared and signed by a registered surveyor; (b) is supplemented by a Recorded written instrument setting forth such restrictions, either on the face thereof or by separate document; (c) said Development or Survey Plat and said written instrument have been Approved by the Declarant; and (d) said Approval by the Declarant or its agent supplements the Recorded Development or Survey Plat, whether on the face thereof or by separate document.

**SECTION 2-4: DEVELOPMENT PLATS.** The Declarant, for so long as Declarant exercises its Class B voting rights (see Section 11-2), and thereafter the Association, shall be provided, at least thirty (30) days prior to recordation (unless this period is waived by the Declarant (or the Association as provided above), for purposes of its comment and review for conformity with these Covenants, copies of all Development and Survey plats of the Property which are prepared by grantees of the Declarant, their heirs, successors and assigns, and for purposes of recording with the Register of Deeds. Any such Development and Survey Plats must be Approved by the Declarant (or subsequently, the Association as provided above). See Section 17-1.1 or 17-1.2.

### **ARTICLE III: GENERAL COVENANTS**

**SECTION 3-1: APPLICATION OF GENERAL COVENANTS.** Each of the covenants set forth in this Article III shall apply to all lands within the Property except undesignated lands owned by Declarant. Declarant shall also not be subject to the provisions of this Article which are cross referenced within Section 10-24. Once conveyed by the Declarant, the provisions of this Article shall apply to each unit of real property conveyed by Declarant, provided that no approvals by the Association or the Architectural Review Board shall be required for any Structure, parking, landscaping, tree removal, or any other undertaking previously made by Declarant with respect to the subject property.



**SECTION 3-2: ARCHITECTURAL REVIEW of Specifications for New Construction or Additions, Reconstructions, Alterations or Changes to Structures and Landscaping.** No Structure may be installed, commenced or erected upon the Property or any landscaping be done, or any addition to any existing building or alteration or change to the exterior thereof including but not limited to window treatments and colors visible from the outside, or any removal of soils or rock providing subadjacent or lateral support to roadways, be made until the proposed building plans, specifications, materials and exterior finish, plot plan, landscape plan, drainage and erosion control plan, and construction schedule have been submitted to and Approved by the Architectural Review Board as provided by Section 10-24.

**SECTION 3-3: SITING.** To assure that buildings and other structures will be located so that desirable view, privacy and breeze will be available to the largest practical number of buildings or structures built within the Property and that structures will be located with regard to the topography of each property taking into consideration the location of large trees, structures previously built or approved pursuant to this Article for adjacent parcels of land and other aesthetic and environmental considerations, the Architectural Review Board, as provided in Section 10-24, shall have the right to control and to decide (subject to the provisions of the pertinent land use regulations of public authorities having jurisdiction) the precise site and location of any building or structures within the Property consistent with setback lines, if any, which may be established on an individual Development or Survey Plat. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. See Section 5-11.

**SECTION 3-4: TREE AND BUSH REMOVAL.** No trees of any kind or branches thereof above six (6) inches in diameter at a point four (4) feet above the ground level may be removed, topped, or trimmed by any Property Owners, their successors and assigns anywhere within the Property, including trees within Common Properties, without the written Approval of the Architectural Review Board as provided by Section 10-24. The Architectural Review Board shall adopt flexible policies concerning diseased trees or trees creating safety hazards. A tree location plan showing all significant trees and location map of adjacent and nearby structures may be required as part of the submission under Sections 3-2, 3-3 and this Section.

**SECTION 3-5: COMPLETION OF CONSTRUCTION.** Unless otherwise Approved by Declarant, the exterior of all buildings and other structures (except the clubhouse) must be completed within twelve (12) months after the construction shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to strikes, fires, national emergency or natural calamities or other factor which in the discretion of the Association is determined to be beyond the control of the Property Owner. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. All of the landscaping shown in plans submitted to the Architectural Review Board must be completed before initial occupancy. As a condition of approval of proposed plans for all structures, a bond may be required by the Association which guarantees payment of the landscape contractor's estimated cost of installation to implement the plan as submitted and Approved by the Association.

**SECTION 3-6: MINIMIZING CONSTRUCTION DISTURBANCES.** During the continuance of construction, the Property Owner who is the owner of the site upon which the construction has been commenced shall require the contractor to: (a) maintain the site of the building in a clean and uncluttered condition, (b) on a daily basis, all onsite trash shall be placed in a dumpster or other approved container or removed from the site; (c) if located within three hundred (300) feet of an occupied residential dwelling, ensure that construction activities may not take place on any Sunday and may not commence before 7:00 a.m. or be continued after 7:00 p.m. more than twenty (20) days a year; (d) diligently maintain compliance with the drainage and erosion control plan which has been approved pursuant to Sections 3-2, 10-19(a) and 10-24; (e) ensure that the construction-related personnel on site shall not engage in any Offensive Activity as provided in Section 3-18; (f) refrain from using road rights of way for construction equipment or materials storage or interference with normal use of the roadway; (g) locate portable toilets on the site so as to

create the least objectional impact on the public appearance of the construction site; (h) determine and ensure that materials and vehicles to be transported on paved roads are not of such weight, quantity, packaging, or bundling to damage paved roads within the Property.

**SECTION 3-7: SERVICE YARDS.** All garbage receptacles, electric and gas meters, heat pump and air-conditioning equipment, clotheslines, water pumps, fuel tanks and other unsightly objects, equipment and service yard contents on the Property must be placed or stored in a safe landscaped, fenced or screened-in areas to conceal them from the view on the road and nearby properties, unless alternate locations are Approved by the Architectural Review Board.

**SECTION 3-8: LIGHTS AND SIGNS.** No promotional, advertising or commercial lights, search lights, signs, banners, flags or ornaments, whether mobile or fixed, including for sale or for rent signs, may be erected on the Property by anyone except where Approved by the Architectural Review Board subject to reasonable rules and regulations established by the Architectural Review Board governing the lighting, size, color, materials, nature, graphic standards and content of any signs or ornaments. Such rules and regulations on their face or as applied may prohibit the establishment of certain kinds of lights, signs, ornaments, flags and banners altogether. Without limiting the foregoing, if Approved by the Architectural Review Board as being consistent with the standards set forth in the preceding sentence, the following types of lights and signs shall be permitted:

- (a) During, preceding or after construction, the identification of all sponsors, designers and builders of the project may be provided on one (1) sign structure for the entire site;
- (b) Signs not in excess of four (4) square feet on each side may be used to offer the particular property for sale pursuant to a court order;
- (c) In Land Use Class D, advertising signs designed by professional graphic designers, neatly constructed, carefully maintained, limited to one (1) on-premise and one (1) off-premise (including item [d] below) sign per advertised entity, not over one hundred (100) square feet in area per sign side, including all window signs, with no single dimension of more than ten (10) feet, exclusive of support columns and framing and with no sign having more than two sides visible to public view; and
- (d) Directory signs, designed by professional graphic designers, neatly constructed, carefully maintained, not exceeding twelve (12) feet in height with the maximum amount of advertising space for each advertiser not to exceed eighteen (18) square feet in area.

Notwithstanding the foregoing, the Declarant or the Association may establish such signs (with the permission of the owner of the land on which the sign is placed) as they deem appropriate for purposes of safety, directional signs, traffic signs, facility, landmark or neighborhood identification signs (e.g. "Reception Center", "WestWind Villas" or "Lookout Peak") and posting of rules and regulations ("No Parking").

No mailboxes may be erected or maintained on the property except mailboxes approved and provided by the Declarant to a Property Owner. The cost of providing, erecting and maintaining a mailbox, including, numbering and lettering Approved by the Architectural Review Board, shall be paid by the Property Owner. The Architectural Review Board may require the use of areas or structures such as kiosks in which individual mailboxes are clustered. The Architectural Review Board may also specify standards for nameplates indicating the names of the owners of Community Dwelling units within the Property.

The display of lights, flags and ornaments during holiday seasons shall be permitted.

Parked vehicles with exterior commercial advertising must be stored in a screened enclosure or garage unless it is actively engaged in providing services to the Mountain Air Country Club Community, and, vehicles with exterior commercial advertising may not be used as a device to circumvent the purposes of this section. No owner or operator of vehicles with exterior commercial advertising may leave such vehicle within public view outside of a screened enclosure or garage if such person is visiting or residing in a Community Dwelling Unit.

The Association or the Declarant reserve the right, after fourteen (14) days notice is given to the Property Owner in conformity with Sections 11-7 through 11-10, to enter upon the lands or premises of any Property Owner to remove any nonconforming sign at the expense of the owner of the property, and, such entry shall not be a trespass. *See also Section 10-21 concerning directional systems within the Property.*

Yard lighting of any Community Dwelling Unit will be so designed that placement and structure of light will illuminate only the premises of the owner and avoid direct illumination of adjacent property or roadways.

**SECTION 3-9: OTHER BUILDINGS AND VEHICLES.** No mobile home, trailer, tent, barn or other similar outbuilding or structure shall be placed on the Property at any time without prior approval from the Architectural Review Board and such approvals shall normally be limited to temporary use of such structures reasonably essential to economical, orderly and efficient construction during the construction process only. No home trailer or residence trailers may be permitted on the Property. Boats, boat trailers, motor homes, campers, trucks or utility trailers must be stored either wholly within a garage on the same Community Dwelling Lot as the Community Dwelling Unit occupied by the owner or user of such trailer, or in a central or neighborhood screened-in storage facility for such boats, vehicles and trailers if, as and when such a screened-in area is constructed upon the Property and thereafter used for such purposes. This Section does not create in the Declarant or the Association an affirmative obligation to provide such a screened-in storage facility. *See also Section 3-2.*

**SECTION 3-10: WATER AND SEWAGE.** Prior to the occupancy of a building or structure on the Property, suitable provision shall be made for water and the disposal of sewage by each Property Owner, consistent with the recommendations of the Architectural Review Board, the Association and the Declarant and consistent with Pertinent Laws. The location of any well or septic tank must be Approved by the Declarant. No private water wells or septic tanks may be installed or maintained on the Property if the Declarant, the Association or a public service district or other governmental unit, its successors and assigns has installed a water distribution line or sewer collection line accessible within two hundred fifty (250) feet of such property line with average daily water pressure or flow in such line adequate for uses permitted by these Covenants, provided that such water distribution line or sewage collection line is completed by the time the building or structure is ready for occupancy. If such distribution line is not completed by the time the building or structure is ready for occupancy, the Property Owner may install an approved private well and septic tank at his expense to service the building until such time as a water distribution line or sewage line is completed to within two hundred and fifty (250) of the property line. If Declarant, the Association, or a utility or public service district (*subject to Section 9-4*), provides a water or sewer distribution line within two hundred fifty (250) feet of the property owned by a Property Owner, said Property Owner shall be required to connect to such line at such Property Owner's expense, including but not limited to construction costs and tap fees.

**SECTION 3-11: ANTENNAS.** No television antenna, satellite antenna, radio receiver or transmitter or other similar device for receipt or transmission of infrared, microwave, television or electromagnetic signals may be erected on the exterior portion of any Structure or land if coaxial cable, fiber optical cable or other transmission conduit running from an operating master antenna system or control satellite earth station(s) provided by the Association, Declarant, or public service district or utility (*subject to Section 9-4*), has been made available to the building. Subject to Section 9-4, should cable television services or a

master antenna system be unavailable and good television reception not be otherwise available, a Property Owner may make written application to the Architectural Review Board for permission to install a television antenna subject to any reasonable aesthetic requirements that may be imposed. All exterior antennas must be removed at the owner's expense if cable television service becomes available to the lot upon which Community Dwelling Unit is constructed. No satellite dishes shall be allowed unless approved by the Architectural Review Board, which approval may be withheld for any reason.

No radio, television, microwave, infrared or other form of electromagnetic or light radiation shall be permitted to originate from any portion of the Property if said radiation interferes with any right reserved by Declarant in Article IX or, subject to Section 9-4, interferes with the proper reception of radio, television or related signals within the Property by any Property Owner, their Lessees and Guests.

**SECTION 3-12: PARKING.** Any construction, alteration, relocation or additional landscaping of the parking areas, or extension of paved areas to areas previously grassed, landscaped or left in a natural condition shall be submitted for approval to the Architectural Review Board. Surfaces of parking areas which absorb water but which protect the land from erosion and wear may be encouraged in lieu of fully paved surfaces and in any event must be kept in good repair at all time. No building or structure shall be occupied until approved parking has been completed. If local governmental bodies do not specify the number of parking spaces associated with a given land use, the Architectural Review Board in its discretion may establish the number of parking spaces which shall be required to be constructed for each given land use. No on-street vehicular parking shall be allowed except as permitted by Declarant or the Architectural Review Board.

Subject to any additional requirements of Pertinent Laws, the requirements for construction of parking spaces may be waived to the extent that the same number of parking spaces in a Neighborhood Parking Area are allocated to the Property Owner by the owner of said Neighborhood Parking Area and such allocation is Approved by the Architectural Review Board after considering the following factors:

- (a) The owner or owners must apply for the credit for parking from neighboring properties at the time of submission of the plans for development or expansion to the Architectural Review Board.
- (b) Credit may be obtained by shared use with neighboring properties which are already developed and which in normal operation have counter-cyclical peak period parking demands, such as an evening only restaurant, or a weekday business-hour retail establishment.
- (c) Allowance may also be made for any reduction in parking needs due to development of central parking areas and mass transit or people-mover systems which are operating within the Property or between the Property.

Such waivers, however, shall not constitute a waiver of any parking as may be required pursuant to any ordinance of any governmental entity and such a waiver as to one (1) parcel within the Property shall not thereby create a waiver as to any other parcel.

**SECTION 3-13: BUILDING HEIGHT.** In addition to any requirements which may be imposed by Pertinent Law, any building segment constructed on the Property shall be subject to the height and visual access guidelines established by the Architectural Review Board. See Section 10-24.

**SECTION 3-14: STREAM SETBACK REQUIREMENTS.** No Structure may be erected within fifteen (15) feet of a pond or stream edge on any property as shown on a Recorded Development Plat; provided, however, that Structures in the nature of pools, decks, nature trails, hot tubs, bridges, guard rails, bike

trails, cookout and entertainment structures, open-air bar and picnic facilities, recreational support structures, picnic storage areas and restrooms may be built within such setback line if such Structure is Approved by the Architectural Review Board pursuant to Section 10-24. Reasonable variances to these setback requirements may be Approved by the Architectural Review Board where, in the sole discretion of the Architectural Review Board, the integrity of the stream, adjacent property and the overall development scheme would not be harmed by such variances. See also Section 5-11.

**SECTION 3-15: ANIMALS.** Except as allowed by the Association, no animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than a maximum of three (3) household pets (mammals, and reptiles not in excess of twelve inches) kept in any one Community Dwelling Unit. In order to preserve the aesthetic qualities of the Property, to maintain sanitary conditions on the Property, to prevent the spread of worms and infectious diseases on the Property, to maintain a proper respect for other Property Owners and users of the Property and to maximize the overall use and enjoyment of the Property, each person who keeps a pet within a Community Dwelling Unit shall abide by the following restrictions and affirmative obligations: (a) no pets may be kept, bred or maintained on the property for any commercial purpose; (b) best efforts shall be exercised to not allow the pets to excrete upon the shrubbery or in any area within the Property or any Common Properties, Limited Common Properties, or Condominium Common Properties which are regularly traversed by neighboring residents or in which children may be expected to play; (c) any defecation or solid excrement left by the pet upon the Common Properties, Limited Common Properties or Condominium Common Properties shall be removed by the owner or the attendant of the pet; (d) the pet shall not be allowed to roam from its attendant uncontrolled by voice or leash; and, (e) any pet which consistently barks, howls or makes disturbing noises which might be reasonably expected to disturb other Property Owners, their Lessees and Guests shall be muzzled. The breach of any of these restrictions and obligations and duties shall be a Noxious and Offensive activity constituting a private nuisance. This provision shall not be deemed to prevent the establishment and operation of equestrian facilities in Land Class D-3 and use of horses within Open Space with the approval of the owner thereof.

**SECTION 3-16: DUTY TO KEEP PROPERTY ATTRACTIVE AND IN GOOD REPAIR.** Each Property Owner and his Lessees shall: prevent and remove the accumulation of litter, trash, packing crates or rubbish; subject to the provisions of Section 3-4, remove any trees which have become damaged and which pose an imminent safety hazard to adjoining properties; prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on the Property either before, during or after construction; prevent and remove accumulations on his Property which tend to substantially decrease the beauty of the specific Property or the community as a whole; and, keep their buildings, roofs, structures and improvements in good repair with a reasonably high standard of care. No Property Owner, Lessee or Guest may litter or create unsightly conditions on public roadsides within the Property, Open Space, Common Properties or Condominium Common Properties. See Section 9-7 and 10-20.

**SECTION 3-17: SOUND DEVICES.** No exterior speaker, horn, whistle, bell or other sound device, except devices intended for use and used exclusively (and with reasonable regard for neighbors) for safety, security, or public welfare (including effluent pumping stations) purposes, shall be located, used or placed upon any part of the Property without a permit from the Association.

**SECTION 3-18: OFFENSIVE ACTIVITY.** No Offensive or Noxious activity shall be carried on upon the Property. "Offensive or Noxious" activity or behavior shall include but not be limited to (1) a public nuisance or nuisance *per se*, (2) any behavior which is inconsistent with both the reasonable pleasurable use of the Property area by Property Owners, their Lessees and Guests and their reasonable expectations of vacationing, year-round living, studying, working, recreating, free of excessively noisy behavior grossly disrespectful of the rights of others, (3) flashing or excessively bright lights, racing vehicles (regardless of the number of wheels), (4) significantly loud musical or natural distractions, (5) any internal combustion engine without adequate muffler or silencer; or (6) other similar unreasonable behavior or activity curtailing

or likely to curtail the reasonable pleasure and use of Community Dwelling Units and their grounds, Common Properties, Condominium Common Properties and other areas within the Property. Community athletic events, concerts, festivals, competitions or shows primarily for the use and enjoyment of the Property by Property Owners and their Guests, conducted under permit from the Association shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Association, or its terms and conditions violated.

Without limiting the foregoing, the following shall also constitute Offensive or Noxious Activity:

- (a) The discharge of firearms, guns or pistols or arrows of any kind, caliber, type or any method of propulsion except (i) pursuant to Section 3-25, (ii) by security personnel in the course of their duties, or (iii) protection of household or self-defense consistent with Pertinent Law;
- (b) Fireworks stores, the sale of fireworks, and the discharge of fireworks except in controlled events Approved by the Association or Declarant.
- (c) Mechanical amusement rides;
- (d) Commercial wild animal parks, animal farms requiring admission for entry other than commercial stables Approved by Declarant and other than kennels for boarding of pets of Property Owners, Lessees or their Guests;
- (e) Signs and advertising devices not in conformity with Section 3-8, and artificial wild animals or birds, flashing lights, painted tree trunks, stacks of tires, outdoor displays of manufactured products, balloons, banners, wind socks except in Land Class E-5, whirling plastic devices on poles, ropes or cables, commercial vehicles with exterior advertising used in a manner inconsistent with Section 3-8, caged or penned animals used as a roadside commercial attraction, and similar commercial devices visible from private or public highways and roads within the Property;
- (f) Gasoline stations, tire sales centers or vehicle repair facilities which are designed or constructed in a fashion to display to roadside travelers service bays or repair areas provided, however, that this provision shall not limit the establishment of an aircraft fuel depot or repair facility in Land Class E-5.
- (g) Any facility or equipment which creates dust, noise, odors, glare, vibrations or electrical disturbances beyond the property lines of the owner of such facility or equipment; provided, however, that this subparagraph shall not apply to normal construction disturbances or to any utility or communications facility owned by the Declarant or its assignee;
- (h) Discharge of explosives except by experienced detonation experts as a part of a necessary and controlled construction undertaking, and

Notwithstanding the foregoing, Offensive Activity shall not be construed to mean any event or activity related to the day-to-day functions of the Country Club or the Mountain Air Country Club Community, including operations of aircraft, golf course operations, operation of construction and maintenance equipment by Declarant or its agents, special events such as golf and tennis tournaments, and all other promotional events conducted or approved by Declarant.

**SECTION 3-19: LAUNDRY DRYING; AIR CONDITIONING UNITS.** In order to preserve the aesthetic features of the architecture and landscaping, each Property Owner, his or her family, his or her Guests or his or her tenants shall not hang laundry from any dwelling unit if such laundry is within the public view.

This provision, however, shall be temporarily waived by the Association upon publication by the Board of Directors, during periods of severe energy shortages or other conditions making the enforcement of this Section contrary to the national or local interests.

No permanently-mounted through the wall or window-mounted air conditioning unit shall be permitted to be installed in or maintained in any structure unless Approved by the Architectural Review Board.

**SECTION 3-20: DUTY TO REBUILD OR CLEAR AND LANDSCAPE UPON CASUALTY OR DESTRUCTION.** In order to preserve the aesthetic value and economic value of all individual properties within the Property, each Property Owner, with respect to any property it owns within the Property, the Declarant, with respect to improved property owned by the Declarant, and the Association, with respect to Common Properties, shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period (not to exceed two (2) months for clearing, six (6) months for landscaping (assuming no rebuilding) and minor Structures, and twelve (12) months for replacement of buildings and landscaping) of time any building, Structure, improvement or significant vegetation which is damaged or destroyed by Act of God, fire or other casualty other than war. Variances and conditional waivers of this provision may be made only upon a vote of the Board of Directors of the Association establishing that the overall purpose of these Covenants will be best effected by allowing such a variance. The allowance of a variance or waiver by the Board of Directors shall not be deemed to be a waiver of the binding effect of this Section on all other Property Owners.

**SECTION 3-21: PROHIBITION OF OIL AND GAS WELLS AND SUBSURFACE MINING.** No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon said premises, nor shall any machinery, appliance or structure, ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the search for or development of water wells, the installation of utilities and communications facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

**SECTION 3-22: PROHIBITION OF INDUSTRY.** Neither the Association nor any Property Owner, nor the Declarant, their heirs, successors and assigns, shall erect, or suffer or permit to be erected, on any part of the Property, any Structure or operation for the manufacture or production of any manufactured goods (other than hand-crafted items made in a home workshop) intended for off-premise sale; or any forge, foundry, blacksmith shop, furnace or factory of any kind or nature whatsoever for the manufacture and operation of industry, warehousing and/or distribution of products. Nothing herein shall prohibit: (1) the use, in conformity with Section 5-1, of kilns, furnaces and welding or similar equipment in any artist or craft studio constructed to accommodate a home occupation permitted by these Covenants, (2) as a resource recovery measure the production, in limited facilities, of alcohol, methane, ethanol, methanol or other biomass energy source derived from organic wastes originating on the Property, or (3) the use of snow-making machines or irrigation of golf courses. This Section shall not serve as a prohibition of Trade Oriented Services when such Trade Oriented Services are not used in the manufacture of goods or operation of industry.

**SECTION 3-23: SUBDIVISION OF PROPERTY.** No property within any Land Class within the Property shall be subdivided other than by the Declarant except by means of a written and Recorded instrument indicating that such subdivision has been Approved by the Declarant. See Section 9-10. With the Approval of Declarant, which approval may be denied in the sole discretion of Declarant, the provision of two (2) or more contiguous lots may be combined into one (1) larger lot. Following the combining of two (2) or more lots into (1) larger lot, only the exterior boundary lines of the resulting larger lot shall be considered

in the interpretation of these Covenants. Prior to granting the approval, Declarant may make specific provisions for payment of assessments.

**SECTION 3-24: PROHIBITION OF MOTORCYCLES; SNOWMOBILES; OFF-ROAD RECREATION VEHICLES.** No motorcycles other than mopeds (or other motor-powered bicycles) with less than or equal to one horsepower shall be permitted on private roads within the Property. Mopeds with less than or equal to one-horsepower shall be limited to operation only on roads designed for automobile traffic within the Property and on trails specifically designated for moped use by the Association and the use of such mopeds on bicycle trails, cart paths, nature trails and recreation areas is prohibited.

No snowmobiles shall be permitted upon the Property unless approved in writing by the Association or unless used by the Association for the purpose of carrying out the Functions of the Association or maintenance of Property within Land Class D-5.

No three-wheeled vehicles, trucks or other off-road recreation vehicles, shall be permitted to be used on any Open Space, Common Properties, golf course, bicycle trails, nature trails or recreation areas within the Property unless used by the Association, Declarant, or the country club operator within Land Classes D-2, D-3, D-5 or E-5 for the purpose of maintaining or operating the Community or unless Approved by the Declarant.

**SECTION 3-25: WILLFUL DESTRUCTION OF WILDLIFE.** No hunting shall be allowed on the Property, except under controlled conditions Approved by the Association and appropriate governmental wildlife authorities for the purpose of protecting Property Owners, the public and other animals against health hazards, disease and other anomalies resulting from species overpopulation and significant wildlife predation. Any violation of this provision with respect to Common Properties shall constitute both a breach of these Covenants and a trespass against property owned by the Association. Since this Property is not intended to be nor is to be maintained as a wildlife sanctuary, any depletion of wildlife stock which may result from the process of planned development shall not be deemed to be a violation of this Section.

**SECTION 3-26: DRAINAGE.** The Association may establish reasonable regulations and restrictions pertaining to drainage and siltation, originating on construction sites and parking lots, porosity of pavement materials used on roadways and parking lots, and similar provisions relating to hydrological factors on the Property. See also, Section 3-2, 3-6, Section 10-19(a) and 10-24.

**SECTION 3-27: SMELLS AND ODORS.** The owner of any realty within the Property shall have the affirmative duty to prevent the release of obnoxious smells and odors from his Property which might tend to adversely affect the reasonable use and enjoyment of the lands and other interests in realty owned by adjacent and nearby Property Owners.

**SECTION 3-28: INSTALLATION OF BULKHEADS, DAMS, FILLING AND EXCAVATION OF STREAMBEDS.** No construction of piers, bulkheads or dams, or filling or excavation of stream edges, may be undertaken by any Property Owner or his agent unless such activity is Approved by the Architectural Review Board and is in conformity with Pertinent Law. The Declarant or the Association may specify that such work must be undertaken by the Association on behalf of the Property Owner(s) involved and such owners shall be assessed for such portion of the cost of the work as the Association shall determine is reasonably allocable to the Property of such Property Owner(s).

**SECTION 3-29: DUTY TO INSURE.** In order to insure that damaged or destroyed buildings can be reconstructed or cleared and landscaped in conformity with Section 3-20, each Property Owner shall have the affirmative duty to procure and maintain full replacement value casualty insurance for any townhouse or detached building owned by the Property Owner. In addition, the members of any Condominium, either directly or through a property owners association established to maintain Condominium Common Properties



shall have the affirmative duty to procure and maintain full replacement value casualty insurance on the entire building or buildings which make up the Condominium. The Association may require at any time that all or any Property Owner(s) submit a photocopy of the insurance policy or other proof that the buildings are insured in conformity with this Section.

**ARTICLE IV: SPECIAL COVENANTS PERTAINING TO OPEN SPACE, COMMUNITY OPEN SPACE AND PRIVATE OPEN SPACE**

**SECTION 4-1: OVERVIEW.** It is important to understand the relationship among the concepts of "Common Properties", "Open Space", "Private Open Space", and "Community Open Space", and in this respect it is important to distinguish the difference between what the land may be used for, who owns it, and who may use it.

Lands within Land Classes A-1, A-2, A-3 and A-4 are categorized several ways. First, the land is grouped by the generic use to which it is restricted pursuant to Section 2-1, i.e. the uses described in Land Classes A-1 (General Open Space), A-2 (Ponds), A-3 (Roads) and A-4 (Roadside Scenic Corridors). All of these categories are referred to as Open Space.

Second, the land is categorized as to whether it is owned by the Mountain Air Property Owners Association (i.e., Common Properties, Purchased Common Properties, Neighborhood Common Properties), whether it is owned in common by a small group of owners such as those in a condominium (Condominium Common Properties), or not necessarily owned in common but subject to common usage rights by Property Owners within a given area (e.g. Limited Common Properties), or whether it is owned by an individual Property Owner. All lands which are Common Properties, Condominium Common Properties, or Limited Common Properties are not necessarily Open Space and, conversely, all lands which are designated as Open Space are not necessarily Common Properties, Limited Common Properties, or Condominium Common Properties. All lands which are Common Properties (including Purchased Common Properties and Neighborhood Common Properties) are governed by the Association (*See Article X and Article XI*).

Third, the land is categorized as "Community Open Space" or "Private Open Space". Community Open Space is usable by all Property Owners, their Lessees and Guests, *see Section 12-1*, whereas Private Open Space is limited to use by the members of a given condominium, townhouse, Neighborhood District or other Property Owner Association. Community Open Space may or may not be a Common Property. *See Section 4-4*.

No property shall be dedicated as Community Open Space or Private Open Space unless it is described as "Community Open Space" or "Private Open Space" in a Recorded declaration signed and formally executed by the title owner, the declaration is accompanied by a plat prepared by a registered surveyor which plat designates Community Open Space or Private Open Space within such described area that is designated as Community Open Space or Private Open Space. Similarly, the dedication of land as Community Open Space or Private Open Space (*See Section 4-2*) does not change the ownership thereof and no land or improvement thereon becomes a Common Property unless the formalities of a Recorded assignment to the Association (in the case of Common Properties) or to a condominium or townhouse association (in the case of Condominium Common Properties or Limited Common Properties) are observed.

**SECTION 4-2: DEDICATION OF COMMUNITY OPEN SPACE AND PRIVATE OPEN SPACE.** In order to help preserve, protect and enhance the natural, scenic, aesthetic, historic and recreational resources, soils, streams, vegetation, and wildlife on the Property, the Declarant, and other owners of Property including any property owner association, may dedicate by Recorded instrument portions of their property as being

restricted to Land Class A-1, A-2 or A-4 for a minimum of twenty five years or for periods of greater durations as is specifically adopted and Recorded as to specific parcels by the owner thereof; provided, however, that no such dedication shall extend beyond the duration of these Covenants (including any extensions thereof). To further this purpose, the Declarant covenants that no Community Open Space or Private Open Space shall be subject to any charges or assessments.

**SECTION 4-3: TRANSFER OF COMMUNITY OPEN SPACE BY THE DECLARANT OR ANY OTHER PROPERTY OWNER.** The Declarant may assign, transfer and otherwise convey to the Association Community Open Space and, upon such assignment, transfer or designation, the Association shall automatically assume the obligation to maintain and protect such Community Open Space or Private Open Space in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance and this Declaration. Nothing within this Section or this Declaration places on the Declarant an affirmative obligation to designate any areas as Open Spaces and nothing within this Section or these Covenants places on the Declarant an affirmative obligation to transfer the title to any areas of Community Open Space to the Association.

Any other property owner may assign, transfer and otherwise convey to the Association Community Open Space and, if the Association chooses to accept the assignment, the Association or such owner of abutting land shall automatically assume the obligation to maintain and protect such Community Open Space or Private Open Space in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance and this Declaration.

**SECTION 4-4: MEMBERS' EASEMENT OF ENJOYMENT OF OPEN SPACE.**

**SECTION 4-4.1: COMMUNITY OPEN SPACE.** Subject to the provisions of these Covenants, the rules and regulations of the Association, and any fees or charges established by the Association, for so long as the subject parcel has been dedicated as Community Open Space, every Class "A" and "B" Member shall have an easement of access, use and enjoyment in and to the lands designated in a supplemental Declaration as Community Open Space whether title to such Community Open Space is held by the Declarant, the Association or any other Property Owner, and such easement shall be appurtenant to and shall pass with the title of every Community Dwelling Lot, Development Parcel, or Community Dwelling Unit within the Property.

**SECTION 4-4.2: PRIVATE OPEN SPACE.** Access, use and enjoyment of Private Open Space shall be available only to those Property Owners whose rights are set out in a condominium declaration, declaration of townhouse or cluster home covenants, or similar instrument which creates a common ownership interest, Neighborhood District, or common usage rights in the private open space and which sets out the rights and conditions, including any applicable fees and charges, of or for use of said Open Space. The Association shall have no right to govern the use of Private Open Space unless the owners thereof grant such right to the Association, or such rights are set forth in a supplemental declaration which respect to a Neighborhood District which contains such Private Open Space.

**SECTION 4-5: FESTIVALS IN COMMUNITY OPEN SPACE.** Subject to appropriate safety and noise control regulations established by the Association, the Association may designate one or more areas of Community Open Space for use as sites for festivals where the primary emphasis is on art, music, performing arts, dance, sports and like events.

**SECTION 4-6: PROHIBITED USES OF OPEN SPACE.** Except as provided in Section 4-5, Open Space, whether Community or Private, may only be used for facilities and uses permitted in Land Use Class A-1, A-2, A-3 and A-4 as described in Section 2-1. All Open Space shall, however, be subject to the Rights of Declarant in Section 9-6.

**SECTION 4-7: DAM SAFETY; PONDS.** Notwithstanding any language within Section 2-1 of this Article, if in the judgment of the Declarant, with respect to lands owned by Declarant, or in the judgment of the Association, with respect to lands owned by the Association, it is determined that the dam which supports any pond within the Property is unsafe or cannot be maintained with a reasonable cost, the pond or any lands within Land Class A-2 pertaining to ponds may be drained. Thereafter, the land use may by Recorded declaration be designated or redesignated by Declarant.

**SECTION 4-8: USE OF PONDS.** There shall be no swimming or ice skating allowed within Land Class A-2 unless and until such use is Approved by the Association, adequate provisions have been made by the Association to provide for the safety of those so using the Ponds, and those using the Pond have in writing expressly assumed the risk of so using the Ponds. The acquiescence of the Association with respect to any unauthorized use of the Ponds shall not be deemed to be a waiver of this Section.

**SECTION 4-9: SKATEBOARDING ON PRIVATE ROADS.** No skateboarding shall be allowed on any of the private roads within the Property unless such use is a part of a controlled event or program which has been Approved by the Association.

**ARTICLE V: SPECIAL COVENANTS APPLICABLE TO PROPERTY CLASSIFIED FOR SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL USE (B-1, B-2 AND B-3)**

**SECTION 5-1: INTENDED USE FOR SINGLE PRIVATE HOUSEHOLD AND RESIDENTIAL PURPOSES.**

- (a) All Community Dwelling Units within one of the Single Private Household and Residential Land Classes (B-1, B-2 and B-3) as described in Section 2-1 shall be used for Single Private Household and Residential Purposes as defined in (b) and (c) below.
- (b) "Single Private Household" shall mean and refer to a family or household unit blended into a single group for usual domestic purposes, including a traditional family of parents and those to whom the parents have legal duty to support and extended families related by blood or marriage, but also including three (3) or fewer companions and friends, nurses and domestic servants and their spouses, and household members not related within two degrees of consanguinity. In no event shall a "household" include more than four (4) persons who are unrelated by blood, marriage, consanguinity or adoption. A Community Dwelling Unit restricted to Single Private Household use may not be used as a "rooming" house to provide accommodations amounting to less than the entire (physical as opposed to temporal dimensions) Community Dwelling Unit to boarders, roomers or tenants who are not members of the resident "household" as defined above. The foregoing limitations on Single Private Households shall not apply to personal Guests (of the owner or lessee of the Community Dwelling Unit) staying on a temporary basis.
- (c) "Residential" (as distinguished from "business," "commerce" or "mercantile") shall mean and refer to a use and occupancy of a building as a long-term abode, dwelling or residence or use for seasonal or periodic vacations. The restriction to use for "Residential" purposes is subject to the following qualifications:
  - (1) The use of a portion of a Community Dwelling Unit as an office or art or craft studio of members of the Single Private Households shall be considered as a Residential use only if such use does not create a significant increase in traffic to and from the Community Dwelling Unit, provided that: no sign, symbol, logo or nameplate identifying a business

or professional office is affixed to or about the grounds or the entrance to the Community Dwelling Unit; the Community Dwelling Unit is only incidentally used for business or professional purposes; and the Association, after responding to one or more reasonable complaints by a neighboring Property Owner, has not expressly requested that the subject Community Dwelling Unit not be used in whole or in part as an office or studio because of auto congestion or other nuisances.

- (.) Community Dwelling Units may be used by Declarant or its agents as a model home, real estate sales office or site for an "Open House" and may be deemed a use for Residential purposes. In addition Declarant may use a unit to support rental management (including all service-related support such as laundry, maintenance and coordination of rentals).
- (3) Except as provided in Subparagraph (2) above, no Community Dwelling Unit located in Land Use Classes B-1, B-2, and B-3 may be used for "open houses" or other commercial gatherings designed to promote the resale of dwellings at any location or any product sales unless a temporary permit for such use has been Approved by the Association based upon the following criteria:
  - (i) The "open house" or other gathering as described herein may only be between the hours of 10:00 a.m. and 6:00 p.m. Monday through Saturday and 1:00 p.m. through 6:00 p.m. on Sunday;
  - (ii) The application for a written temporary approval must be made no later than seven (7) days prior to the date of the anticipated use. No approval may be granted for a period of more than two consecutive days;
  - (iii) There shall be no other temporary approval issued for the requested date in the immediate neighborhood;
  - (iv) There shall not have been any temporary approval issued for the requested Community Dwelling Unit within the previous fourteen (14) day period;
  - (v) No "open house" may be used as a device or station to promote the sale of any Community Dwelling Unit other than the one in which the "open house" is being held;
  - (vi) All signs must comply with Section 3-8;
  - (vii) Any Guests attending the open house or gathering at the Community Dwelling Unit must obtain temporary gate passes from the security office and adhere to any of the vehicular access limitations set forth and in existence; and,
  - (viii) The Property Owners requesting a temporary permit shall restrict the number of individuals present at the open house or other commercial gathering to be no greater than twenty-five (25) at any one time.
- (4) Except as provided in subparagraph (2) above, the use of a Community Dwelling Unit as a situs of work and home occupations is permitted only as an incidental use subject to the following limitations: (i) no display of products shall be visible from the street; (ii) no mechanical equipment shall be installed or used except equipment that is normally used for domestic, craft and professional purposes; (iii) no outside storage shall be used in connection with the home occupation; (iv) not over twenty-five percent (25%) of the total

actual floor area or five hundred (500) square feet, whichever is less, shall be used for a home occupation; and (v) traffic generation shall not be significantly increased.

- (5) No Community Dwelling Lot or Community Dwelling Unit restricted to Residential uses may be used as a means of service to business establishments on adjacent lots, including but not limited to supplementary parking facilities or an intentional passageway or entrance into a business house.
- (6) Parking spaces for airplanes or enclosures for airplanes may be included in any property within land classes B-1, B-2 or B-3 if designated by Declarant in the deed of conveyance.

**SECTION 5-2: OUTBUILDINGS AND CAMPING FACILITIES.** No trailer, basement, tent, shack, garage, barn or other outbuilding erected within Land Classes B-1, B-2, and B-3 shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

**SECTION 5-3: PROHIBITION OF TIME SHARING, CERTAIN MULTIPLE OWNERSHIP, AND SUBDIVISION OF RESIDENTIAL PROPERTY.** After its initial sale by the Declarant or the Owner of a Development Unit Parcel, no Community Dwelling Unit located within any area classified as B-1, B-2, and B-3 may be further subdivided by the Property Owner thereof.

No real property within Land Class B may be subdivided or directly or indirectly used to permit or effect "Time Share", "Time Share Units", "Time Share Project" or "Time Share Programs". For purposes of this paragraph, "Time Share" means a right to occupy a unit or any of several units during five or more separated time periods over a period of at least five years, including renewal options, whether or not coupled with a freehold estate or an estate for years in a time share project or a specified portion thereof, including but not limited to, a vacation license, prepaid hotel reservation, club membership, partnership, limited partnership, or vacation bond. "Time Share Unit" or "Unit" means the real property or real property improvement in a project which is divided in time shares and designated for occupancy and use. "Time Share Project" means any real property that is subject to a time share program. "Time Share Program" means any arrangement for time shares whereby real property has been made subject to a time share.

This Section shall not be construed to prohibit the ownership of real property within the Property by corporations, trusts or partnership which are not devices to effect Time Share, Time Share Units, Time Share Projects or Time Share Programs.

No Community Dwelling Lot or Community Dwelling Unit shall be owned by more than three individuals as joint tenants or as tenants in common unless such interests are acquired by operation of a will or inheritance. Unless otherwise approved by Declarant, no partnership which owns a Community Dwelling Unit or Community Dwelling Lot shall have more than three individual partners.

**SECTION 5-4: TENNIS COURTS, RACQUETBALL AND SQUASH COURTS AND SWIMMING POOLS WITHIN RESIDENTIAL LAND CLASSES.** No indoor or outdoor tennis courts or outdoor racquet sport courts may be constructed within Land Class B-1. No indoor or outdoor racquet courts may be constructed within Land Classes B-2 or B-3 unless approved by Declarant. Private swimming pools are allowed in Land Classes B-1 through B-3.

**SECTION 5-5: EXTERIOR MAINTENANCE AND REPAIR IN LAND CLASSES B-2 AND B-3.** All structures within Land Class B-2 or B-3 shall be subject to a special exterior maintenance assessment as provided in Section 10.35.A and 13-6 and shall be maintained under the direction of a Neighborhood

Committee of the Association as provided by Section 11-13, including but not limited to the following activities:

- (a) maintaining compliance with Section 3-16;
- (b) garbage and trash collection from home;
- (c) painting or staining the exterior siding and trim of Structures and maintaining the roofs of Structures;
- (d) maintaining the entrance sign to the neighborhood and common area landscaping including entrance areas, and such additional responsibilities relating to the exterior maintenance, landscaping, lighting, and related items as the Association shall direct.

In the case of a condominium within Land Class B-3, the foregoing shall be subject to the requirements of the North Carolina Condominium Act or its successor. See Section 10-35.4.2.

**SECTION 5-6: SPECIAL RESTRICTIONS AFFECTING GOLF FAIRWAY RESIDENTIAL AREAS.**

The following provisions shall apply to all Golf Fairway Residential Areas.

**SECTION 5-6.1: LANDSCAPING.** That portion of any Golf Fairway Residential Lot within thirty (30) feet of the lot line bordering the golf course shall be in general conformity with the overall landscaping pattern for the golf course fairway area established by the golf course architect. All individual lot landscaping plans must be approved by the Declarant before their implementation.

**SECTION 5-6.2: MAINTENANCE EASEMENT.** There is reserved to the Declarant a "Golf Course Maintenance Easement Area" on each Property adjacent to any golf course located in the Property. This reserved easement shall permit the Declarant to go onto any Golf Course Maintenance Easement Area. Such maintenance and landscaping may include regular removal of underbrush, trees less than three (3) inches in diameter, stumps, trash or debris, planting of grass, watering, application of fertilizer, and mowing of the Golf Course Maintenance Easement Area. This Golf Course Maintenance Easement Area shall be limited to the portion of such lots within twenty (20) feet of the lot line(s) bordering the golf course, provided, however, that the above described maintenance and landscaping rights shall apply to the entire lot until there has been filed with the Declarant a landscaping plan for such lot by the Owner thereof, or alternatively, a residence is constructed on the lot. Unless otherwise Approved by Declarant, no fences or other Structures within the Golf Course Maintenance Easement Area may be erected so as to have the effect of limiting the access of golfers to these areas. This Section shall not be construed as an affirmative covenant on the part of the Declarant, the Association or the Country Club to maintain this Maintenance Easement Area. As with all other property, the land within the Golf Course Maintenance Easement Area shall be maintained by the owner of the underlying fee consistent with the provisions of these Covenants, including without limitation, the provisions of Section 3-16.

**SECTION 5-6.3: GOLF EASEMENT.** Until such time as a residence is constructed on a lot, the Declarant reserves an easement to permit and authorize registered golf course players and their caddies to enter upon a lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass. After a residence is constructed, such easement shall be limited to that portion of the lot included in the Golf Course Maintenance Easement Area, and recovery of balls only, not play, shall be permitted in such Easement Area. Golfers or their caddies shall not be entitled to enter on any such lot with a golf cart or other vehicle, shall not spend unreasonable time on such lot, or in any way commit a nuisance while on such lot. After construction of a residence on a Golf

Fairway Residential Lot, 'Out of Bounds' markers may be placed on said lot at the expense of the Declarant.

**SECTION 5-6.4: RESTRICTIONS.** Owners of Golf Fairway property shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course or the development of an attractive overall landscaping plan for the entire golf course area. Such prohibited actions shall include, but are not limited to, such activities as the maintenance of unfenced dogs or other pets on the lot under conditions interfering with the play due to their loud barking, running on the fairways, picking up balls or other like interference with play.

**SECTION 5-6.5: ASSUMPTION OF RISK.** EACH OWNER OF PROPERTY WHICH IS WITHIN A GOLF RESIDENTIAL FAIRWAY AREA ASSUMES THE RISK OF ANY DIRECT, INDIRECT AND CONSEQUENTIAL DAMAGE TO PERSON OR PROPERTY WHICH MAY OCCUR AS A RESULT OF BEING STRUCK BY A GOLF BALL WHICH IS HIT BY A GOLFER DURING THE NORMAL COURSE OF GOLFING ACTIVITY ON THE GOLF COURSE OR WITHIN THE GOLF FAIRWAY RESIDENTIAL AREA. EACH PROPERTY OWNER, THEIR FAMILY MEMBERS AND GUEST HEREBY AGREES TO HOLD HARMLESS DECLARANT, THE COUNTRY CLUB, OR THE ASSOCIATION FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGE TO THE PROPERTY OWNER, HIS FAMILY, HIS GUESTS, OR HIS PROPERTY AS A RESULT OF BEING STRUCK BY A GOLF BALL (OR OTHER OBJECT HIT BY A GOLF BALL) PUT IN FLIGHT BY A GOLFER DURING THE NORMAL COURSE OF GOLFING ACTIVITY ON THE GOLF COURSE OR WITHIN THE GOLF FAIRWAY RESIDENTIAL AREA.

**SECTION 5-7: ENCROACHMENTS.** To the extent that any common or party wall comprising a part of any Community Dwelling Unit shall encroach upon any other Community Dwelling Unit or Community Dwelling Lot, whether by reason of any deviation from the recorded plat or Approved plans in the construction, repair, renovation, restoration or replacement of any improvement or by reason of the settling or shifting of any land or improvement, a valid easement for such encroachment shall exist; provided, however, that in the case of willful and intentional misconduct on the part of Declarant or of any Property Owner or of any contractor or subcontractor, which misconduct causes the encroachment, no easement for an encroachment shall exist.

**SECTION 5-8: INTERIOR MAINTENANCE AND CARE FOR UNITS WITHIN LAND CLASSES B-2 AND B-3.** Except to the extent such responsibility is assumed or undertaken by the Association, a Condominium Association, or other property owners association, each Property Owner within Land Classes B-2 and B-3 shall perform promptly all maintenance and repair work within his own Community Dwelling Unit, excluding any Limited Common Properties or Limited Common Elements, and shall be responsible for the damages and liabilities to adjacent Property Owners that his failure to do so may engender. Every Property Owner shall be responsible for maintaining the interior temperature of his unit sufficiently high such that water pipes located within such unit shall not be in danger of freezing.

**SECTION 5-9: BASKETBALL GOALS.** No basketball goals within Land Class B may be mounted so as to be visible from public or private roads within the Property.

**SECTION 5-10: MINIMUM SQUARE FOOTAGE.** All units within Land Class B-1 shall have a minimum of sixteen-hundred (1600) square feet of heated and finished area, exclusive of garages, decks and screened porches. The main floor (as defined by the Architectural Review Board) shall have a minimum of one thousand (1000) square feet of such heated and finished area.

**SECTION 5-11: PARKING IN LAND CLASS B-1.** Each Community Dwelling Lot in Land Class B-1 shall provide for at least two off-road parking spaces for each Community Dwelling Unit.

**ARTICLE VI: SPECIAL COVENANTS APPLICABLE TO LANDS USED FOR GUEST LODGE FACILITIES (C-1)**

**SECTION 6-1: PROHIBITION AGAINST SUBDIVISION, CERTAIN MULTIPLE OWNERSHIP, TIME SHARING AND INTERVAL OWNERSHIP OF GUEST LODGING UNITS.** No real property within Land Class C-1 shall be subdivided or directly or indirectly used to permit or effect "Time Share", "Time Share Units", "Time Share Projects", or "Time Share Programs" as those terms are defined in Section 5-3. This Section shall not be construed to prohibit ownership of Guest Lodging Units by corporations, trusts, or partnerships.

No Guest Lodging Unit shall be owned by more than three individuals as joint tenants or as tenants in common unless such interests are acquired by operation of a will or inheritance. Unless otherwise approved by Declarant, no partnership which owns a Guest Lodging Unit shall have more than three individual partners.

**ARTICLE VII: SPECIAL COVENANTS APPLICABLE TO PROPERTY USED FOR COMMERCIAL AND RECREATIONAL PURPOSES (D-1, D-2, D-3, AND D-4)**

**SECTION 7-1: LIGHTING.** In addition to the restrictions of Section 3-8, all owners of buildings, facilities and parking lots within Land Use Classes D-1, D-2, D-3 and D-4 shall design the placement and structure of all exterior lights so as to illuminate only the premises of the owner of the commercial property and avoid direct illumination of property of other adjacent owners or roadways.

**ARTICLE VIII: SPECIAL COVENANTS APPLICABLE TO UTILITY, TRANSPORTATION AND SERVICE AREAS**

**SECTION 8-1: CONDITIONAL USES FOR LAND USES E-1, E-2, E-3, E-4, AND E-5.** The Declarant, the Association, each Property Owner, and all who take lands within the Property subject to these Covenants, do covenant and agree that certain land uses, particularly those involving vital support and utility services, cannot be adequately controlled by general land use regulations but can be more effectively controlled by approaching the problems associated with the special character of each desired use; therefore, each use specified in Section 2-1 as proper for being within Land Classes E is a "Conditional Use," subject to Approval by the Architectural Review Board, pursuant to the procedures prescribed in Section 10-24, and prior to the approval of any conditional service use, the Architectural Review Board shall specify the conditions upon which the service or utility facility may be built, including but not limited to the creation, installation or placement of buffer zones, fences, shrubbery, trees, vegetation, berms, parking space, building materials and other reasonable undertakings which are deemed by the Architectural Review Board or the Association to be necessary to maintain a compatibility within and between Land Classes within the Property. Some of the standards to be considered by the Architectural Review Board in allowing conditional service and utility facilities include: the location, size, design and operating characteristics of the proposed facility; the level of noise generated by such facility; the harmony in scale, bulk, coverage, function and density-of-use characteristics of the proposed facility and utility; the generation of traffic and the capacity of surrounding street; and the necessity and desirability of providing for such facility or utility in light of benefitting the Property Owners and Property. Any grant of a specific conditional use shall be in writing, shall be Recorded with the Yancey County Registry, and shall briefly state the grounds for such grant, and shall state the conditions for such use. The provisions of the foregoing paragraph shall not apply to the airport facility which is described in Exhibit E and which may be transferred by the Declarant to the Association pursuant to Section 9-8. The Architectural Review Board may waive any provision of Article III with respect to any property within Land Use Class E.



SECTION 8-2: SPECIAL COVENANTS RELATED TO AIRPORT FACILITIES AND HELICOPTER PADS (E-5). The airport facility and any helicopter pad in Land Class E shall be operated and maintained by the Association in conformity with Section 10-25.

ARTICLE IX: RIGHTS RESERVED BY THE DECLARANT, ITS SUCCESSORS AND ASSIGNS

SECTION 9-1: OTHER RIGHTS AND RESERVATIONS. THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE SHALL NOT LIMIT ANY OTHER RIGHT OF OR RESERVATION BY THE DECLARANT WHICH IS EXPRESSLY STATED IN OR IMPLIED FROM ANY OTHER PROVISION IN THESE COVENANTS.

SECTION 9-2: NO AFFIRMATIVE OBLIGATION UNLESS STATED. ANY RESERVATION OR RIGHT OF THE DECLARANT WHICH IS STATED IN OR IMPLIED FROM THESE COVENANTS SHALL NOT GIVE RISE TO ANY AFFIRMATIVE OBLIGATION OR DUTY ON THE PART OF THE DECLARANT UNLESS EXPRESSLY STATED IN THESE COVENANTS.

SECTION 9-3: MODIFICATION AND REVISION OF THE CONCEPT RESEARCH OR MASTER PLANS. The Declarant reserves the right to modify the Concept Research Plan or Master Plan with respect to any parcel, lot or area within the Property which has not by Recorded declaration been dedicated to the Association as Common Properties or already been conveyed to a Property Owner. No implied equitable or reciprocal covenants, servitudes or easements shall arise with respect to lands retained by the Declarant by virtue of any Concept Research Plan or Master Plan. The right of the Declarant to modify the Concept Research Plan shall not include the right to do any act inconsistent with respect to these Covenants or any supplemental declaration of covenants, conditions and restrictions which may hereafter be filed by the Declarant with respect to the Property.

SECTION 9-4: CERTAIN UTILITY, COMMUNICATIONS, TRANSPORTATION AND PUBLIC CONVENIENCE EASEMENTS. Notwithstanding the restrictions established by any Land Use Class, and unless expressly waived by Declarant, the Declarant reserves exclusively unto itself, a perpetual, alienable and releasable utility easement and right in, on, over and under the Property to erect, maintain, operate and use poles; wires; cables; switches; computers; receptacles; satellite transmission earth stations; conduits; directional and informational signs; drainage ways; sewers; irrigation lines; pipelines; wells; antennas; receivers; garbage collection facilities; pumping stations; tanks; water mains and other suitable equipment including microwave and satellite stations for the conveyance, transmission or use of video, voice, facsimile and data communications, electricity, gas, sewer, water, drainage or other public conveniences, utilities and communication facilities on, in or over those portions of such property as may be reasonably required for utility line purposes; provided, however, that unless permission has been received from the owner of the subservient parcel:

- (a) no utility easement shall run across any portion of the Property which is covered by an existing building or across any area for which written approvals to construct a building thereon have been obtained within the past year from the Architectural Review Board;
- (b) such easement or installation of utilities therein or thereon shall be maintained in as attractive a state as is reasonably feasible;
- (c) the Declarant, without obligation, reserves the right to transfer such utilities and easements, in whole or in part, to the Association, at which time the Association shall be responsible for and shall have the obligations to operate and maintain such utility easements or corridors;

- (d) the Declarant, without obligation, reserves the right to transfer such utilities and utility easements and easements of access to such utility and utility easements, in whole or in part, to another entity, whether public or private, which shall undertake to provide such utility service.

No utility, communications, public convenience or transportation facility described in this Section may be installed or operated unless such facility is Approved by Declarant. The Declarant or its assigns may charge reasonable fees for the provision of such utility, communications, public convenience or transportation facilities or services.

Declarant reserves the right to irrigate the front thirty-five (35) feet of any Community Dwelling Lot in Land Use Classes B-1 and B-2.

In order to protect the stability of the existing and yet-to-be-constructed roadbeds within the Mountain Air Community and to enhance the safe use of these corridors, Declarant reserves and shall have an easement over all lands within the Property to provide subadjacent and lateral support to the roadbeds, including but not limited to cut and fill, and to provide maintenance of the roadbeds and the areas which provide support or drainage, including but not limited to cut and fill. In addition, Declarant shall have an easement to maintain areas adjacent to roads from which debris may fall or slide into the roadway. This reservation and easement does not create in Declarant an obligation to maintain said roadbeds or roadsides.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Any material disturbance to the grounds of any Property Owner or Common Properties caused by such utility installation shall be repaired and said grounds returned to as reasonable a reconstruction of their prior condition as possible or feasible by the Declarant. The Declarant further reserves to itself, its successors and assigns the right to locate wells, pumping stations, siltation basins and tanks within the Property in any Common Property, or upon any other property designated for such use on the applicable plat of the property, or to locate same upon any property with the permission of the respective Property Owner.

**SECTION 9-5: BRIDGES, WALKWAYS AND DIRECTIONAL SIGNS.** Within each parcel of land within the Property, the Declarant reserves and shall have a twenty (20) foot easement along the roadside and back (i.e. opposite the roadside) property line of such parcel for the purpose of constructing bikeways, cross country skiing trails, moped or golf cart trails, nature trails, directional signage, jogging paths, bridges and other passageways to interconnect with major recreational, commercial, residential and lodging facilities on the Property.

**SECTION 9-6: EASEMENTS IN COMMUNITY OPEN SPACE AND COMMON PROPERTIES.** The Declarant may make access trails or paths through Common Properties and Community Open Space for the purpose of permitting recreation, picnicking, health and fitness exercise, cross country skiing, observation and study of wildlife, hiking and riding, to identify sites for and to construct helicopter landing pads, to erect small signs through the Community Open Space designating points of particular interest and attraction, to irrigate the Open Space and Common Properties including the use of treated sewerage effluent; planting flowers, shrubbery and trees, and taking such other steps as are reasonable, necessary and proper to further the community use and enjoyment of the Community Open Spaces; provided, however, there is no affirmative obligation on the Declarant to perform such functions, and provided, further that any trails, facilities, landscaping, signage, or other improvements which may be established by Declarant pursuant to this Section shall be thereafter maintained by the Association.

**SECTION 9-7: ENFORCEMENT.** The Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to complete compliance to the terms of this Declaration or to prevent the violation or breach in any event. Violators shall be personally obligated to reimburse the Declarant in full

for all its direct and indirect costs or damages resulting from the violation or breach, including but not limited to legal fees and expenses incurred by the Declarant and/or the Association in maintaining compliance with this Declaration, and such obligation shall also constitute a lien upon the property of any Property Owner in accordance with Section 15-1.

The Declarant and the Association also retain an easement and license to enter upon any part of the Property, after reasonable notice, to engage in such repair, maintenance, upkeep or reconstruction as may be necessary to enforce compliance with this Declaration, and the full cost of such maintenance, repair, upkeep or reconstruction shall constitute a lien upon the Property Owner's property and shall be a personal obligation of the Property Owner in accordance with Sections 15-1.

**SECTION 9-8: THE DECLARANT'S RIGHT TO CONVEY CERTAIN PROPERTIES AND RIGHTS TO THE ASSOCIATION; PROPERTIES DONATED BY THE DECLARANT; LIMITED REVERSION OF PROPERTIES DONATED BY DECLARANT. THE DECLARANT, ITS SUCCESSORS AND ASSIGNS, MAY AT ITS OPTION AND WITHOUT OBLIGATION TO DO SO, CONVEY, WITH RESPECT TO PROPERTIES IT OWNS, OR ALLOW TO BE CONVEYED, WITH RESPECT TO PROPERTY OWNED BY OTHERS, TO THE ASSOCIATION, AT NO COST OF ACQUISITION TO THE ASSOCIATION, ANY OR ALL OF THE FOLLOWING LANDS, EASEMENTS, OR IMPROVEMENTS THEREON, WHICH ARE DESCRIBED BELOW AND THE ASSOCIATION MUST ACCEPT SUCH TRANSFER IF MADE.**

- (a) AN EIGHTEEN HOLE GOLF COURSE, THE CLUBHOUSE, THE ASSOCIATED MAINTENANCE FACILITIES AND THE ASSOCIATED RECREATIONAL FACILITIES WHICH MAY BE ESTABLISHED BY DECLARANT PURSUANT TO SECTION 9-15 WITHIN THE LANDS DESCRIBED IN EXHIBIT D, PROVIDED THAT SUCH TRANSFER MAY NOT OCCUR UNTIL AFTER TWO HUNDRED (200) COMMUNITY DWELLING UNITS OR COMMUNITY DWELLING LOTS HAVE BEEN TRANSFERRED TO PROPERTY OWNERS BY DECLARANT OR UNTIL 1999, WHICHEVER IS EARLIER, AND PROVIDED THAT SUCH TRANSFER MUST BE APPROVED BY THE BOARD OF DIRECTORS OF MOUNTAIN AIR COUNTRY CLUB, INC., ITS SUCCESSORS AND ASSIGNS.

UNLESS SUCH TRANSFER OCCURS BY RECORDED DEED, NEITHER THE ASSOCIATION NOR ANY PROPERTY OWNER SHALL HAVE ANY INTEREST IN OR RIGHT TO USE ANY OF THE LAND OR FACILITIES DESCRIBED IN EXHIBIT D UNLESS SUCH INDIVIDUAL BECOMES A MEMBER OF THE COUNTRY CLUB (WHICH IS A DIFFERENT ENTITY THAN EITHER THE MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION OR THE MOUNTAIN AIR DEVELOPMENT CORPORATION), OR UNLESS OTHER USAGE RIGHTS ARE SUBSEQUENTLY EXPRESSLY GRANTED TO EITHER THE PROPERTY OWNER OR THE ASSOCIATION.

- (b) ANY ROADS WITHIN THE PROPERTY AND ANY ROADSIDE SCENIC CORRIDORS.
- (c) THE AIRPORT FACILITY DESCRIBED IN EXHIBIT E. (See Section 8-2, 10-25).
- (d) WATER DISTRIBUTION, STORAGE AND TREATMENT SYSTEM, WASTEWATER COLLECTION SYSTEM WITH PUMPS, WASTEWATER TREATMENT WORKS AND/OR DISPOSAL FACILITIES TO PROVIDE WATER AND SANITARY SEWER DISPOSAL TO SERVE THE PROPERTY. (See Section 10-17.1).
- (e) ANY OTHER LANDS WITHIN LAND CLASS A, D-1, D-2, D-3, D-5 AND E WHICH ARE OWNED BY DECLARANT.

Unless otherwise agreed upon by the Association all transfers made pursuant to this Section shall be "subject to" any mortgages, deeds of trust, contract obligations, usage rights previously conveyed to third parties, and covenants and restrictive covenants of record to which the property is subject at the time of conveyance, but although such land and improvements may serve as security for such underlying indebtedness, the Association as grantee shall not be liable for any indebtedness on the transferred property outstanding as of the time of transfer and, after the time of transfer, Declarant shall have no authority to increase the amount of indebtedness to which the transferred property is subject. Declarant shall, however, have the right to substitute or add new mortgages thereon, provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any said mortgages.

Upon the transfer of such properties, the properties shall become Common Properties, and the Association shall have the obligation to maintain the transferred properties in a manner and to the degree consistent with a clean, safe, high quality, aesthetically attractive and functionally convenient community, and in a manner and degree consistent with the restrictions and obligations set forth in the instrument of conveyance and this Declaration.

Unless this right is relinquished in writing by Declarant, no Properties Donated by Declarant, and no property described within subparagraph (a) of this Section above, may be sold, leased, assigned, hypothecated, or pledged by the Association without the consent of Declarant, which consent may be withheld for any reason. The Declarant may also assign to the Association any right retained or reserved by the Declarant pursuant to these Covenants. The Association shall accept such assignment of rights and shall exercise the rights in furtherance of its responsibilities pursuant to Article X of these Covenants for the benefit of all Property Owners, or to give effect to the intent of Declarant as established in the Recitals of these Covenants. Except as provided in Section 10-29, the Association may not thereafter convey these rights to a third party.

Unless this right is relinquished in writing by Declarant, the Association may not purchase Purchased Common Properties or own or lease land or facilities not on the property unless such action is Approved by Declarant. See Sections 10-6 and 10-7.

Unless this right is relinquished in writing by Declarant, if Declarant or Mountain Air Country Club, Inc, their successors and assigns, convey the club house facilities described in (a) above to the Association at no charge to the Association, the Declarant reserves the right (but not the obligation) to lease from the Association at the discretion of the Declarant, on a quarterly basis, at the annual rate of Five Dollars (\$5.00) per square foot per year for a period of up to fifteen (15) years (with an upward annual adjustment tied to the Consumer Price Index), from the date of such transfer, any portion of the building which is then being used by the Declarant for undertaking its real estate marketing, project administration, country club and Association management obligations with respect to the Mountain Air Community. After said fifteen (15) year period, the Declarant may lease said space from the Association at a reasonable market rate determined by the Declarant and the Association. The Association and Declarant may offset rents charged by the Association against fees and expenses payable to Declarant in conjunction with the activities of Declarant as a contractual manager of the Association.

**SECTION 9-9: USE OF TRADEMARK.** Each Property Owner or Lessee, by acceptance of a deed to any lands, tenements or hereditaments within the Property hereby acknowledges that "Mountain Air" as used in the following manner "Mountain Air Development Corporation", "Mountain Air Realty", "Mountain Air Community", "Mountain Air Utility Company" and "Mountain Air Country Club" is a service mark of the Declarant. Each Property Owner or Lessee agrees to refrain from misappropriating or infringing these service marks or trademarks.

**SECTION 9-10: SUBDIVISION AND RE-PLATTING OF PROPERTY.** Notwithstanding the provisions of Section 3-23, the Declarant expressly reserves unto itself, its successors or assigns the right to re-plot any

two or more or more adjacent lots into one (1), or to subdivide one (1) or more lots which are owned by the Declarant into two or more smaller lots, and the Declarant may take such other steps as are reasonably necessary to make such re-platted lot(s) suitable and fit for use for a structure or structures permitted under its Land Use Class as if originally platted as one parcel, such steps including but not limited to the relocation of easements, walkways, bike trails, nature trails and rights-of-way to conform to the new boundaries of said re-platted lots, provided that no lot originally shown on a Recorded Development or Survey Plat is reduced to a size less than ninety percent (90%) of the smallest lot in the original recorded subdivision plat.

**SECTION 9-11: RECORDING OF ADDITIONAL RESTRICTIONS ON LAND USE BY THE OWNER THEREOF.** For so long as Declarant retains ownership of land within the Property, no Property Owner may impose additional restrictive covenants on any lands within the Property beyond those contained in these Covenants without the consent of the Declarant. The Declarant may impose additional restrictive covenants on land then owned by the Declarant without the consent of any other owner or the Association, but such additional Declarations of Land Use Restrictions shall be consistent with the burdens and benefits established by these Covenants.

**SECTION 9-12: RIGHT TO APPROVE CONDOMINIUM AND PROPERTY OWNERS ASSOCIATION DOCUMENTS.** No condominium declaration, declaration of covenants, conditions and restrictions, and no Recorded instrument giving rise to creation of a Property Owners Association the obligations to which run with lands within the Property shall be effective until all legal documents associated therewith have been Approved by Declarant as being compatible and integrated with these Covenants. A reasonable charge for cost of legal review of such documents may be charged by Declarant to the entity which seeks to file such documents.

**SECTION 9-13: LIMITED RIGHT TO AMEND COVENANTS.** The Declarant specifically reserves to itself, its successors and assigns the limited right to amend this Declaration on its own motion from the date hereof until January 1, 2010, solely for the purpose of making technical changes to eliminate or clarify conflicting provisions, or adding new Land Use Class categories and special covenants and assessment provisions and restrictions therefor, so long as the amount of assessments or obligations of such existing Members is not raised or changed in any manner that would substantially or materially adversely affect such Members.

In addition, until January 1, 2010, Declarant reserves the right, and the irrevocable power coupled with an interest, to make changes in these Covenants, in order that: (a) clearer title can be conveyed to Property Owners, (b) any restraints on alienation adversely affecting the issuance of, or cost of, title insurance be removed at the discretion of the Declarant; (c) these Covenants may qualify real property within the Property for any state or federal loan or loan guarantee program, such as, but not limited to those which might be established by the Federal National Mortgage Association (FNMA), the Farm Home Administration, the Federal Housing Administration, and their successors; (d) these Covenants may conform to the requirements of the Federal Interstate Land Sales Disclosure Act; (e) these Covenants may make appropriate changes which may be reasonably necessitated by amendments to the North Carolina Condominium Act, the North Carolina Time Share Act (if applicable), North Carolina recording statutes, or their successors; (f) Declarant may waive all or a part of any right or reservation retained by Declarant in these Covenants.

**SECTION 9-14: ACCESS AND USE OF COMMON FACILITIES BY CERTAIN ADJACENT LANDOWNERS.** See Section 10-34 for the Right Reserved by Declarant to allow property owners within the tracts described in Exhibits B and C to use recreation facilities within Common Properties upon the same terms and conditions that they are made available to Members of the Association.

SECTION 9-15: USE OF ENJOYMENT OF COMMON AREAS BY DECLARANT AND COUNTRY CLUB MEMBERS. The Declarant hereby reserves an easement for the use and enjoyment of all Community Common Properties. In addition, the Declarant reserves the right: (1) to establish a country club facility on the Property comprised of members which, although such country club itself will be a Member of the Association, these members of the country club and their guests may or may not be Members of the Association, and (2) to provide to the country club and its members the right to use roads within the Mountain Air Community which are Common Properties consistent with the provisions of Section 12-2.

SECTION 9-16: TRANSFER FEE. Contemporaneously with the filing of this Declaration, Declarant has irrevocably dedicated or committed to dedicate substantial acreage (in excess of sixty (60) acres of land) for use within Land Use Classes A and E. This commitment on the part of Declarant enhances the beauty, value, quality, use and enjoyment of the overall Property and represents a benefit to all Property Owners. These commitments represent significant long term capital investments on the part of Declarant, and have required and will require substantial ongoing expense throughout the development cycle on the part of Declarant. Furthermore, the Declarant has created and compiled in-depth and sophisticated private land use and zoning instruments manifested in these Covenants which are designed to protect the mountain atmosphere, and ongoing appreciation, use and enjoyment of the Property. In addition, the Declarant will incur considerable expense promoting the overall exposure of the Property, which promotion will benefit not only the lands owned by Declarant but also all other Property Owners. Therefore, in order to offset and recover some of these past, present and future capital outlays and expenses which benefit all Property Owners even after the development cycle has ended, there shall be imposed on each sale of property within the Property, after its initial sale or assignment by Declarant, a transfer fee payable by the seller to Declarant in the amount of one-quarter of one percent (.25%) of the sales price (including cash received by seller, debt instruments issued by the buyer to the seller, and any other consideration received by the seller) of the Property. No transfer fee shall be paid, however, with respect to property which is transferred by will or by operation of the laws of descent and distribution, or by gift to a close family member, or pursuant to a mortgage foreclosure. Such transfer fee shall be paid at the time of the closing of the sale transaction and, if the obligation is not paid, the obligation by operation hereof shall be secured by a lien upon the property transferred. See also section 13-9.

**PART THREE: THE MOUNTAIN AIR PROPERTY OWNERS  
ASSOCIATION, INC.**

**ARTICLE X: CREATION AND FUNCTIONS OF THE MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION,  
INC.**

**SECTION 10-1: CREATION OF THE MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC.** Prior to any conveyance or lease of any Community Dwelling Lot, Community Dwelling Unit, Development Unit Parcel, Guest Lodging Unit, Professional Service Unit, Retail Unit or any other lands or improvements with the Property, or any other lands or improvements within the Property, the Declarant shall cause to be incorporated, under the laws of North Carolina, a nonprofit corporation called The Mountain Air Property Owners Association, Inc. (the "Association") and, also prior to the conveyance or lease of any lands or improvements within the Property, the Declarant shall cause the Articles of Incorporation of the Association to be Recorded.

The Association, its successors and assigns shall be considered: (1) assignees of the Declarant; (2) as the trustee of the Property Owners, their successors and assigns with respect to the Functions specified herein and Common Properties; (3) by virtue of the rights and obligations assigned and assumed by the Association herein, as a real-party-in-interest under these Covenants; and, (4) as a third-party beneficiary under these Covenants. The Association and its successors and assigns shall have standing and authority at law or in equity, to carry out and enforce these Covenants or any supplemental Declaration made pursuant to these Covenants.

**SECTION 10-2: LIMITATIONS ON LIABILITIES, DUTIES AND OBLIGATIONS.** The Association shall strive to carry out and put into effect the Functions and services specified or reasonably implied in this Declaration; however, the Functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association with due consideration given to the quantum of reserves and revenues available to the Association, and the relative demands upon the resources which the Association can utilize to execute the Functions. Functions for which the Association "shall" be obligated shall have priority over Functions which the Association "may" perform.

**THE DECLARANT, AND THE ASSOCIATION, THEIR DIRECTORS AND OFFICERS SHALL NOT BE LIABLE TO ANY PROPERTY OWNER, THEIR LESSEES AND GUESTS FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY RULE OR REGULATION PROMULGATED PURSUANT TO THESE COVENANTS IN GOOD FAITH AND WITH REASONABLE CARE.**

**SECTION 10-3: NEW FUNCTIONS.** The Association may perform other Functions not in this Declaration so long as: (1) the Board of Directors specifically finds that such function will likely benefit the Property by improving or maintaining its economic, environmental, commercial, aesthetic, cultural or historical value, or enhance the use and enjoyment of the Property; and (2) the commitment to provide for such new Function is approved by an affirmative vote of the Board of Directors of the Association, and (3) the commitment to provide for such new Function is approved by the Members pursuant to a Mail Referendum.

**SECTION 10-4: OWNERSHIP OF COMMON PROPERTIES.** The Association shall be authorized to own Common Properties and equipment, furnishings and improvements necessary to carry out its Functions pursuant to these Covenants.

**SECTION 10-5: ACCEPTANCE OF PROPERTIES DONATED BY DECLARANT.** The Association shall be obligated to accept and assume responsibility for maintaining those lands and facilities described in Section 9-8 if and when such Properties are conveyed by the Declarant to the Association. See also Section 4-3.

**SECTION 10-6: OWNERSHIP OF PURCHASED COMMON PROPERTIES.** Subject to the provisions of Section 9-8, the Association shall be authorized to purchase and own Purchased Common Properties and Neighborhood Common Properties.

**SECTION 10-7: OWNERSHIP OR LEASE OF LAND OR FACILITIES NOT ON THE PROPERTY.** Subject to the provisions of Section 9-8, the Association may acquire and own any land or facilities not located on the Property so long as such land or facilities are necessary to carry out the authorized Functions of the Association which, in the discretion of the Directors of the Association, will benefit the Property by enhancing its use and enjoyment of its commercial, cultural, economic, historical, environmental or aesthetic value.

**SECTION 10-8: POWER TO MORTGAGE AND PLEDGE.** The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge designated percentages of the revenues of the Association as security for loans made to the Association in performing its authorized Functions.

**SECTION 10-9: PROPERTY MAINTENANCE FUNCTION.** Subject to the limitations provided in Section 10-2, consistent with the standards set forth in Section 3-16, and in addition to the requirements of Section 10-25, the Association shall provide for: the care, operation, management, maintenance, repair and replacement of all Common Properties, including, if any, parking areas, roads, walks, airport facilities (including runways), drives, security gates, signage, lighting, malls and other similar Common Properties, as necessary for their customary use and enjoyment; maintenance and care of all Community Open Space or unimproved areas included in the Common Properties, and of plants, trees, shrubs and wildlife in such Open Space or unimproved areas; maintenance of lighting provided for transportation corridors, parking areas, walks, drives, fountains, nature trails bikeways, waterways and other similar Common Properties; maintenance of other areas as may be necessary for access to the boundary or for full utilization of any land or any improvements within the Property.

If any Common Properties consist of only a portion of, or defined space within, a building or other improvement owned by the Declarant, and such space is not subject to a written lease between the Declarant and the Association, the Association shall as a part of this Function be obligated to and shall provide for the care, operation, management, maintenance and repair of said defined space, within the building or other improvement and shall be obligated to and shall bear and pay to the Declarant a proportionate share of the Declarant's costs and expenses relating to the building or improvement as a whole shall be determined by the Declarant based on the actual amounts of such costs and expenses relating to the building as a whole multiplied by the ratio of the number of square feet of floor area of said defined space within the building or improvement to the number of square feet of floor area of the entire building or improvement.

**SECTION 10-10: MAINTENANCE OF PURCHASED COMMON PROPERTIES.** The Association shall have the obligation to maintain, repair and otherwise care for Purchased Common Properties consistent with Section 10-9.

**SECTION 10-11: OPERATION FUNCTION.** Consistent with Pertinent Law and the provisions of these Covenants, the Association may perform all Functions which are not being performed by a governmental body which may be reasonably necessary or desirable to keep or maintain the Property as a safe, attractive, desirable community.



**SECTION 10-12: CONTROLLED ACCESS AND COMMUNITY PROTECTION FUNCTION.** To the extent not provided by public, private or volunteer police/sheriff or fire departments, the Association may provide security and fire protection within the Property and provide and maintain a fire and watch system which may include periodic fire prevention inspections and equipment certifications, cable, microwave, telephone or radio-based fire monitoring and television security electronics which do not unreasonably offend the privacy of the Property Owners, the Declarant or their Residents, Guests, Employees or Invitees.

NEITHER THE ASSOCIATION, NOR THE DECLARANT, SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NOR DO DECLARANT OR THE ASSOCIATION REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEMS, BURGLAR ALARMS OR OTHER SECURITY OR SAFETY SYSTEMS WILL IN ANY CASE PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEMS ARE DESIGNED OR INTENDED. THE ASSOCIATION AND DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, RELATIVE TO ANY FIRE OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY. IN ADDITION, DECLARANT AND THE ASSOCIATION AND THEIR AGENTS DO NOT REPRESENT AND DO NOT WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM CHOSEN OR INSTALLED MAY NOT BE COMPROMISED OR CIRCUMVENTED OR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE.

**SECTION 10-13: TRANSPORTATION FUNCTION.** The Association may own, lease, care for, operate, maintain, repair and replace or otherwise provide for a transportation system between the major commercial, residential, recreational, educational and group meeting facilities located on the Property and within Yancey County. Such transportation system may be linked with other transportation systems which provide access to other parts of neighboring towns. The Association may charge such user fees as may provide optimum revenues to assist in defraying costs for the purchase, operation and maintenance of a transportation system.

The Association may establish any fee or toll for use of roadways belonging to the Association; provided, however, that such fee or toll shall be limited to an amount which, when combined with a portion of the total Annual Assessments, generates sufficient sums to the Association to cover the cost of the operation of every road entry control security station, to repair, rehabilitate, resurface and otherwise maintain said roadways, and to provide otherwise for security reasonably related to use of roads and security risks arising from illegal acts of roadway users on or off the roadways.

In addition, the Association shall have the power to protect the use and enjoyment of the roadways owned by the Association, including but not limited to restrictions on the types, sizes and weights of vehicles permitted to use roads, use of the roads during ice and snow storms, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. Restrictions on the use of the private roads may be more restrictive than the laws of any state or local government having jurisdiction over the Property. The Association may prohibit or regulate the entry into and use within the Property of excessively noisy vehicles and vehicles which in the judgment of the Association are likely to damage the terrain or landscape, including but not limited to two- and three-wheeled motorcycles, snowmobiles, and off-road recreation vehicles.

The Association shall have the authority to provide for snow removal on public roads and Common Properties within the Property. The Association shall also maintain all directional signs within the Property and shall have the authority to establish directional signs where appropriate.

In order to protect the stability of the roadbeds within the Mountain Air Community and to enhance the safe use of these corridors, the Association shall have an easement over all lands within the Property to provide subadjacent and lateral support to the roadbeds and to provide maintenance of the roadbeds and the areas (including but not limited to cut and fill areas) which provide support or drainage. In addition, the Association shall have an easement to maintain areas adjacent to roads from which debris may fall or slide into the roadway.

**SECTION 10-14: RECREATION AND FESTIVAL FUNCTIONS.** In order to promote the use and enjoyment of the Property, the Association may provide limited year-round sports, recreation, festival and adult education programs of suitable variety and such miscellaneous equipment as may be necessary therefor.

**SECTION 10-15: MARKETING FUNCTION.** In order to establish, preserve, enhance or maintain the economic value or maximum use and enjoyment of the Property as a whole, the Association may provide a suitable and continuing program to promote the Property locally, nationally and internationally, as a desirable country club community. Such program may include, but not be limited to: stimulating and coordinating major events, including festivals and sports competitions; advertising and placing articles in news media; involvement in travel industry and the management training and development industry; encouraging responsible groups to hold conferences, training sessions and meetings within the Property; and publishing a newsletter. All of such functions may be carried on separately or jointly with other local, regional or national organizations, corporations or associations, including cooperating in joint programs with other Western North Carolina accommodation services. The Association may, to the extent possible, undertake its obligations hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the state or local area tourism industry, and shall pay what the Association determines as an appropriate fair share of the costs and expenses of promotional activities of any such organizations. Notwithstanding any of the foregoing, any marketing activity undertaken by the Association pursuant to this paragraph must be Approved by Declarant.

**SECTION 10-16: ACCESS FUNCTION.** In the event that a national or regional energy shortage or other condition makes it difficult for Property Owners, their Lessees or Guests to obtain access to the Property by conventional modes or automobile or airline traffic, the Association may engage in such activities, cooperative or otherwise, which will reasonably enhance the possibility or feasibility or providing other modes of transportation to the Property.

**SECTION 10-17: SOLID AND ORGANIC WASTE COLLECTION FUNCTION.** In the absence of or in lieu of, provision of such services by a governmental body, the Association may provide for collection and removal of all solid and organic waste within the Property. The Association may solicit funds for and may otherwise engage in research and feasibility studies of the possibility of using the solid or organic waste as a fuel for burning or as a feedstock for the production of ethanol, methanol or methane. If in the discretion of the Board of Directors such energy production is cost efficient, can be done in a manner which does not create environmental, visual or olfactory pollution, and if such energy production is necessary or beneficial to the survival or maximum use of the Property, the Association may engage in such energy production.

**SECTION 10-17.1: DIVISION OF ENVIRONMENTAL MANAGEMENT.** Upon the dedication and transfer of the ownership and control of the wastewater treatment collection disposal facilities described in Section 9-8(d) in conformity with applicable rules and regulations of the Division of Environmental Management, the Association and Declarant shall request appropriate permits to operate said facilities

from the North Carolina Division of Environmental Management. Said facilities shall be on Common Property, shall be maintained as a common expense by a separate fund created in each annual budget for this purpose apart from other routine maintenance and operations expenses, and shall receive the highest priority for expenditures by the Association except for federal, state and local taxes, and insurance. See also section 13.7.

If a wastewater collection system and wastewater treatment and/or disposal facility provided by any city, town, village, county, water and sewer authorities, or other unit of government shall become available to serve the development, the Association shall take such action as is necessary to cause the existing and future wastewater of the development to be accepted and discharged into said governmental system and shall convey or transfer as much of the disposal system, and such necessary easements as the governmental unit may reasonably require as a condition of accepting the development's wastewater. Notwithstanding the foregoing, the Association shall not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of the disposal system until a permit has been issued to the Association's successor. Similarly, the Association shall not enter into a volunteer dissolution without first having transferred its disposal system to some person, corporation or other entity acceptable to and approved by the North Carolina Division of Environmental Management (or its successor) by the issuance of a permit.

This Section 10-17.1 and Section 13-7 shall no longer be effective if the North Carolina Division of Environmental Management shall cease to exist and no successor is established with the authority and responsibility to issue the permits required by this Section.

**SECTION 10-18: DOMESTIC ANIMAL CONTROL FUNCTION.** The Association may provide regulations, manpower and funds to enforce pet control in a manner consistent with Section 3-15. The Association may exclude pets from Common Properties and other public areas. The Association may but shall not be obligated to, provide reasonable kennel facilities for the keeping and care of Property Owners', Lessees', and Guests' dogs or for the orderly confinement or demise of stray animals in cooperation with an animal humane society. The Association may capture any animal in violation of Section 3-15 and may charge the owner or keeper thereof a fee reasonably related to the cost incurred by the Association in enforcing Section 3-15.

**SECTION 10-19: RESOURCE PROTECTION FUNCTIONS.** The Resource Protection Functions of the Association shall be as follows provided, however, that none of the following Resource Protection Functions shall apply to any lands or improvements within Land Classes D-5 and E-5:

- (a) Drainage Control Function. The Association may promulgate, prescribe and amend from time to time, reasonable standards and regulations for drainage control to minimize the ecological damage which would tend to result from any grading, paving, landscaping, clearing or vegetation, excavation, burning, application or discharge of chemicals and nutrients, construction or demolition activity on the Property.
- (b) Environmental Hazard Function. The Association may promulgate, prescribe and amend from time to time, reasonable rules and regulations which shall govern activities which may be environmentally hazardous, such as the application or discharge of fertilizers, pesticides and other chemicals.
- (c) Insect, Reptile and Woods Fire Control Function. To implement effective insect, reptile and woods fire control, the Association or its agents have the right to enter upon any property for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other growth, removing trash or dispensing pesticides.

- (d) Wildlife Function. The Declarant intends that the Property is to be developed and maintained for the principal purpose of accommodating human uses and that the Property is not intended to be nor is to be maintained as a wildlife sanctuary; nonetheless, the Association may undertake reasonable measures to protect or replenish species of wildlife that can be expected to adapt to man's presence on the Property, particularly in Community Open Space areas, and the Association shall undertake to enforce the prohibitions of Section 3-25 against willful destruction of important species of wildlife that can be expected to adapt to man's presence in the area. The Association may also undertake to restock fish populations in the ponds and streams within the Property, if any.
- (e) Hazardous Waste Function. In addition to the requirements for solid waste management and for disposition and control of hazardous wastes as provided by Pertinent Law, the Association may from time to time establish appropriate, reasonable regulations and controls designed to reduce the likelihood that noxious and hazardous wastes may seep into the water table or into any ponds which are or may in the future be located on the Property.
- (f) Environmental Monitoring Function. The Association may promulgate, prescribe and amend from time to time, reasonable rules and regulations designed to protect air and water quality within the Property, including but not limited to regulation of (or preventing the) use of fireplaces and/or requiring the installation of such devices as spark control devices and catalytic converters to reduce emissions and enhance safety. The Association may monitor air and water quality within the Property to determine environmental trends and to detect violation of the Association's rules and regulations as well as violations of local, state and federal pollution laws.

**SECTION 10-20: ENFORCEMENT OF COVENANTS FUNCTION.**

- (a) If any Property Owner fails to maintain any Undesignated Land, Development Unit Parcel, Condominium Common Property, Limited Common Elements, Community Dwelling Lot, Community Dwelling Unit, Guest Lodging Unit, Retail Unit, Restaurant Unit, Private Open Space or other Structure, facility or lands within the Property, or fails to perform any acts of maintenance or repair required under these Covenants to be performed by said Property Owner, the Association may provide exterior maintenance and repair upon such Property and improvements thereon. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any other property. The cost of such emergency exterior maintenance and repair shall be assessed against the Property Owner, shall be a lien on the subject property and an obligation of the Property Owner and shall become due and payable as set forth in Sections 15-1 and 15-4. For the purpose of performing the emergency exterior maintenance authorized by this Section, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Property Owner, to enter upon the respective property during reasonable hours. The Association is given an irrevocable license or easement over all the Property to inspect in order to determine whether any repair is necessary under this Section.
- (b) THE DECLARANT, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.
- (c) Whenever the Association or the Declarant undertakes, pursuant to these Covenants, to correct, repair, clean, preserve, clear out or perform any action on the property or on easement areas

adjacent thereto, entering the property and taking such action shall not be a trespass and a license or easement to enter is hereby granted by any Property Owner who takes subject to these Covenants.

- (d) The Association shall respond to complaints received as to violations of the Covenants and shall inform the violators of such complaint. If the violation is not expeditiously terminated, the Association may engage legal counsel to bring an appropriate action at law or in equity, including any appeals, to enforce these Covenants. After final adjudication, violators shall be obligated to reimburse the Association in full for all its direct and indirect costs including but not limited to legal fees and expenses incurred by the Association in maintaining compliance with these Covenants.
- (e) The Association may suspend the rights of enjoyment in Common Properties of any Member, or Lessee or Guest of any Member, for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days next following the cessation of any violation for any infraction of its published rules and regulations, provided that any suspension for either nonpayment of any assessment or breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment or to abide by such rules, and provided further that the Association shall not suspend the right to use the roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use.
- (f) See Section 10-18 pertaining to control of animals.

**SECTION 10-21: CENTRAL IDENTIFICATION FUNCTION; NUMBERING SYSTEM; DIRECTIONAL SIGNAGE.** The Association may make available to Property Owners and Lessees and Guests of businesses within the Property a central identification card or vehicle sticker function, which may provide for the issuance of an identification card to overnight Guests, Employees, Property Owners and Lessees.

In addition, the Association may establish a system for numbering and directional signage for all addresses within the Property so as to minimize the likelihood of confusion to community guests, public safety officers and postal carriers who are attempting to locate buildings or units within the Property.

**SECTION 10-22: INSURANCE FUNCTION.** In order to protect the financial integrity of the Association so that it may carry out its Functions, subject to Section 10-2, the Association shall in its name keep in full force and effect at all times at least the following insurance coverage:

- (a) Casualty insurance with respect to all Common Properties and Purchased Common Properties including all improvements thereon, insuring such facilities for the full replacement value thereof, including coverage for fire and extended coverage, vandalism, malicious mischief and Acts of God, and, if available, coverage for soft costs such as media and data reconstruction, records, interest, architectural and inspection fees, and business interruption; and
- (b) Broad form comprehensive liability coverage, covering both public liability and automobile liability, with limits of not less than Five Hundred Thousand Dollars (\$500,000) for each person injured and not less than Two Million Dollars (\$2,000,000) for each occurrence and with property damage limits of not less than Two Million Dollars (\$2,000,000) for each accident. The Board in its discretion may provide higher or lower coverage limits in all categories and may also provide for directors and officers liability insurance with respect to the directors and officers of the Association. All liability insurance shall, if reasonably obtainable, include the Architectural Review Board and its members as additional insureds; and

- (c) Such other insurance as the Board of Directors of the Association in its discretion deems desirable and consistent with the dictates of good business practices.

All insurance may contain such deductible provisions as good business practice may dictate. The proceeds of all casualty insurance shall be applied to the repair or replacement of the damaged or destroyed land, improvements or vegetation. The proceeds of all liability insurance shall be applied to satisfy the liability. All proceeds from casualty insurance shall be distributed, utilized, or set aside as reserves as the Board of Directors in its discretion shall determine, provided that: (1) the Directors shall operate under the strong presumption in favor of rebuilding or repairing the property which has been subjected to the casualty or damage; (2) any proceeds from casualty insurance arising out of coverage for Common Properties other than Neighborhood Common Properties, if distributed, shall be distributed to Property Owners in proportion to the amount of Minimum Annual Assessments paid by Property Owners; and (3) any proceeds from casualty insurance arising from Neighborhood Common Properties, if distributed, shall be distributed in proportion to the amount of Minimum Annual Assessments paid by the Property Owners in the subject neighborhood. Except as provided in the following paragraph, all insurance shall name the Declarant as an additional insured. The Association shall provide the Declarant, upon request, with certificates evidencing such insurance and copies of the insurance policies.

With the consent of Declarant and Declarant's insurer, and provided the above standards are met, the Association may elect to be treated as an additional insured under Declarant's insurance policies. In such case, the Association shall be responsible for payment of the cost to Declarant for listing the Association as an additional insured.

**SECTION 10-23: RECONSTRUCTION FUNCTION.** In the event that any facilities or structures maintained on Common Properties are damaged or destroyed by fire, Act of God or other casualty other than war, the Association shall have the affirmative duty to repair or rebuild such structure or improvement or to clear such structure or facility from the land and to landscape the property so as to render it attractive.

**SECTION 10-24: ARCHITECTURAL, SITING, LANDSCAPING, DRAINAGE AND EROSION CONTROL FUNCTION.** The Architectural Review Board of the Association shall have the ultimate authority for decisions and actions made pursuant to Article III of these Covenants pertaining to architectural, siting, landscaping, drainage and erosion control, tree and vegetation removal and building controls. See Sections 3-2, 3-3, 3-4, 3-5, 3-6, 3-7, 3-8, 3-9, 3-11, 3-12, 3-13, 3-14, 3-19, 3-26 and 3-28.

Until such time as the Declarant by written instrument relinquishes this position, the Declarant shall serve as the exclusive Managing Architectural Agent of the Association with the authority to appoint and or remove the members of the Architectural Review Board consistent with the provisions of this Section. The Architectural Review Board shall be comprised of three (3) or five (5) members who serve staggered one or two year terms specified by the Board of Directors. The members of the Architectural Review Board need not be Property Owners. The Architectural Review Board shall function as an agent of the Association for the purpose of establishing and enforcing architectural, siting, landscaping, drainage and erosion, vegetation and building controls in conformity with these Covenants.

The business of the Architectural Review Board shall be conducted as follows:

- (a) Compensation and Consultation. The Association may compensate the members of the Architectural Review Board in a manner and to the extent that is deemed prudent, desirable and reasonable in the judgment and discretion of the Managing Architectural Agent and the Board of Directors of the Association, and the Architectural Review Board may engage or contract with such consultants or professional services as may be necessary to carry out this

Function; provided, however, that for so long as the Declarant shall have voting control of the Association, the Declarant shall reimburse the Association for any remuneration or compensation made to either members of the Architectural Review Board or to consultants or professionals, for the purpose of developing appropriate architectural, siting, tree and vegetation removal, landscaping, drainage and erosion control, and building standards, as distinguished from the cost of processing individual applications.

(b) Submission, Approval and Refusal of Architectural, Siting, Landscaping, Drainage and Erosion, and Other Building Plans.

In order to provide helpful guidance and to minimize the likelihood that plans will be rejected, the Architectural Review Board strongly encourages property owners to present, in an informal manner, concepts, sample photographs or pictures, and sketches to the Board for its comment, prior to the submission of formal plans and related data as specified below. Comments made at these informal hearings shall not be deemed to be an informal approval of any part of the information presented. Appointments for these informal presentations must be made in advance as agreed upon by the Property Owner and the Architectural Review Board.

With respect to the formal approval, two (2) copies of all plans and related data, including exterior material, color, and roofing samples, tree surveys, landscape plans, and all other required information shall be furnished to the Architectural Review Board. Architectural plans must be certified by an architect licensed under the laws of North Carolina. One (1) copy shall be retained in the records of the Architectural Review Board. The other copy shall be returned to the Property Owner, and both copies shall be marked "approved" or "disapproved" with the signature of the Chairman or Executive Director of the Architectural Review Board. The Architectural Review Board of the Association may require payment of a reasonable cash fee to recover the expense of reviewing plans and related data at the time they are submitted for review, for site inspections or related matters. A similar fee may be required for appeals and considerations. This paragraph shall not apply to any property utilized by a governmental entity or institution.

Approvals shall be dated and shall not be effective for construction commenced more than twelve (12) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Architectural Review Board of written request for approval, the applicant may send a demand for action by certified mail, and if the application is neither granted nor denied within ten (10) days of receipt of such demand, the provisions of this Section shall be thereby waived by the Architectural Review Board and the Association but only with respect to that application.

Refusal of plans, location or specifications may be based by the Architectural Review Board or the Association upon any reasonable ground which is consistent with the objectives of these Covenants, including but not limited to aesthetic considerations. The architectural review process shall not be conducted in an arbitrary and capricious manner.

Architectural and design review shall be directed toward attaining the following objectives for Mountain Air:

- (1) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar landforms.

- (2) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the Community Dwelling Lots and with surrounding Community Dwelling Lots and structures and do not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.
- (3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with Mountain Air's overall appearance, with surrounding development, with natural landforms and native vegetation, and with development plans, officially approved by the Declarant, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located.
- (4) Ensuring the plans for landscaping provide visually pleasing settings for structures on the same lot and on adjoining or nearby lots, and blend harmoniously with the natural landscape.
- (5) Ensuring that any development, structure, building or landscaping complies with the provisions of these Covenants.
- (6) Promoting building and site engineering design and construction techniques that respond to energy consumption and environmental quality consideration such as heat loss, air emissions, and run-off water quality.
- (7) Ensuring that all conduits for permanent utilities, including wires and cabling for such services as cable television, electrical power, and telephone, are placed underground.
- (8) Ensuring that the location of driveways and access to community roads will maximize safe ingress and egress and will be aesthetically pleasing to passersby and neighboring properties. Similarly, ensuring that water resistant drainage pipes of adequate gauge and diameter to carry the maximum flow of the adjacent road drainage ditch are installed in driveways prior to allowing vehicles to enter the lot.
- (9) Minimizing the impact of construction on the community, including but not limited to road usage, noise levels, signage, erosion control, and other considerations consistent with these covenants, and, in this regard, the Board of Directors of the Association may authorize the Architectural Review Board to require a performance bond with respect to certain construction practices, completion of erosion control plans, site clean-up, road damage and related matters.

If the Architectural Review Board denies the application of a Property Owner, the Property Owner may appeal such action to the Board of Directors of the Association within thirty (30) days after such action. The Board of Directors shall provide an opportunity to hear the case of the Property Owner and a representative or agent of the Architectural Review Board within thirty (30) days of the receipt of the appeal. The decision of the Board of Directors shall be issued within fifteen (15) days after the hearing of the appeal. The decision of the Board of Directors shall be final.

- (c) Building Standards. The Architectural Review Board or the Association may promulgate standards through bulletins making reference to various national, regional, statewide or local building standards, fire safety standards and other building codes which must be followed in architectural designs submitted to the Declarant. These standards may reference design, color, material, architectural, siting, landscaping, drainage, and erosion control criteria, including building height requirements, that the Architectural Review Board deem necessary to achieve its overall purpose of protecting and enhancing the value and visual quality of all property



within the Mountain Air Country Club Community. If adopted, said standards shall be published by the Architectural Review Board of the Association and shall be made available to any Property Owner at the cost of publication. These standards may be amended from time to time to reflect changes in market considerations, community expectations, and building and construction practices.

- (d) Approval Not a Guarantee or Representation of Proper Design or Good Workmanship. No approval of plans, location or specifications, and no publication or architectural standards bulletins by the Architectural Review Board or the Association shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence or that such standards comply with Pertinent Law. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence will be built in a good workmanlike manner. NO IMPLIED WARRANTIES OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR PURPOSE, OR MERCHANTABILITY SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE BY THE DECLARANT, THE ASSOCIATION, OR THE ARCHITECTURAL REVIEW BOARD.
- (e) Liabilities for Approvals Granted or Denials Issued by the Architectural Review Board or the Association. NEITHER THE ARCHITECTURAL REVIEW BOARD, NOR THE ASSOCIATION, NOR DECLARANT, SHALL BE LIABLE TO A PROPERTY OWNER OR TO ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST A PROPERTY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATING TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCES, INSPECTIONS, PERMISSIONS, CONSENTS OR REQUIRED APPROVALS WHICH MUST BE OBTAINED FROM THE ARCHITECTURAL REVIEW BOARD OR THE ASSOCIATION WHETHER GIVEN, GRANTED OR DENIED.

**SECTION 10-25: AIRPORT FUNCTIONS.** The Association shall maintain and operate as a common expense the airport facility located within the Property, including but not limited to the runway, fuel depot (if any), airplane hangers (if any and unless not a Common Property), airport storage areas (if any, and unless not a Common Property), airplane parking areas (unless not a Common Property), control tower/office (if any), lighting systems (if any), or navigation systems (if any) in a manner consistent with any state or federal laws pertaining to the operation of this airport facility. The Declarant, until the Declarant relinquishes such right in writing, and thereafter the Association, shall adopt rules and regulations governing the use of the airport facility including, but not limited to, reasonable hours of operation, communications procedures, reasonable guest landing fees (recognizing, for example, that some property owners and their guests will use the airport, others will use roads, but that all will support the cost of using both), policies for parking aircraft, fueling policies including safety considerations concerning use of the airport and golf course in relation to each other, landing and taking off policies, fueling operations, policies concerning take-off and landing during varying weather conditions, among others.

The Association shall not cease operation of the airport facility for the use by Property Owners, their guests and invitees, unless such cessation of operation is approved by a Mail Referendum as provided in Section 11-4. In the event the Association or a governmental authority with regulatory power over the airport, determines that the airport should cease all or a substantial part of its operations other than for reasons of weather or off-season activity, if the airport facilities have been transferred to the Association by Declarant pursuant to Section 9-8, the airport facilities and underlying land will revert to Declarant.

The Association may establish a subcommittee of pilots and property owners to advise it with respect to the airport and may employ experts, including but not limited to, legal counsel and technical counsel, with respect to carrying out this function.

*See Section 11-4 concerning the requirement for a Mail Referendum in the case of cessation of all or a substantial part of the operations of the airport facility.*

**EACH PROPERTY OWNER WHO PURCHASES PROPERTY WITHIN MOUNTAIN AIR DOES SO WITH FULL KNOWLEDGE OF THE PRESENCE OF THE AIRPORT FACILITY AND POTENTIAL HAZARDOUS OR ULTRA HAZARDOUS ACTIVITIES ASSOCIATED WITH THE OPERATIONS AND USE OF THE AIRPORT FACILITY. ACCORDINGLY, EACH PROPERTY OWNER, THEIR GUESTS AND INVITEES, ASSUME THE FULL RISK OF ANY INJURY TO HIS OR HER PERSON OR PROPERTY THAT MAY OCCUR AS A RESULT OF OPERATION OF THE AIRPORT FACILITY OR AIRCRAFT ACCIDENT WITHIN THE PROPERTY.**

**SECTION 10-26: OTHER UTILITIES FUNCTIONS.** Subject to Pertinent Law and the rights reserved by the Declarant in Article IX, and subject to the recognition that the Association is not a public governing or regulatory body which can enforce public laws, the Association may regulate the installation of any utilities, including but not limited to water, sewage, power lines, telephone lines, cable television, satellite communications and microwave transmission facilities on the Property. In addition, the Association shall have the authority to install water wells for maintenance of Common Properties.

**SECTION 10-27: ASSESSMENT FUNCTION.** The Association shall be authorized to collect assessments, fees and charges as prescribed in Article XIII of these Covenants.

**SECTION 10-28: TAX PAYMENT FUNCTION.** The Association shall pay all ad valorem real estate taxes, special improvement and other assessments, ad valorem personal property taxes and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with any Common Properties or personalty owned by the Association.

**SECTION 10-29: RIGHT TO DISPOSE OF COMMON PROPERTIES AND PERSONALTY.** Subject to the provisions of this Declaration requiring the consent of the Declarant with respect to Properties Donated by Declarant (Section 9-8), the Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Common Properties and personalty owned by the Association.

**SECTION 10-30: GOVERNMENTAL SUCCESSOR.** Subject to Pertinent Law, and subject to the provisions of this Declaration requiring consent of the Declarant with respect to Properties Donated by Declarant, the Association may convey all or any part of any Common Properties owned by the Association, including leasehold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Association. No such gift or sale or determination as to the purposes or as to the conditions of the transfer shall be effective unless such dedication, transfers and determinations as to purposes and conditions is authorized by Mail Referendum as set forth in Section 11-4. Unless specifically reserved in the deed of conveyance, the transfer of any Common Properties by the Association to third parties will extinguish all licenses and easements of Property Owners in the Common Properties transferred.

**SECTION 10-31: IMPLIED RIGHTS AND FUNCTIONS.** The Association shall have and may exercise any right or privilege given to it expressly in these Covenants or, except to the extent limited by the terms and provisions of these Covenants, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under these Covenants.

including the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; employ personnel necessary to manage affairs of the Association; obtain and pay for legal, accounting and other professional services as may be necessary or desirable; and to perform any function by, through or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable.

**SECTION 10-32: INDEMNIFICATION FUNCTION.** To the maximum extent allowed by Pertinent Law, The Association shall be obligated to and shall indemnify the Declarant and hold it and its officers, directors, partners, employees and managers harmless from all liability, loss, cost, damage and expense, including attorneys fees, arising with respect to any operations of the Association or any Common Properties or Functions.

**SECTION 10-33: LIMITED REGULATION FUNCTION.** The Association shall be authorized to and shall have the power to adopt, amend and enforce reasonable rules and regulations applicable within the Property with respect to any Common Property or Function, and to implement the provisions of these Covenants, the Association's Articles of Incorporation or its By-Laws, and a copy of all such rules and regulations shall be provided to each Property Owner. Each Property Owner, Lessee, Guest and their employees shall be obligated to and shall comply with and abide by such rules and regulations and shall reimburse the Association for its cost of enforcement and damages upon failure to comply with or abide by such rules and regulations.

**SECTION 10-34: CHARGES FOR USE OF FACILITIES; OUTSIDE CLUB MEMBERSHIPS.** The Association may establish reasonable charges for use of Common Properties to assist the Association in offsetting the costs and expenses of the Association attributable to the Common Property. Such fees and charges may apply to one or more classes of Members, guests or Lessees without applying uniformly to all classes of users of the Association's Common Properties, provided, however, that such charges may not be applied against Declarant except where otherwise provided and, further, that no charges may be applied against Class C members for use of their easement of access as provided in Section 12-2.

In order to reduce the cost to Property Owners of maintaining the Common Properties, the Association shall have the authority to provide for Outside Memberships with respect to any clubhouse, recreational facilities, and Community Open Space which may be owned by the Association; provided, however, that no such Outside members shall thereby become Members of the Association. The charges and conditions for such Outside Memberships shall be established by the Board.

**SECTION 10-35: CHARGES FOR SERVICE FUNCTIONS; CONTRACTS WITH OTHER PROPERTY OWNERS ASSOCIATIONS; MANAGEMENT CONTRACTS; NEIGHBORHOOD COMMITTEES AND THEIR FUNCTIONS.**

**SECTION 10-35.1: CHARGES FOR SERVICES.** The Association may establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to a Property Owner, Lessee, Guest, Neighborhood District, or other Property Owners Association to assist the Association in offsetting the costs and expenses of the Association.

**SECTION 10-35.2: CONTRACTS WITH OTHER PROPERTY OWNERS ASSOCIATIONS.** The Association shall have the authority to enter into a contract with any other Property Owner Association or Condominium Association within the Property or any of the lands described in Exhibits B and C, pursuant to which this Association agrees to manage on behalf of such Association any of the Functions provided for by these Covenants or the declaration which creates such other Property Owners Association, provided, however, that this Association shall at a minimum recover all of its costs for providing such service and provided, further, that this Association shall be indemnified and held harmless for all liability it incurs in the performance of said contract for reasons other than fraud or gross neglect on the part of the Association. The Association

shall also have the authority to contract with another Property Owners Association to carry out any of the Functions provided for herein.

**SECTION 10.35.3: MANAGEMENT CONTRACT.** The Association shall have the authority to contract or subcontract with a private management company including the Declarant, to carry out any and all of the Functions of the Association. Any contract between the Declarant and the Association shall provide, among other things, that the Declarant shall be entitled to recover all of its direct costs, and a proportionate amount of its indirect costs, of managing the Association, plus a profit not to exceed fifteen (15) percent of such costs.

**SECTION 10.35.4: NEIGHBORHOOD DISTRICT MANAGEMENT FUNCTION.**

**SECTION 10.35.4.1: ESTABLISHMENT BY SUPPLEMENTAL DECLARATION.** The Declarant may, by supplemental declaration filed prior to the time any real property in a given neighborhood (defined in the supplemental declaration) is transferred: (1) identify one or more Neighborhood Districts; (2) establish procedures for expanding a Neighborhood District or combining one or more Neighborhood Districts with other Neighborhood Districts; (3) define and establish Neighborhood Common Properties or Limited Common Properties within a Neighborhood District; (4) define the Neighborhood Functions to be performed by the Neighborhood Committee for the Neighborhood District; (5) establish Neighborhood Committees of the Association with respect to each such Neighborhood District identified; (6) set forth the means by which the members of the Neighborhood Committee shall be selected and how the rights of the Property Owners who are in the Neighborhood District are established; (7) determine what Special Neighborhood Assessments shall be paid by members of the Association whose properties constitute the subject Neighborhood District; and, (8) set forth procedures pursuant to which Members of the Association who are within a Neighborhood District may or shall give to one or more individuals serving on the subject Neighborhood Committee the proxies of said Members to vote on Association matters pursuant to Article XI hereof.

Each Neighborhood Committee shall be a part of the Association and shall have the authority set forth in the Supplemental Declaration, which may include but not be limited to maintaining Private Open Space, establishing and maintaining Neighborhood or Limited Common Properties including Private Open Space, carrying out the management of a condominium association, and establishing rules and regulations governing the use and maintenance of these properties.

**SECTION 10.35.4.2: ESTABLISHMENT BY DEED.** As an alternative to establishment of a Neighborhood District by Supplemental Declaration, the Declarant may establish a Neighborhood District by including the following information in the initial deed given by Declarant to a Property Owner:

- (a) The number and name of the Neighborhood District.
- (b) The amount of initial assessment.
- (c) Reference to a Recorded plat or other Recorded instrument which describes the Neighborhood District, Neighborhood Common Properties or Limited Common Properties (including Private Open Space), Condominium Common Properties, or Condominium Limited Common Elements, upon which the Neighborhood Functions are to be performed;
- (d) Reference to the subsection or subsections of this subsection which indicate the Functions to be performed by the Neighborhood Committee.

- (i) Exterior maintenance as required pursuant to Section 3-16 and Section 5-5, including but not limited to routine and periodic major repairs, such as painting, replacement of rotted wood, and replacement of roofs.
- (ii) Subject to requirements of the North Carolina Condominium Act or its successor, carrying out the functions and duties of the subject Condominium Association, including maintenance and care of Condominium Common Properties or Condominium Limited Common Elements.
- (iii) Maintenance of Neighborhood or Limited Common Properties, including but not limited to common roads and Private Open Space as designated pursuant to Section 10.35.4.2 (c) above.

Any Neighborhood Committee of the Association created by this subsection shall be governed and administered pursuant to the provisions of Section 11-13. See also Section 13.6.

**SECTION 10.35.4.3: USE OF ASSESSMENTS FOR NEIGHBORHOOD COMMITTEE FUNCTIONS; ALLOCATION OF COSTS.** All funds collected and distributed on behalf of any Neighborhood District pursuant to Section 13.6 shall be maintained in separate bank accounts, shall be recorded and accounted for separately, and except for sharing common administrative costs (see below) shall only be used for carrying out the specified Neighborhood Committee Functions. Even though the Neighborhood Committees shall be managed as a part of the Association, there shall be no commingling of funds between the Neighborhood Committees or between the Neighborhood Committees and the Association.

The Property Owners within each Neighborhood District represented by a Neighborhood Committee shall repay the Association for all direct costs (e.g. maintenance of Neighborhood Common Properties) incurred by the Association in managing the Functions of the given Neighborhood as well as its pro rata share of common costs incurred. The allocation of such costs shall be determined by the Board of Directors of the Association in a manner consistent with the assessment provisions of these Covenants.

In the event of dissolution of the Association, any Common Properties or Neighborhood Common Properties (or the proceeds therefrom) which are not Properties Donated By Declarant, shall be distributed only to Property Owners within the given Neighborhood.

**SECTION 10-36: REPORTING FUNCTION.** The Association shall annually, within ninety (90) days after the end of the fiscal year of the Association prepare a general itemized statement showing the assets and liabilities of the Association at the close of such fiscal year, and a general statement of the Association's revenues, costs and expenses. The Association shall furnish to each Member of the Association who makes request therefor in writing a copy of such statement within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail. The Association may charge the requesting Member for the cost of copies and postage.

In addition, any Member may request to see listings of the income and expenditures of the Association with thirty (30) days written notice to the Association.

**SECTION 10-37: NOTICE FUNCTION.** Copies of these Covenants, the Articles of Incorporation of the Association, the By-laws of the Association, and all rules or regulations established by the Association shall be made available to Property Owners upon written request. The Association may establish a charge for reproducing and distributing these documents. Copies of these documents shall be available for review at the Association offices or the Association clubhouse if said facilities exist. In addition, the Association may publish such rules and regulations in a local newspaper or mail the rules and regulations to Property Owners as provided in Sections 11-7, 11-8, 11-9 and 11-10.

The Association or its agents may not enter upon improved lands of any Property Owner to install any utility, communications or public convenience facility without providing at least two (2) weeks mail notice to the Property Owner in conformity with Sections 11-7, 11-8, 11-9 or 11-10.

**ARTICLE XI: MEMBERSHIP, NOTICE, VOTING RIGHTS, DISTRIBUTION RIGHTS AND CERTAIN OBLIGATIONS OF MEMBERS OF THE ASSOCIATION**

**SECTION 11-1: AUTOMATIC MEMBERSHIPS.** Every Property Owner and the Declarant shall be a Member of the Association. Except for the rights of Declarant, membership in the Association is appurtenant to the property owned by a Property Owner and is not separable from the ownership of such property. The Class "A," "B" and "C" Members as defined in Section 11-2 below are collectively referred to as the "Members."

**SECTION 11-2: VOTING RIGHTS.** The Association shall have three (3) types of regular voting membership. Members are divided into classes for the sole purpose of computing voting rights and they shall in no event vote as a class.

Class "A" - The Class "A" Members shall include the owners of any Community Dwelling Unit, Community Dwelling Lot, or Guest Lodging Unit within the Property, including Declarant with respect to such units or lots owned by Declarant. Each owner of a Community Dwelling Unit, Community Dwelling Lot, or Guest Lodging Unit shall be entitled to one vote for each such unit or lot. In addition, The owner of a Development Unit Parcel shall be entitled to one vote for each Community Dwelling Unit, Community Dwelling Lot, or Guest Lodging Unit which has been designated in the deed of conveyance as may be built upon or within the Development Unit parcel.

Class "B" - The Class "B" Member shall be the Declarant, until the Declarant relinquishes its Class B voting rights in a recorded Declaration or until December 31, 2010. In addition to whatever vote the Declarant has as a Class A or Class C member, the Declarant as a Class "B" member shall be entitled to two (2) votes for each vote held by a Class "A" Member or a Class "C" Member, plus one (1) additional vote.

Class "C" - Class "C" Members shall include the Country Club (see Section 9-15), which shall have one vote for each ten (10) members up to a maximum of 50 votes. The Class C Members shall also include the owners of any Retail Unit, Restaurant Unit, Professional Service Unit, or Trade Oriented Service Unit, who shall have one (1) vote for each such unit plus one (1) vote for each 1000 square feet in excess of one thousand (1000) square feet rounded to the nearest thousand. The owner of a Development Unit Parcel shall be entitled to one vote for each Retail Unit, Restaurant Unit, Professional Service Unit, or Trade Oriented Service Unit, which has been designated in the deed of conveyance as may be built upon within the Development Unit parcel.

When any property entitling any owner to membership as a Class "A," "B" or "C" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants by the entirety, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have a fiduciary relationship respecting the same property, then, the vote of such membership shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting or vote, but the vote must be cast whole and may not be split. In the absence of such advice, the vote of such

membership shall be suspended in the event there is no agreement, or, in the event more than one person or entity seeks to exercise it.

There shall be no right to cumulative voting on any issue.

In some instances the voting rights which may be exercised by a Class A or Class C Member may be delegated by proxy to a Neighborhood Committee which is elected by Property Owners within a given Neighborhood District. See Section 35.4.1. See also Section 11-6.

**SECTION 11-3: BOARD OF DIRECTORS.** The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7) or nine (9) members. Initially, the Board shall consist of three (3) members with the number in subsequent years to be determined by the Members of the Board of Directors. Members of the Board need not be Property Owners, but no more than one-third (1/3) of the Board may be comprised of individuals who are not Property Owners. When voting to elect Directors, each Member shall be entitled to as many votes as equal the number of votes to which he is ordinarily entitled to, based on his ownership of one or more of the various classifications of property multiplied by the number of Directors to be elected. All votes must be based in whole numbers and not fractions thereof.

**SECTION 11-4: MEMBERS' RIGHT TO APPROVE CERTAIN ACTIONS BY MAIL REFERENDUM: SPECIAL ASSESSMENTS; AMENDMENTS OF COVENANTS; MERGER OF ANOTHER PROPERTY OWNERS' ASSOCIATION; MATTERS SPECIFIED IN BY-LAWS OF THE ASSOCIATION.** A Mail Referendum may be held on any of the following issues and may be initiated by (i) a two-thirds (2/3) favorable vote of the Board, (ii) by a petition signed by Property Owners who hold one-third of the total Class A votes, or (iii) by Declarant. The subject of a Mail Referendum may include any of the following matters and none of the following actions may be taken unless a quorum as defined in Section 11-5 is present and the action approved by the following respective requisite votes of a quorum in a Mail Referendum: (a) any Special Assessment recommended by the Directors as provided in Section 13-5 (fifty-one percent (51%) required); (b) any merger of the Association with another property owners' association serving an adjoining or nearby tract (except those lands described in Exhibits B and C for which no approval is required, see Section 1-2)(fifty-one percent (51%) approval required); (c) amendments to any provision of these Covenants except that no amendment may impair any right reserved by the Declarant, may create or increase any liability of the Declarant, alter the Land Use Class of any property retained by the Declarant or any Property conveyed by the Declarant prior to the Mail Referendum unless expressly approved in writing by Declarant (fifty-one percent (51%) approval required); (d) other fundamental and material actions designated in the Association's By-Laws (other than amendment of these Covenants) as actions for which Mail Referendum must be held (fifty-one percent (51%) approval required); (e) the sale or transfer of any Common Property consisting of realty or Open Space (fifty-one percent (51%) approval required); and (f) unless otherwise required by Pertinent Law, the cessation of all or a substantial part of the operations of the airport facility sixty-six percent (66%) of the quorum plus at least fifty-one percent (51%) of the vote of members of the Association who are pilots currently licensed by the Federal Aviation Administration (or its successor) and who have given the Association notice of this status pursuant to Section 11-7 (see Section 11-2 for allocation of voting rights when any property entitling any owner to membership as a Class "A", "B" or "C" member of the Association is owner of record in the name of two (2) or more persons who are entities). The percentage of vote requisite refers to the percentage of a quorum of total Class A, B and C votes; provided, however, that if the Declarant no longer exercises its Class B membership rights, the percentage shall relate only to that Class A and Class C membership vote.

Any Mail Referendum notice shall include a statement prepared by the Directors of the Association stating the reasons that Directors are for passage of the Mail Referendum, together with a statement prepared by the Directors dissenting from such proposed action; provided, however, that neither of such statements may exceed a maximum length of five (5) pages for each proposed action. In any Referendum initiated by a Petition of Property Owners, one representative designated by the Property Owners requesting

the Referendum may include in the Referendum notice a statement, and the Directors may include a statement setting forth the reasons which a majority of the board is in favor or is opposed to the subject of the Referendum. Declarant shall have the right to include a statement with respect to any matter which is the subject of any Referendum.

No Mail Referendum shall be effective unless a statement of the results thereof is signed by the President and Secretary of the Association in their representative capacities and the statement is mailed to Property Owners in the manner provided in Sections 11-7 through 11-10. Said statement shall include the effective date of the action, the date at which a mailing of the Mail Referendum was made, the total number of votes needed to adopt the action and the total votes cast for and against the action.

**SECTION 11-5: QUORUM REQUIRED FOR ANY ACTION AUTHORIZED AT REGULAR OR SPECIAL MEETINGS OF THE ASSOCIATION.** The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association (other than a matter subject to a Mail Referendum), the presence at the meeting of Members or proxies or Mail Referendum Ballot entitled to cast fifty percent (50%) of the total vote of the membership shall constitute a quorum. In the event the required quorum is not forthcoming at the first meeting a second meeting may be called subject to the giving of proper notice, and there shall be no quorum requirement for such meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Section and any other requirements for such "duly called meeting" which may be established by the By-Laws of the Association.

**SECTION 11-6: PROXIES.** All Members may vote and transact business at any meeting of the Association by proxy authorized in writing; provided, however, that proxies shall not be required for any action which is subject to a Mail Referendum, in which case the votes of all Members polled shall be made by specially provided ballots mailed to the Association. See Section 11-2.

**SECTION 11-7: DUTY OF PROPERTY OWNERS TO INFORM THE ASSOCIATION OF CURRENT ADDRESS.** Each Property Owner other than Declarant shall have the affirmative duty and obligation to inform the Association in writing of his current address or any change of address. Also, each Property Owner who is or becomes a pilot licensed by the Federal Aviation Administration (or its successor), who wishes to utilize the airport facility or who wishes to vote on Mail Referendum matters related to the airport facility, shall give notice of this license status in writing, including the class of license, number of such license, and any restrictions thereon, to the Association and, further, such pilot shall notify the Association of any change in such status. No Property Owner may be excused from his obligations established in these Covenants nor challenge a Mail Referendum if the Association mailed an assessment bill, statement, Mail Referendum ballot or notice of Mail Referendum to the last address of said Property Owner which is recorded on the books of the Association and for which the Association has not received the Property Owner's current address or notice of change of ownership from the Property Owner.

**SECTION 11-8: NOTICE OF MAIL REFERENDUM BALLOT BY MAIL.** Any notice of Mail Referendum ballot required to be sent to any Member or Property Owner under the provisions of this Declaration shall be sufficient if mailed with the proper postage affixed, to the last known address of the person or entity who appears as owner in the Association's records as established pursuant to Section 11-7. Unless otherwise specified, a period of thirty (30) days between the date of mailing and the date of action shall be a sufficient and reasonable period of notice or period in which to return a Mail Referendum ballot.

**SECTION 11-9: NOTICE AND MAIL REFERENDUM BALLOTS TO PREDECESSOR IN TITLE.** Any person who becomes a Property Owner and Member following the first day in the calendar month in which notice or Mail Referendum ballots are mailed is not entitled to additional notice or a Mail Referendum ballot if notice or Mail Referendum ballot was given or mailed to his predecessor in title.



**SECTION 11-10: NOTICE OF MAIL BALLOT TO CO-OWNERS.** Notice of Mail Referendum ballot to one (1) of two (2) or more co-owners of any units of property within the Property shall constitute sending of proper notice or Mail Referendum ballot to all co-owners of said unit. Similarly, the sending of notice or a ballot to a life tenant shall constitute proper notice or Mail Referendum ballot to all remaindermen and holders of other future interests.

**SECTION 11-11: CONTRACTS.** Prior to the lapse of the Class B voting rights of Declarant, the Association shall not be bound either directly or indirectly to contracts or leases (including a management contract) with the Declarant or its affiliates unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time after transfer of control, upon not more than ninety (90) days notice to the other party.

**SECTION 11-12: RIGHTS UPON DISTRIBUTION.** In the event the Association should dissolve, each Member shall have an interest in the net assets of the Association in the proportion of the number of votes held by such Property Owner divided by the total number of votes held by all Members of the Association.

**SECTION 11-13: GOVERNANCE AND ADMINISTRATION OF NEIGHBORHOOD COMMITTEES.**

The following provisions shall apply with respect to the governance and administration of Neighborhood Committees:

**SECTION 11-13.1: ULTIMATE AUTHORITY OF BOARD OF DIRECTORS.** Notwithstanding the Neighborhood Functions which may be delegated to a Neighborhood Committee, all Neighborhood Committees established pursuant to Section 10-35.4 shall operate as a part of the Association and are subject to the ultimate fiduciary administration, direction, and control of the Board of Directors of the Association. All staff or management of the Association shall, within the guidance and direction of the Board of Directors of the Association, be available to support the activities of the individual Neighborhood District.

**SECTION 11-13.2: COMPOSITION OF NEIGHBORHOOD COMMITTEES.** Unless otherwise provided in the supplemental declaration establishing the Neighborhood District (see Section 10.35.4.1), each Neighborhood Committee shall be comprised of three (3) members who are Nominated by the Board of Directors and elected by a majority vote of the Class A and Class C Property Owners who are located within the given Neighborhood District.

**SECTION 11-13.3: VOTING ON NEIGHBORHOOD MATTERS; NEIGHBORHOOD MAIL REFERENDUMS.** All provisions of Sections 11-2, 11-5, 11-6, 11-8, 11-9, and 11-10 shall apply with respect to votes on Neighborhood District matters taken by Property Owners within a given Neighborhood District except that only Property Owners within the Neighborhood District may vote on the matter and the matter may only affect the given Neighborhood.

An annual Neighborhood Assessment may be increased or a Neighborhood Special Assessment (see Section 13-6) may be approved by a fifty-one percent (51%) affirmative vote of a quorum of Property Owners within the Neighborhood District pursuant to a Neighborhood Mail Referendum. A Neighborhood Mail Referendum may be initiated by either the Declarant, the Board of Directors of the Association, the Neighborhood Committee or upon petition of twenty percent (20%) of the Property Owners within the Neighborhood District. In any Neighborhood Mail Referendum which is conducted the last two paragraphs of Section 11-4 shall apply with the exception that the Neighborhood Committee shall be substituted for the Directors of the Association.

**ARTICLE XII: COMMON PROPERTIES**

**SECTION 12-1: GENERAL.** Common Properties are defined in Section 17-1.4. The title to all Common Property shall be held by the Association. Subject to Section 12-2 below, all Common Properties are to be devoted to and intended for the common use and enjoyment of the Property Owners, their family member, Lessees and Guests at uniform fees, charges and assessments and rules and regulations which may be established from time to time by the Association.

The designation of land or improvements as Common Properties or Neighborhood Common Properties shall not mean or imply that Property Owners, their Lessees and Guests acquire an easement of use and enjoyment therein except as provided in Section 12-2 below and except at such fees, and under such rules and regulations, as may be established from time to time by the Association. *See Section 9-8 pertaining to the Declarant's right to convey certain categories of Common Properties to the Association.*

**SECTION 12-2: EXTENT OF MEMBERS' EASEMENTS IN COMMON PROPERTIES.** Every Class "A", "B" and "C" Member shall have a nonexclusive right and easement of access, use and enjoyment in all Common Property and such easement shall be appurtenant to and shall pass with the title of every tract of land or other unit ownership of realty within the Property; provided, however, that (1) the rights and benefits created pursuant to this section shall be subject to the Rights of the Declarant and the Association set forth in this Declaration and subject to any Rules and Regulations promulgated by the Association, (2) unless otherwise approved by the Association, Class C Members shall not be entitled to use Common Properties except to the extent necessary to have a right of access for the Class C Members and their guests over the community roads within Land Class A from the community entrance to the site of the property owned by the Class C Members, and (3) Neighborhood Common Properties established pursuant to Section 10-35.4 may be limited to use only by Property Owners and their Guests within a given Neighborhood District.

**SECTION 12-3: PURCHASED COMMON PROPERTIES.** "Purchased Common Properties," shall be considered Common Properties, and except where provided otherwise, all provisions in these Covenants pertaining to Common Properties shall be applicable to Purchased Common Properties. Subject to Section 12-2 and other limitations which may be provided elsewhere in these Covenants, every Class "A", "B" and "C" Member shall have a right and easement of enjoyment in the use of any property now or hereafter defined as "Purchased Common Property" pursuant to this Declaration.

**ARTICLE XIII: ASSESSMENTS AND OTHER CHARGES**

**SECTION 13-1: COLLECTION AND USE OF ASSESSMENTS, FEES AND CHARGES.** The Assessments, fees, charges and liquidated damages described in these Covenants shall be collected by the Association and used exclusively for carrying out the Functions described in Article X of these Covenants.

The Assessments described in this Article shall not be in lieu of, nor shall they displace, any other charges or fees for services and use of Common Properties which may be required by the Board of Directors of the Association pursuant to other Sections of these Covenants. *See Sections 4-4.1, 4-4.2, 5-4, 9-4, 9-7, 9-8, 9-12, 10-13, 10-17, 10-18, 10-20(d)(e), 10-24(b) and 12-1.* Nor shall the Assessments described in this Article XIII of these Covenants be in lieu of, or displace, any charges, fees or assessments owed by any Property Owner to any other Property Owners Association in which the Property Owner is also a member.

All obligations to pay assessments established hereby, together with interest, costs, and reasonable attorneys fees (*Section 13-11*), are secured by a lien upon the subject property and are the personal obligation of the Property Owner of the Unit or subject property at the time the assessment arose, and his

or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance (See Article XV), except no mortgagee who obtains title to the property of a Property Owner within the Property pursuant to the remedies provided in a mortgage or deed of trust made in good faith and for a valuable consideration shall be liable for unpaid assessments which accrued prior to such acquisition of title (see Section 14-3).

Unless reduced by the Board of Directors (Section 13-4), the Minimum Assessment (Section 13-2), which may be increased in any given year in an amount not to exceed the relevant Maximum Assessment (Section 13-3), together with Special Assessments (Section 13-5), Neighborhood Assessments (Section 13-6), and Special Assessments for Maintenance of Wastewater Collection, Treatment and Disposal Facilities (Section 13-7) and such other assessments and charges authorized by these Covenants, shall be due and payable in such manner and on such dates as may be determined by the Board of Directors consistent with these Covenants.

SECTION 13-2: MINIMUM ANNUAL ASSESSMENT. The Minimum Annual Assessment which shall be imposed upon each unit of real property within the Property shall be as follows unless reduced by the Board of Directors as provided in Section 13-4 below:

- (a) Open Space within Land Class A: No assessment.
- (b) Common Properties, Purchased Common Properties, Neighborhood Common Properties, Limited Common Properties, Condominium Common Properties, Open Space and Outdoor Recreation Facilities (Land Class D-3): No assessment.
- (c) Properties within Land Class E: No assessment, except for Trade Oriented Services as provided below.
- (d) Undesignated Land: No assessment.
- (e) Development Unit Parcels: An amount equal to fifty-percent (50%) of the amount specified in (f) through (o) below for each Community Dwelling Lot, Community Dwelling Unit, Guest Lodging Unit, Restaurant Unit, Retail Unit, Professional Service Unit, Trade Oriented Service Unit as specified in the deed of conveyance by Declarant, which may be built upon the Development Unit Parcel and which has not been conveyed by the owner of the Development Unit Parcel to the owner of a parcel described in (f) through (o) below.
- (f) Community Dwelling Lots within Land Class B-1: \$600 per lot.
- (g) Community Dwelling Lots within Land Class B-2: \$600 per lot.
- (h) Community Dwelling Units within Land Class B-1: \$800 per unit.
- (i) Community Dwelling Units within Land Class B-2: \$800 per unit.
- (j) Community Dwelling Units within Land Class B-3: \$800 per unit.
- (k) Guest Lodging Units within Land Class C-1: \$800 per unit.
- (l) Professional Service Unit within Land Class C-1, D-1 or D-4: \$80 per 100 sq.ft. of finished space, including storage.

- (m) Retail Unit within Land Class C-1 or D-4: \$80 per 100 sq. feet. of finished space including storage.
- (n) Restaurant Unit within Land Class C-1 or D-4: \$80 per 100 square feet of finished space, including storage, kitchens and freezers.
- (o) Trade Oriented Service unit: \$40 per 100 square feet of enclosed space within Land Class E-1 utilized for commercial rendition of Trade Oriented Services to third parties.
- (p) Country Club facilities within Land Class D-2, D-3 and D-5: two percent (2%) of the annual membership dues collected from members of the Country Club.
- (q) Designated Byt Unsold Properties Owned by Declarant: In addition to other contributions to the Association which may be made by Declarant to the Association, Declarant shall pay twenty five percent (25%) of the applicable Minimum Annual Assessment with respect to any unsold inventory which is owned by Declarant and which falls within (f) through (p) above.

The Association may make an annual increase in the Minimum Annual Assessment in an amount not to exceed the higher of up to ten percent (10%) or the increase in the Consumer Price Index published by the United States Department of Labor or comparable index selected by the Board of Directors. Such increases shall be cumulative.

*The above assessments are Minimum Annual Assessments. See Section 13-3 with respect to the Maximum Annual Assessment, Section 13-5 with respect to Special Assessments for Major Repairs and Debt Retirement, Section 13-6 with respect to Neighborhood Assessments, and Section 13-7 with respect to Special Assessments for Maintenance of Wastewater Collection, Treatment and Disposal Facilities.*

**SECTION 13-3: MAXIMUM ASSESSMENT.** The Maximum Annual Assessment which may be assessed upon any unit of real property shall be 1.1 times the Minimum Annual Assessment for a given year. No Assessment may exceed the Maximum Assessment unless it is a Special Assessment for Major Repairs or Debt Retirement as provided in Section 13-5 below.

**SECTION 13-4: LOWERING OF ASSESSMENTS.** The Board may at any time lower the Annual Assessment if in its discretion the Association will receive more revenues than are needed to meet its annual obligations.

**SECTION 13-5: SPECIAL ASSESSMENTS FOR MAJOR REPAIRS AND DEBT RETIREMENT.** In addition to the Annual Assessment authorized by Section 13-2 and Section 13-3 hereof, the Association may levy Special Assessments for the purpose of reconstruction, repair or replacement of capital improvements upon the Common Properties including the necessary fixtures and personal property related thereto, for additions and improvements to Community Open Space or to Common Properties for the necessary facilities and equipment to offer the services authorized herein, or to repay any loan made to the Association, provided that such assessment shall have received the approval of fifty-one percent (51%) of the votes of the Members other than Declarant in a Mail Referendum conducted pursuant to Section 11-4.

The portion of each Special Assessment to be paid by the owners of the various classifications of assessable property (excluding properties with full or limited exemptions) shall be proportionate to the applicable Annual Assessment for each Property Owner for the assessment year during which such special assessments are approved.

**SECTION 13-6: NEIGHBORHOOD ASSESSMENTS.** In the event Declarant establishes a Neighborhood Committee to carry out a Neighborhood District Management Function as provided in Section 10-35.4, the Property Owners within the applicable Neighborhood District shall be subject to the Neighborhood Assessment which is established as provided in Section 10.35.4. Once established, said Assessments may be increased annually by an amount not to exceed the greater of ten percent (10%) or the increase in the Consumer Price Index published by the United States Department of Labor or comparable index selected by the Board of Directors of the Association, unless otherwise approved by a Neighborhood Mail Referendum as provided in Section 11-13. Similarly, a given Neighborhood may adopt a Special Assessment in the nature of that provided in Section 13-5 but applicable only to a given neighborhood if approved pursuant to a Neighborhood Mail Referendum as provided in Section 11-13.

**SECTION 13-7: SPECIAL ASSESSMENT FOR MAINTENANCE OF WASTEWATER COLLECTION, TREATMENT AND DISPOSAL FACILITIES.** In the event the common expense declaration (see Section 10-17.1) and separate fund for operation and maintenance of wastewater collection, treatment and disposal facilities are not adequate for the construction, repair, and maintenance of the disposal system, there shall be a Special Assessment to cover such necessary costs. By requirement of the North Carolina Division of Environmental Management, this assessment can be made as necessary at any time and there can be and shall be no limit on the amount of such assessment.

**SECTION 13-8: ASSESSMENT RESERVES; WORKING CAPITAL.** The Association may establish Reserve Funds of the receipts from its Annual Assessments, Special Assessments, or Neighborhood Assessments to be held in an interest drawing account or in prudent investments as a reserve for major rehabilitation or major repairs, and for emergency and other repairs required as a result of depreciation, erosion, storm, fire, natural disaster or other casualty loss.

*See also Section 10-17.1 with regard to separate reserve funds which must be established for maintenance of the wastewater treatment, collection, and disposal facilities.*

**SECTION 13-9: SPECIAL RESERVE FUND ASSESSMENT ON PROPERTY RE-SALE.** In order to provide for the continued operation, maintenance and expansion of the Association properties and services, including, but not limited to, construction or reconstruction, repair or replacement of capital improvements upon the Common Properties and to minimize the necessary for the levying of Special Assessments for Major Repairs and Debt Retirement as provided in Section 13-5, each Owner of a Community Dwelling Lot, Community Dwelling Unit, Guest Lodging Unit, Retail Unit, Professional Service Unit, Restaurant Unit, or Development Unit Parcel, upon resale of said property, shall, at closing, pay to the Association a Special Reserve Fund Assessment in an amount equal to one-quarter (1/4) of one (1) percent of the gross sales price of said Lot or Unit or interest therein. For purposes of this Section "Resale" is defined as any transfer, after the property's initial transfer by Declarant, of legal or equitable title to all or any portion of the property for valuable consideration, other than by gift, inheritance, or mortgage foreclosure, where said transfer occurs subsequent to the initial sale by the Declarant, its successors or assigns, to a bona fide purchaser for value. The Association, upon prior written application by a Property Owner, may waive the provisions of this Section, where the Association in its sole discretion determines that a particular transaction is not intended to be treated as a Resale.

**SECTION 13-10: TIME AND METHOD OF PAYMENT OF ANNUAL ASSESSMENTS; SUPPORTING DATA.** Any assessment year shall run from January 1 to December 31, the annual assessments provided for in Article XIII of these Covenants shall be assessed according to the land use characteristics of the property as of January 1, 1991 and each January 1 thereafter, and the annual assessments provided for herein shall commence no earlier than January 1, 1991. For any assessment year, each Property Owner shall pay in advance, on a monthly basis within the first ten (10) days of each month, all assessments due on said property.

SECTION 13-11: EFFECT OF NON-PAYMENT OF ASSESSMENTS AND OTHER CHARGES. The following actions may be taken by the Association in the event a Property Owner fails to make payment of any assessments set forth above or other charges and obligations when due:

- (a) Interest on Late Payment. An interest charge at an ANNUAL PERCENTAGE RATE OF FIFTEEN PERCENT (15%) or five percent (5%) over the prime rate charged by major Charlotte, North Carolina banks, whichever rate is greater, will be charged on all late payments of assessments.
- (b) Personal Liability. If the assessment or charge is not paid within thirty (30) days after the past due date, the Association may bring an action at law or in equity against the Property Owner personally, and there shall be added to the amount of such assessment the cost, including reasonable attorneys fees, of preparing and filing the legal documents in such action, and in the event a judgment order against the Property Owner is obtained, such judgment shall include interest on the assessment as provided in (a) above, reasonable attorney's fees and expenses to be fixed by the court and the costs of the action.
- (c) Execution on Lien. Subject to Section 14-3 relating to subordination of the lien to mortgages and other encumbrances, the Association may execute its lien upon the subject property according to procedures prescribed by the laws of North Carolina as appropriate.
- (d) Other Rights. In addition to the above, the Association shall reserve the rights it may have under and according to applicable law to attach and execute against any personal assets of a Property Owner in order to receive assessments due.

SECTION 13-12: ROUNDING OF ASSESSMENT FIGURES. All assessments charged by the Association and interest thereon shall be rounded off to the nearest dollar.

## PART FOUR: GENERAL PROVISIONS

### ARTICLE XIV: DURATION, OBLIGATION AND APPOINTMENT OF RIGHTS AND OBLIGATIONS CREATED HEREIN; ASSIGNMENTS

**SECTION 14-1: DURATION.** These Covenants shall be in effect, shall run with and bind the land, and shall inure to the benefit of and be enforceable by and against the Declarant, the Association, any Property Owner, their respective legal representatives, heirs, successors and assigns for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of the Declaration if, during the last year of the initial twenty (20) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes of Class "A" and Class "B" Members cast pursuant to a Mail Referendum conducted pursuant to Section 11-4 vote in favor of terminating this Declaration at the end of its then current term.

In the event that the Association votes, at the end of such specific periods, to terminate this Declaration, the president and secretary of the Association shall execute and record a certificate which shall set forth the resolution of the Board of Directors calling for a Mail Referendum concerning termination of the Association, the date of the meeting of the Board of Directors of the Association at which such resolution was adopted, the date that the Mail Referendum was mailed, the total number of votes of Members of the Association returned pursuant to the Referendum, and the number of votes in favor of and against termination of the Association. Any termination shall, however, be subject to Section 10-17.1.

**SECTION 14-2: DURATION OF EASEMENTS.** All easements established or reserved by this Declaration shall have a duration co-extensive with the duration of these Covenants as provided in Section 14-1 (see e.g. Sections 4-3, 10-20(a), 10-20(c), and 14-4) except for those easements which are set forth below and which have the respective durations set forth below:

- (1) Section 9-4: Certain Utility, Communications, Transportation and Public Conveyance Easements, (reserved in perpetuity);
- (2) Section 9-5: Easement for Bridges, Walkways, and Directional Signs (reserved in perpetuity);
- (3) Section 9-6: Easements in Community Open Space and Common Properties (reserved in perpetuity);
- (4) Section 9-10: Subdivision and Replating of Property (right to relocate easements) (reserved in perpetuity).

**SECTION 14-3: PROTECTION OF MORTGAGES AND OTHER ENCUMBRANCES.** No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision or to prevent a violation shall effect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any property if such lien or deed of trust is taken in good faith and for value and is Recorded prior to the time an instrument describing such property and listing the name or names of the owners of fee simple title to the property and giving notice of a claimed violation, breach or failure to comply with the provisions of this Declaration is Recorded. Any such violation, breach or failure to comply

used by Declarant, the Association or other Property Owner shall not affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien, nor shall the former owner's violation, breach or failure to comply result in any liability, personal or otherwise, of any mortgage holder or new owner resulting from foreclosure. Any such new owner on foreclosure shall, however, take subject to this Declaration with the exception of the former owner's violations or breaches of, or failures to comply with, any provisions of this Declaration which occurred prior to the vesting of fee simple title in such new owner, and such prior acts shall not be deemed breaches or violations hereof or failures to comply herewith with respect to such new owner, his heirs, personal representatives, successors or assigns; provided, however, that any action of the new owner, after taking title to, or possession of, such property, which constitutes a violation shall cause such new owner to be subject to all assessments, charges, restraints, restrictions, burdens and obligations under the Covenants.

**SECTION 14-4: OWNER'S RIGHTS AND OBLIGATIONS APPURTENANT.** All rights, easements and obligations of a Property Owner under this Declaration and all rights of a Property Owner with respect to memberships in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title held by the Property Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the title held by the Property Owner. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of the title held by a Property Owner shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations.

**SECTION 14-5: AMENDMENTS.** These Covenants may be amended pursuant to an affirmative vote of a majority of the Property Owners not voting as a class, provided, however that no such amendment may affect any rights of Declarant pursuant to these Covenants without Declarant's written consent (which consent may be withheld for any reason), and provided further, that no such amendment may discriminate against any Class of Members without the approval of a majority of the members of that Class. See Article 11. See also Sections 9-13 and 11-4.

#### **ARTICLE XV: EFFECT OF COVENANTS AND ENFORCEMENT**

**SECTION 15-1: EFFECT OF PROVISIONS OF THESE COVENANTS.** Each Property Owner, Lessee, their successors, heirs and assigns, and all others who take an interest in land or realty within the Property do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

- (a) shall be considered incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by a Property Owner, or the Association, (i) be deemed accepted, ratified, adopted and declared as a personal covenant of the Property Owner or the Association, and (ii) be deemed a personal covenant to, with and for the benefit of the Declarant, the Association, and any other Property Owner;
- (c) shall be deemed a real covenant by the Declarant for itself, its successors and assigns and also an equitable servitude, running in each case, as both burdens and benefits with and upon the title to each parcel of real property within the Property and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by the Declarant within the Property and for the benefit of any and all other real property within the Property; and



- (d) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each parcel of real property within the Property which lien, with respect to any respective unit of real property within the Property, shall be deemed a lien in favor of the Declarant and the Association, jointly and severally.

**SECTION 15-2: WHO MAY ENFORCE.** The benefits and burdens of these Covenants run with the land at law and in equity and the Declarant, its successors and assigns, the Association, its successors and assigns, or any Property Owner and his heirs, successors, representatives, administrators and assigns with respect to the Property, shall have the right to proceed pursuant to Section 15-4 against a party specified in Section 15-3 to compel a compliance to the terms hereof or to prevent the violation or breach in any event. The Association may carry out its Enforcement Function as provided in Section 10-20. The Declarant may carry out its enforcement rights as provided in Article X.

**SECTION 15-3: AGAINST WHOM MAY THE COVENANTS BE ENFORCED.** The obligation and benefits prescribed by this Declaration shall run with the Property and shall be enforceable against the Declarant, its successors and assigns and against any Property Owner, his heirs, successors, representatives, administrators, assigns, or other person whose activities bear a relation to the Property, including Guests and Lessees when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent the covenants, burdens, obligations, easements, servitudes and restrictions set forth in this Declaration.

**SECTION 15-4: ENFORCEMENT REMEDIES.** In addition to the enforcement rights of the Declarant pursuant to Article IX and in addition to the enforcement rights of the Association pursuant to Article X, in the event that any Structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any Structure or land use is in violation of these Covenants, the Association, the Declarant or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity: (a) to prevent or remove such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (b) to restrain, correct or abate such violation, or breach of these Covenants; (c) to prevent the occupancy of said building, structure or land; (d) to prevent any act, conduct, business or uses which is in breach of these Covenants; (e) to compel any affirmative act which, pursuant to these Covenants "shall" be performed; or (f) to recover the cost incurred by the Declarant or the Association, including legal fees, pursuant to Sections 9-7 or 10-20 of the Covenants.

In addition, the Association may suspend the voting rights and easements of enjoyment of any Member, Lessee or guest for any period during which the payment of any assessment against property owned by such member is delinquent, and for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay such assessment, and provided that the Association shall not suspend the rights to use any of the access roads belonging to the Association although such use shall be subject to the rules and regulations established by the Association for such use.

#### ARTICLE XVI: INTERPRETATION AND CONSTRUCTION

**SECTION 16-1: SEVERABILITY.** Should any Covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matter and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable. Similarly, should any portion of these Covenants be determined to be illegal or unenforceable for any reason as to any parcel within the Property by the adjudication of the highest court or other tribunal which

considers such matter and has jurisdiction over the parties, these Covenants shall nonetheless continue to apply to all other parcels within the Property.

**SECTION 16-2: INTERPRETATION.** In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property Owners, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and which will preserve the Property as a situs for a high amenity, attractive, well maintained, privately-governed country club community.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Property Owners who take ownership subject to these Covenants, do covenant and agree, and are thereby estopped to deny, that each Function of the Association, and each other covenant condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be subject to Pertinent Law to the extent that these Covenants may allow an act which is prohibited by Pertinent Law; however, where these Covenants are inconsistent with Pertinent Law these Covenants shall apply to the extent the standards of Covenants shall be higher and more restrictive than Pertinent Law.

**SECTION 16-3: GENDER, TENSE AND NUMBER.** When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

**SECTION 16-4: NO WAIVER.** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

**SECTION 16-5: OPTIONS.** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

**SECTION 16-6: NO IMPLIED LIABILITIES OR DUTIES. ANY RULES OR REGULATIONS ESTABLISHED BY THE ASSOCIATION PURSUANT TO THESE COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.**

#### **ARTICLE XVII: DEFINITIONS**

**SECTION 17-1: DEFINITIONS.** The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings and where applicable shall be considered as restrictions on use of land where required to give meaning to the land use restrictions of the various Sections and Articles of these Covenants:

**SECTION 17-1.1: "APPROVED OR APPROVAL BY THE ASSOCIATION" or "APPROVED OR APPROVAL BY THE ARCHITECTURAL REVIEW BOARD"**, shall mean and refer to any approval required under these Covenants to be made by the Mountain Air Property Owners Association. Any Approval by the Association shall be provided in writing, signed by the President (or in the case of architectural review pursuant to Section 10-24, by the Chairman of the Architectural Review Board) and Secretary of the Association and shall be maintained in the Association's records.

SECTION 17-1.1: "APPROVED OR APPROVAL BY THE DECLARANT" shall mean and refer to a written approval issued by the Declarant signed by its President or Vice President and also attested by its Secretary or an Assistant Secretary, or a written approval by such officers or designated members of entities entitled to issue Approvals for the Declarant as may be designated by the Declarant in supplemental declarations to these Covenants.

SECTION 17-1.3: "ASSOCIATION" shall mean and refer to the Mountain Air Property Owners Association, Inc., a nonprofit corporation organized under the laws of North Carolina, which has a membership as provided in Article XI of these Covenants, and which serves the Functions pertaining to the Property as provided in Article X of these Covenants.

SECTION 17-1.4: "COMMON PROPERTIES" shall mean and refer to those areas of land or estates in land with any improvements and fixtures thereon which are purchased by the Association, deeded or leased to the Association by the Declarant or deeded or leased to the Association by any other grantor and which are designated in said Recorded deed or lease as "Common Properties," or are so designated by a Recorded instrument after acquisition by the Association as grantee. "Common Properties" shall also include Purchased Common Properties defined in Section 17-1.33. Common Properties shall also include Neighborhood Common Properties established pursuant to Section 10-33.4 for which use is limited to members of a given Neighborhood District. Common Properties shall not include those common areas defined as Condominium Common Properties in Section 17-1.8 or Limited Common Properties defined in Sections 17-1.21. Common Properties shall also include any personal property acquired by the Association if said property is designated as "Common Property".

SECTION 17-1.5: "COMMUNITY DWELLING LOT" shall mean and refer to any parcel of unimproved land located within the Property which is designated for use as a site for a one (1) detached residential dwelling, one (1) townhouse, or one (1) attached patio dwelling.

SECTION 17-1.6: "COMMUNITY DWELLING UNIT" shall mean and refer to any improved property which is used as a Single Private Household and Residential Dwelling, whether attached or unattached, including any single family detached dwelling, patio home, condominium unit, townhouse unit, cooperative apartment unit or apartment unit located within Land Use Classes B-1, B-2 and B-3.

SECTION 17-1.7: "CONCEPT RESEARCH PLANS" AND "MASTER PLANS" shall mean and refer to master plans, general land use maps, advertising brochures, scale models, designs and drawings commissioned by the Declarant and prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists and similar professionals displaying possible future uses of the Property prepared as an aid in the orderly development of the Property as part of its communications with the public and property purchasers or as part of its research programs undertaken by the Declarant to determine economically optimal/environmentally sensitive programs for future development of the Property.

SECTION 17-1.8: "CONDOMINIUM"; "CONDOMINIUM COMMON PROPERTIES"; "CONDOMINIUM LIMITED COMMON ELEMENTS". "Condominium" shall mean and refer to the legal association established under the laws of North Carolina in which owners of a single dwelling, lodging or commercial unit in a building own directly such unit and hold a co-ownership interest with other unit holders in the "Condominium Common Properties" (more precisely defined by the North Carolina Condominium Act). "Limited Common Elements" (more precisely defined by the North Carolina Condominium Act) shall mean and refer to those areas and facilities, such as a unit balcony or a common stairway leading to a few units, which may be used only by one or a designated few unit owners. Condominium Common Properties are distinguished from Limited Common Properties by the following factors: Neighborhood Common Properties are not held in common by owners within the subject area or complex but rather are owned by the Association for use by only Property Owners within the subject neighborhood, or Neighborhood Common Properties may be owned in common by owners within the subject area or complex, but such ownership in common is not

within the scope of the North Carolina Condominium Act and is governed instead by the principles of the common law and equity. Similarly, Condominium Common Properties and Limited Common Elements are distinguished from Limited Common Properties in that Limited Common Properties are not owned in common at all but are either subject to easements of use or are owned by a property owners association other than a property owners association established to manage a condominium.

SECTION 17-1.9: "COVENANTS" shall mean and refer to the entire set of covenants, conditions, restrictions, reservations, easements and obligations contained herein adopted by the Declarant as declarant for the Property and Incorporator of the Association, as amended pursuant to the provisions of these Covenants and any supplemental declarations hereto.

SECTION 17-1.10: "DECLARANT" shall mean and refer to Mountain Air Development Corporation, a North Carolina corporation, and the successors and assigns of the Declarant as a legal entity.

SECTION 17-1.11: "DEVELOPMENT OR SURVEY PLATS" (as distinguished from "Concept Research Plans" and "Master Plans") shall mean and refer to the Recorded Plats of property prepared and signed by a registered surveyor describing by metes and bounds sections or portions of the Property for purposes, as specified, of either describing conveyances or leases to third parties.

SECTION 17-1.12: "DEVELOPMENT UNIT PARCELS" shall mean and refer to a parcel of land which has been conveyed to a developer other than Declarant and which is subject to limitations established by Declarant as to what Land Uses the property may be used for and the number of Community Dwelling Lots, Community Dwelling Units, Professional Service Units, Retail Units or Restaurant Units which may be established upon the subject parcel.

SECTION 17-1.13: "FUNCTION" shall mean and refer to those rights, duties and obligations set out in these Covenants which shall or may be performed by the Association and in particular, those obligations and duties set out in Article X of these Covenants.

SECTION 17-1.14: "GOLF FAIRWAY RESIDENTIAL AREAS" shall mean and refer to all those Residential Lots or blocks of land intended for subdivision located adjacent to any golf course located in the Property, even if immediately separated from the fairway or green by a road.

SECTION 17-1.15: "GUEST" shall mean and refer to any customer, agent, guest or invitee of the Declarant, the Association, the Country Club or any Property Owner or Lessee.

SECTION 17-1.16: "GUEST LODGE" shall mean and refer to a facility which offers lodging to owners, guests, and transients, which may have restaurants, meeting rooms and retail shops.

SECTION 17-1.17: "GUEST LODGING UNIT" shall mean and refer to a room or suite which is a single rentable unit of accommodation in a Guest Lodge within a Class C-1 area of the Property.

SECTION 17-1.18: "IMPROVED PROPERTY" shall mean land which has been improved by construction of buildings and other Structures to make the property suitable for human lodging, commerce, education and recreation as permitted pursuant to this Declaration.

SECTION 17-1.19: "LAND USE CLASS" shall mean and refer to the designated use for any lands or improvements within the Property which is in conformity with a use classification established in Section 2-1 of these Covenants.

SECTION 17-1.20: "LESSEE" shall mean and refer to the person or persons, entity or entities who are the Lessees, assignees of a Lessee or Sublessee of a Lessee under any ground lease or any lease of any part

or all of a Guest Lodging Unit, Restaurant Unit, Retail Unit, Community Dwelling Unit, Community Dwelling Lot, Development Parcel or any other property owned by a Property Owner within the Property.

SECTION 17-1.21: "LIMITED COMMON PROPERTY" shall mean and refer to the Structures, facilities, or lands which are owned by a subgrouping of Property Owners, such as those in a given townhouse or patio home cluster and which are not owned by either (a) the Association (as in the case of Common Properties or Neighborhood Common Properties), or (b) any Condominium or Condominium Association ("Condominium Common Properties"). Limited Common Properties may be owned by a property owners association other than (a) the Association or (b) a condominium property owners association.

SECTION 17-1.22: "MAIL REFERENDUM" shall mean and refer to the power of all Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth in Section 11-4.

SECTION 17-1.23: "MEMBER" shall mean and refer to the Declarant and all those Property Owners who are members of the Association as provided in Article XI hereof.

SECTION 17-1.24: "NEIGHBORHOOD COMMITTEE", "NEIGHBORHOOD COMMON PROPERTY," "NEIGHBORHOOD DISTRICT" or "NEIGHBORHOOD FUNCTION". A "Neighborhood District" shall mean and refer to an area established by the Declarant by deed or supplemental declaration pursuant to Section 10-35 which has one or more common needs or functions ("Neighborhood Functions") which can appropriately be addressed and satisfied by the Association by establishing a "Neighborhood Committee" to oversee those functions or to advise the Association with respect to those functions. A Neighborhood Common Property is a type of Common Property which is defined pursuant to Section 10.35.4 and which may only be used by or for the benefit of members of a given Neighborhood District.

SECTION 17-1.25: "NON-ASSESSABLE LAND AND WATER" shall mean and refer to all Common Properties, Community Open Space and lands within the Property which are primarily used for the following governmental, charitable or nonprofit uses, the presence of which benefits the Property as a whole: any buildings and lands which are owned by local, state and federal governments and which are used for governmental as opposed to proprietary functions; police stations, fire stations and emergency medical care facilities and other nonprofit schools, educational and instructional centers.

SECTION 17-1.26: "OPEN SPACE" shall be designated as either "Community Open Space" or "Private Open Space" and shall mean and refer to those parcels of land which are dedicated pursuant to Section 4-1 of these Covenants by Recorded declaration of the Declarant as land for such purposes, which, pursuant to these Covenants, cannot be developed or improved or altered except as provided in Article IV and any other relevant Sections of these Covenants.

SECTION 17-1.27: "OVER-UNDER TOWNHOMES" shall mean and refer to a structure in which one townhouse (architecturally tailored to a hillside) is built on top of or vertically connected to or supported by another townhouse (also architecturally tailored to a hillside), with the upper townhouse having an entrance at street level on the wall facing the hill and the lower townhouse having a street level entrance on the wall opposite the side of the hillside.

SECTION 17-1.28: "PERTINENT LAWS" shall mean and refer to the statutes, ordinances, regulations and other laws pertinent to the ownership, lease, sale, use, improvement and development of the Property, as are codified or promulgated by the State of North Carolina, the County of Yancey, North Carolina, the Government of the United States of America and other governmental authorities having jurisdiction over the Property.

SECTION 17-1.29: "PROFESSIONAL SERVICE UNIT" shall mean and refer to any unit of real property within the Property, under a single ownership, whether such ownership is a proprietorship, corporation, joint tenancy, tenancy in common, tenancy by the entirety, or partnership in form, which unit is improved and utilized primarily for the purpose of rendering "professional" as opposed to either Trade-Oriented Services within Land Class E-1 or management of lodging operations within Land Class C-1. Professional Service Units which units shall include but are not limited to those utilized for business offices; architectural and design offices; accounting services; general consulting, managerial or real estate brokerage and sales and other professional services; medical offices; legal service offices, insurance sales offices; and governmental offices; provided, however, that no real property and improvements thereon operated by a single business entity used for providing electronic, plumbing, mechanical, building construction, ceramic firing or repair service can be a "Professional Service Unit."

SECTION 17-1.30: "PROPERTY" shall mean and refer to the land in Mountain Air more particularly the lands described in Section 1-1 hereof and Exhibit A attached hereto together with any additions to the property which are made pursuant to Sections 1-2.

SECTION 17-1.31: "PROPERTY OWNER" shall mean and refer to the owner, except the Declarant (other than as provided in Section 11-2), of any real estate within the Property as shown by the real estate records of the Register of Deeds. "Property Owner" shall in all cases also include the successors, heirs, assigns, personal representatives, receivers and trustees of the Property Owner with respect to real estate within the Property. "Property Owners" may be used to describe any persons, firms, proprietresses, associations, corporations or other legal entities owning a fee simple title to any: Community Dwelling Lot; Community Dwelling Unit; Guest Lodging Unit; Community Inn; Professional Service Unit; Retail Unit; Utility, Transportation or Maintenance Unit; Recreational Unit; Country Club, Trade Oriented Service Unit, or other Undesignated land situated upon the Property but, notwithstanding any applicable theory of a mortgage or trust, shall not mean or refer to the mortgagee (even if viewed by State law as holding legal title), trustee under a deed of trust, or holder of a security interest, unless and until such mortgage holder or holder of a security deed has acquired both legal and equitable title pursuant to a foreclosure proceeding or deed in lieu of foreclosure; nor shall the term "Property Owner" mean or refer to any Lessee or Tenant of a Property Owner. In the event that there is a Recorded long-term contract of sale, nominal option to purchase, bond for title, long-term lease with option to purchase, or any similar recorded device for ultimate conveyance of beneficial interest, covering any lot, condominium unit, building, or parcel of land within the Property, the Property Owner of such property shall be the purchaser under said contract and not the legal title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond twelve (12) months from the date of the contract, and where the purchaser does not receive legal title to the property until such payments are made although the purchaser is given the use of said property.

SECTION 17-1.32: "PROPERTY OWNERS ASSOCIATION" OR "POA" shall mean and refer to any property owners association whose members are Property Owners and which is established by filing a declaration of covenants or a declaration of condominium but which shall not include the Association which is created and administered pursuant to Articles X, XI, XII and XIII of these Covenants.

SECTION 17-1.33: "PURCHASED COMMON PROPERTIES" shall mean and refer to those Common Properties which the Members of the Association choose to purchase by Mail Referendum.

SECTION 17-1.34: "RECORDED" shall mean and refer to a filing, in conformity with all legal formalities under North Carolina law for the filing of a real property interest with the Register of Deeds.

SECTION 17-1.35: "RECREATIONAL UNIT" shall mean and refer to any unit of real property within the Property which is not within a Condominium comprised of Community Dwelling Units, and which is improved, used and operated as a separate for-profit or not-for-profit sports, athletic or health club facility,

whether indoor or outdoor, including but not limited to those used for racquet sports, swimming pools, reducing salons, pro shops, golf, tennis, saunas, spas, gymnasium facilities, skating areas, day care facilities or large recreation centers.

SECTION 17-1.36: "REGISTER OF DEEDS" OR "REGISTRY" shall mean and refer to the Register of Deeds of Yancey County, North Carolina and to any successors of said office which is responsible for maintaining formal filing and recording of all mesne conveyances including deeds, covenants, mortgages, plats and other evidences of real property interests;

SECTION 17-1.37: "RESIDENTIAL" purposes shall mean and refer to those purposes which are defined in Section 5-1(e) of these Covenants.

SECTION 17-1.38: "RESTAURANT UNIT" shall mean and refer to any unit of real estate, other than one located within the club house in Land Class D-2, which is used as a public bar, dining room, soda shop, restaurant, eatery, cafe, night club, deli/cafeessen or other public place or club for eating and/or drinking which is operated or intended to be operated as a for-profit business enterprise.

SECTION 17-1.39: "RETAIL UNIT" shall mean and refer to any unit of real property within the Property which is improved and utilized primarily for the purpose of sale of goods other than prepared food and beverages to ultimate consumers usually in small quantities (as opposed to in wholesale quantities).

SECTION 17-1.40: "SHALL", whether or not capitalized, indicates a mandatory requirement, condition or obligation; in contrast, the term "MAY", whether or not capitalized, indicates a right to take permitted action without obligation or duty to take such action.

SECTION 17-1.41: "SINGLE PRIVATE HOUSEHOLD" purposes shall mean and refer to those purposes which are further defined in Section 5-1(b) of these Covenants.

SECTION 17-1.42: "STRUCTURE" shall mean and refer to any construction, object, projection or piece of work artificially built up or composed of parts joined together in some definite manner, which is erected or shaped on the Property, including but not limited to buildings, docks, fences, bulkheads, tennis courts, pavilions, signs, tents, gazebos, docks, bird baths, bird houses, treehouse, garage facilities, garbage receptacles, abutments, ornamental projections, exterior fixtures, berms, shaped earth, masonry structures, outdoor hot tubs and jacuzzis, large balloons, dirigibles and blimps attached to the Property or suspended so as to remain over the Property, together with any other lights or any device which might obstruct or interfere with the quality of a view from the windows of any improvements which have been made to the Property.

SECTION 17-1.43: "TIME SHARE OWNER" shall mean and refer to any Property Owner who owns a fractional, interval or time share ownership interest in a Community Dwelling Unit or a Guest Lodging Unit for a limited and designated period each year, including any such ownership pursuant to the North Carolina Time Share Act, N.C. Gen. Stat. Chapter 93-A, as it may be amended from time to time. See Sections 5-3 and 6-1 with respect to prohibitions against Time Share Ownership.

SECTION 17-1.44: "TRADE-ORIENTED SERVICES" shall mean and refer to installation, repair and maintenance services in the nature of air-conditioning, heating, plumbing, solar equipment, mechanical systems, electrical systems, appliances and equipment, motor vehicles, building construction and pest control, and related services, except where such Trade-Oriented Services are used in the manufacture of goods or are prohibited by Section 3-22 of these Covenants.

SECTION 17-1.45: "TRADE-ORIENTED SERVICE UNIT" shall mean and refer to any real property within the property which has been designated to be used for Trade-Oriented Services.

SECTION 17-1.46: "UNIT" shall be a separate taxable or assessable unit of real property.

SECTION 17-1.47: "UNDESIGNATED LANDS" shall mean and refer to any land within the Property for which Declarant has not specified a given Land Use Class in a Recorded instrument, and, shall also mean any land which was given a specified Land Use Class for a limited period of time which has since lapsed.

SECTION 17-1.48: "UTILITY, TRANSPORTATION AND MAINTENANCE UNITS" shall mean and refer to any real property within the Property, which is owned by a single entity whether corporation, trust, partnership or proprietorship, and which is designated in deed of conveyance from the Declarant for a use permitted within Land Classes E as provided in Section 2-1 of these Covenants.

IN WITNESS WHEREOF, the undersigned do set their hand and seal.

DECLARANT

MOUNTAIN AIR DEVELOPMENT CORPORATION

By: William R. Bask  
Vice President



ATTEST:  
Julien Y. McQueen  
Secretary

North CAROLINA  
Yancey COUNTY

Rebecca M. Stiles, a Notary Public of said state and county certify that Sukna Y. McQueen, personally appeared before me this day and acknowledged that (s)he is Secretary of Mountain Air Development Corporation, and that by authority duly given and as the act of the corporation, the foregoing Declaration of Land Use Covenants, Conditions and Restrictions was signed in its name by its Vice President, seated with its corporate seal, and attested by himself/herself as its Secretary.

Witness my hand and notarial seal this the 3rd day of August, 1990.

[SEAL]

Rebecca M. Stiles  
Notary Public

My Commission Expires: 4/2/95

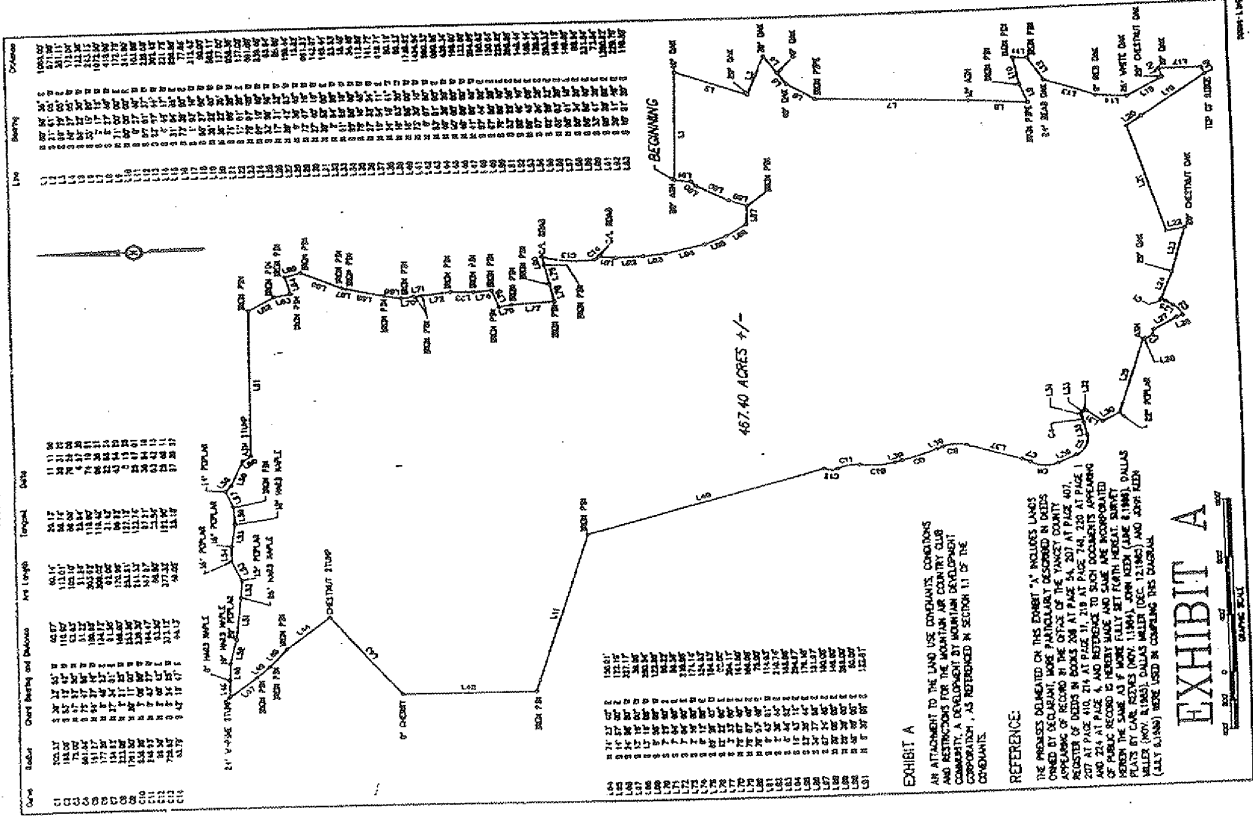
NORTH CAROLINA, YANCEY COUNTY:  
The foregoing for annual performance of  
Rebecca M. Stiles



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is (are) certified to be correct.  
This 13 day of Aug, A.D. 1990  
Keith B. Hewitt  
Deputy REGISTER OF DEEDS





**EXHIBIT A**  
 AN ATTACHMENT TO THE LAND USE ORDINANCE CONDITIONS  
 APPLICABLE TO THE MOUNTAIN AIR COUNTRY CLUB  
 COMMUNITY DEVELOPMENT BY MOUNTAIN DEVELOPMENT  
 CORPORATION, AS REFERRED IN SECTION 11 OF THE  
 ORDINANCE.

**REFERENCE**

THE PROCESS DELINEATED ON THIS EXHIBIT "A" INCLUDES LAKES  
 OWNED BY DECLARANT, MORE PARTICULARLY DESCRIBED IN THE  
 APPEARANCE OF RECORD IN THE O&M AT PAGE 34, 201 AT PAGE 407,  
 202 AT PAGE 410, 211 AT PAGE 11, 218 AT PAGE 749, 220 AT PAGE 407,  
 221 AT PAGE 410, 211 AT PAGE 11, 218 AT PAGE 749, 220 AT PAGE 407,  
 AND 221 AT PAGE 4, AND REFERENCE TO SUCH RECORDS IS INCORPORATED  
 OF PUBLIC RECORD AS FURTHER DETAILED IN THE HERETO SURVEY  
 PLATS BY CARL ESTES (NOV. 11, 1984), JOHN KEEN (JUNE 19, 1984),  
 MALLER (NOV. 8, 1985), GALLAS MILLER (OCT. 19, 1985) AND JOHN KEEN  
 (JULY 14, 1986) WERE USED IN COMPLETING THIS SURVEY.

**EXHIBIT A**



## EXHIBIT B

AN ATTACHMENT TO THE LAND USE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MOUNTAIN AIR COUNTRY CLUB COMMUNITY, A DEVELOPMENT BY MOUNTAIN AIR DEVELOPMENT CORPORATION, AS REFERENCED IN SECTION 1-2 OF THE COVENANTS.

The hereinafter-described and referenced interests in real estate consist of real estate interests belonging to Declarant, all or a part of which may be subjected to the Covenants by Recording a supplemental declaration executed by Declarant.

FIRST TRACT: Located in Prices Creek Township, Yancey County, North Carolina, and described as follows:

BEGINNING at a point located S 88-48-56 W 57.41 feet from a 12-inch white oak, said beginning point being a common corner to Bill Banks, and runs thence with the Banks line S 88-48-56 W 284.44 feet to a point; thence leaving the Banks line and runs with the Weeks line N 56-41-04 W 113.49 feet; N 66-41-15 W 290.11 feet; N 51-27-05 W 227.61 feet; N 31-43-28 W 94.79 feet; N 01-38-49 E 109 feet; N 23-40-41 W 98.82 feet; N 04-26-08 E 253.68 feet; N 08-40-55 W 116.98 feet; N 04-57-36 E 117.21 feet; N 17-09-47 E 394.91 feet; N 24-35-21 W 45.07 feet; N 40-04-42 W 75.64 feet; N 19-48-36 W 291.71 feet; N 00-05-50 E 58.40 feet; N 17-58-08 E 269.37 feet; N 34-09-40 E 192.82 feet to a point in the centerline of Jim Cole Branch, common corner to Robert W. Ball; thence up and with said branch and the Ball line S 84-18-07 E 16.44 feet; S 84-02-32 E 20.98 feet; S 70-01-36 E 50.75 feet; S 76-38-40 E 21.55 feet; S 77-51-57 E 51.47 feet to a point in the centerline of said creek; thence leaving said creek and running with the Weeks line S 34-09-40 W 228.63 feet; S 17-58-08 W 224.45 feet; S 00-05-50 W 8.49 feet; S 19-48-36 E 238.57 feet; S 40-04-42 E 69.23 feet; S 24-35-21 E 122.67 feet; S 17-09-47 W 436.68 feet; S 04-57-36 W 83.23 feet; S 08-40-55 E 116.28 feet; S 04-26-08 W 233.36 feet; S 23-40-41 E 94.97 feet; S 01-38-49 W 97.74 feet; S 31-43-28 E 23.75 feet; S 51-27-05 E 181.47 feet; S 66-41-15 E 283.17 feet; S 56-41-04 E 163.91 feet; S 62-27-48 E 155.67 feet; S 50-30-49 E 42.48 feet to the BEGINNING, containing 9.57 acres according to a map and plat of a survey by John E. Keen, Registered Land Surveyor, L-2991, dated 29 January 1988 and entitled "Survey for Mountain Air Golf & Country Club."

Title Reference: Yancey County Deed Registry, Yancey County Deed Book 213, page 484.

SECOND TRACT: Located in Prices Creek Township, Yancey County, North Carolina, and described as follows:

BEGINNING at a point located S 86-27-39 E 429.59 feet from a tack in an Ash tree, said BEGINNING point being a common corner of Mae Stiles and Robert W. Ball and runs thence with the Stiles line S 86-27-39 E 152.43 feet; thence leaving the Stiles line and running with the Ball line S 13-46-52 W 17.90 feet; S 27-33-59 E 27.81 feet; S 50-51-52 E 164.94 feet; S 12-39-58 E 177.01 feet; S 22-42-57 W 137.69 feet; N 84-03-19 E 62.12 feet; S 68-58-28 E 268.76 feet; S 49-00-41 E 107.69 feet; S 69-31-36 E 113.76 feet; S 32-12-27 E 132.88 feet; S 34-44-17 E 197.64 feet; S 07-33-01 E 212.32 feet to a point in Jim Cole Branch, common corner to Jane Weeks; thence down and with said branch and the Weeks line N 77-51-57 W 51.47 feet; S 76-38-40 W 21.55 feet; N 70-01-36 W 50.75 feet; N 84-02-32 W 20.98 feet; N 84-18-07 W 16.44 feet to a point in the centerline of said branch, common corner of Weeks and Ball; thence leaving said branch and running with the Ball line N 07-33-01 W 118.91 feet; N 34-44-17 W 164.68 feet; N 32-12-27 W 85.54 feet; N 69-31-36 W 90.25 feet; N 49-00-41 W 108.44 feet; N 68-58-28 W 206.39 feet; S 84-03-19 W 163.24 feet; N 30-28-05 W 126.97 feet; N 22-42-57 E 211.13 feet; N 12-39-58 W 77.23 feet; N 50-51-52 W 143.92 feet; N 27-33-59 W 115.34 feet; N 13-46-52 E 47.40 feet to the BEGINNING, containing 5.70 acres according to a map and plat of a survey by John E. Keen, Registered Land Surveyor, L-2991, dated 29

January 1988 and entitled "Survey for Mountain Air Golf & Country Club."

Title Reference: Yancey County Deed Registry, Yancey County Deed Book 213, page 482.

THIRD TRACT: Located in Pices Creek Township, Yancey County, North Carolina, and described as follows:

BEGINNING at a point located S 86-27-39 E 429.59 feet from a tack set in an Ash tree in the line between Robert Ball and Mae Stiles and runs from said BEGINNING point with the Mae Stiles Line N 13-46-52 E 51.35 feet; N 21-24-10 E 108.12 feet; N 22-35-19 W 95.85 feet; S 72-14-26 W 337.59 feet; N 59-23-47 W 139.80 feet; N 74-26-47 W 76.58 feet; N 77-58-48 W 7.20 feet; S 79-39-44 W 78.92 feet; N 81-52-48 W 69.31 feet; S 80-52-54 W 81.76 feet to a point in the edge of the right of way for State Road No. 1116; thence with said right of way N 19-34-20 E 49.04 feet; N 06-03-27 E 54.84 feet; N 14-14-55 W 51.03 feet; N 27-48-31 W 3.41 feet to a point on the east bank of Phipps Creek and in the edge of the right of way for State Road No. 1116, common corner to Kenneth Phillips and runs thence with the Phillips line N 80-52-54 E 72.26 feet; S 81-52-48 E 67.68 feet; N 79-39-44 E 84.19 feet; S 77-58-48 E 41.47 feet; S 74-26-47 E 101.02 feet; S 59-23-47 E 92.26 feet to a point in a branch, common corner to Phillips and Mae Stiles, et als; thence with the Stiles line N 72-14-26 E 408.10 feet; S 22-35-19 E 294.31 feet; S 21-24-10 W 158.72 feet; S 13-46-53 W 14.26 feet to a point in a fence line, common corner to Robert W. Ball, thence with the fence line, the same being the Ball line N 86-27-39 W 152.43 feet to point of BEGINNING, containing 4.06 acres according to a map and plat of a survey by John E. Keen, Registered Land Surveyor, L-2991, dated 29 January 1988 and entitled "Survey for Mountain Air Golf & Country Club."

Title Reference: Yancey County Deed Registry, Yancey County Deed Book 213, page 478.

FOURTH TRACT: Those easements, rights of way, and interests in land located in Pices Creek Township, Yancey County, North Carolina, and described as follows:

BEING a nonexclusive, perpetual easement and right of way for a road 60 feet in width measured 30 feet on each side of the center of a line commencing at the intersection of NCSR 1115 and call number 1, as shown upon and identified on a Plat of Mountain Heritage Estates filed for public record in Yancey County Map File 2, page 38B and running from said point with the metes and bounds set forth and identified as call numbers 1 through 58, inclusive, respectively, said metes and bounds as identified appearing of public record on Subdivision Plat for Mountain Heritage Estates appearing of public record in the Office of the Register of Deeds for Yancey County, North Carolina, in Map File 2, page 38B, and incorporated herein by reference, the same as if more fully set forth; thence continuing from the terminus of call number 58, S 25-02-10 E 90.70 feet to the intersection of two private drives; thence running S 69-26-40 W 20 feet from the terminus of the preceding call and continuing from that point (the width of this easement and right of way remaining 30 feet on each side of the line described herein) S 17-33-20 E 150.35 feet, S 05-15-20 E 110.36 feet, S 29-34-20 W 87.79 feet, S 51-40-40 W 54.95 feet, S 36-20-00 W 52.77 feet, S 20-14-30 W 109.24 feet, to the southeastern corner of Lot No. 17; thence continuing for the following 10 calls: with the arc of a curve to the left having a delta angle of 29-40-10 and a radius of 728.65 feet and a chord running S 05-24-25 W 373.12 feet; with the arc of a curve to the left having a delta angle of 115-13-50 and a radius of 45.79 feet and a chord running S 71-08-07 E 77.34 feet; N 51-14-58 E 147.36 feet; thence with the arc of a curve to the right having a delta angle of 147-10-14 and a radius of 71.87 feet and a chord running S 55-09-55 E 137.88 feet; with the arc of a curve to the left having a delta angle of 26-19-56 and a radius of 266.14 feet and a chord running S 05-15-14 W 121.24 feet; with the arc of a curve to the right having a delta angle of 10-36-04 and a radius of 1,140.61 feet and a chord running S 02-36-44 E 210.74 feet; thence with the arc of a curve to the left with a delta angle of 17-02-04 and a radius of 364.10 feet and a chord running S 05-49-44 E 107.85 feet; S 14-20-45 E 261.87 feet; with the arc of a curve to the left having a delta angle of 18-09-28 and a radius of 306.82 feet and a chord running S 23-25-29 E 96.83 feet; S 32-30-13 E 189.70 feet to a point in the line of Mountain Air County Club, Inc. being located S 28-30-00 W

37.38 feet from a point on a rock, together with the right to enter the area encompassing this easement and right of way to inspect, construct, maintain, improve, and repair the roadway and use same as a nonexclusive, perpetual means of ingress, egress, and regress between NCSR 1115 and premises now or hereafter owned by Mountain Air Country Club, Inc. (Now Mountain Air Development Corporation).

ALSO INCLUDED is an easement and right of way for utilities (the designation "utilities" to include pipe and pipeline for water and sewer and electrical line and conduit for electricity, telephone and cable television, and other means of communication) in and along the area designated and specified above for a roadway, together with the right to enter the area hereinabove described to inspect, dig, and bury beneath the surface, locate, install, construct, maintain, improve, and repair the hereinabove described utilities, consisting of pipeline and wiring and necessary and associated pumps, pump stations, substations, junction boxes, and similar facilities. It is understood and agreed that within the area of this easement and right of way, utilities may be located above or beneath the surface, and that damage to the roadway in connection with the exercise or enjoyment of this easement and right of way shall be repaired within a reasonable period of time following any damage or disruption.

Title Reference: Yancey County Deed Registry, Yancey County Deed Book 219, page 746 and Yancey County Deed Book 220, page 1.

FIFTH TRACT: Being that certain easement and purchase option more particularly set forth in an Agreement dated 31 August 1988 between Claude Burlison and wife, Dorothy Burlison and Mountain Air Country Club, Inc., recorded in Yancey County Registry, Yancey County Deed Book 216, page 385, and reference to such public document for a more full and complete description, the terms of which are incorporated herein by reference, if hereby made.

EXHIBIT C**AN ATTACHMENT TO THE LAND USE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MOUNTAIN AIR COUNTRY CLUB COMMUNITY, A DEVELOPMENT BY MOUNTAIN AIR DEVELOPMENT CORPORATION, AS REFERENCED IN SECTION 1-2 OF THE COVENANTS.**

Unless specifically described, the hereinafter-referenced tracts or parcels of real estate are described more fully and completely in the deeds and maps appearing of record in the Yancey County Deed Registry, to which reference is made. The public documents hereinafter referenced are specifically incorporated by such reference, the same as if specifically hereinafter set forth. This "Exhibit C" consists of real estate, all or a part of which, may be subjected to these Covenants by Recording a supplemental Declaration executed by Declarant and the owners thereof. The reference to public documents is for a description of real estate tracts or parcels in fee simple absolute which may be subjected to these Covenants, regardless of the quantity or quality of title with respect to the transaction evidenced by the public document.

FIRST: Located in Pricess Creek Township, Yancey County, North Carolina and being the First Tract containing 16 acres, more or less, the Second Tract containing 176 acres, more or less, the Third Tract containing 100 acres, more or less, and the Fourth Tract containing 40 acres, more or less, all of which are more particularly described in a Deed dated 4 February 1950 from W. K. Banks and wife, Julia Banks to William A. Banks and wife, Virginia A. Banks, recorded in Yancey County Deed Book 105, page 421, and reference to such public document for a more full and complete description of the premises is hereby made.

SECOND: Located in Pricess Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 202 acres, more or less, more particularly described in a Deed dated 1 August 1955 from Julia Banks and husband, W. K. Banks to William A. Banks and wife, Virginia A. Banks, recorded in Yancey County Deed Book 115, page 226, and reference to such public document for a more full and complete description of the premises is hereby made.

THIRD: Located in Pricess Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 100 acres, more or less, more particularly described in a Deed dated 15 February 1974 from Edward A. Yuziuk and wife, Carolyn R. Yuziuk to W. A. Banks and wife, Virginia A. Banks, recorded in Yancey County Deed Book 164, page 589, and reference to such public document for a more full and complete description of the premises is hereby made.

FOURTH: Located in Pricess Creek and Pensacola Townships, Yancey County, North Carolina, and being the First Tract containing 200 acres, more or less, the Second Tract containing 50 acres, more or less, the Third Tract containing 100 acres, more or less, the Fourth Tract containing 64-1/2 acres, more or less, the Fifth Tract containing 100 acres, more or less, and the Sixth Tract, containing 30 acres, more or less, and all other lands or interests therein which are more particularly described in a Deed dated 8 January 1957 from Donald Banks et al to Jack Patton et al, recorded in Yancey County Deed Book 120, page 313, and reference to such public document for a more full and complete description of the premises is hereby made.

FIFTH: Located in Pricess Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 200 acres, more or less, more particularly described in a Deed dated 4 June 1909 from M. H. Blankenship and Sallie Blankenship to S. C. Blankenship and Maggie Blankenship, recorded in Yancey County Deed Book 37, page 330, and reference to such public document for a more full and complete description of the premises is hereby made.

SIXTH: Located in Pricess Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land of unspecified acreage, but containing, by estimate, 75 acres, more or less, more particularly described in a Deed dated 8 January 1957 from Pauline Banks and husband, Donald Banks to Jack Patton, et al, recorded in Yancey County Deed Book 120, page 308, and reference to such public

document for a more full and complete description of the premises is hereby made.

SEVENTH: Located in Prices Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 831.76 acres, more or less, more particularly described in a Deed dated 8 January 1957 from Donald Banks et al to Jack Patton et al, recorded in Yancey County Deed Book 120, page 310, and reference to such public document for a more full and complete description of the premises is hereby made.

EIGHTH: Located in Prices Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 180 acres, more or less, more particularly described in a Deed dated 8 January 1957 from Donald Banks et al to Jack Patton et al, recorded in Yancey County Deed Book 120, page 289, and reference to such public document for a more full and complete description of the premises is hereby made.

NINTH: Located in Prices Creek Township, Yancey County, North Carolina, and being ALL of the 300 acres, more or less, described in the First Tract and ALL of the 25 acres, more or less, described in the Second Tract, more particularly described in a Deed dated 28 October 1974 from Charles E. Keith, et al, Trustees to William A. Banks, recorded in Yancey County Deed Book 158, page 283, and reference to such public document for a more full and complete description of the premises is hereby made.

TENTH: Located in Prices Creek Township, Yancey County, North Carolina, and being all of that certain tract or parcel of land containing 85.76 acres, together with the right of way, more particularly described in a Deed dated 16 September 1988 from Helen Banks Anglin to Marjorie A. Hall and Grady Vonno Anglin, Jr., recorded in Yancey County Deed Book 214, page 564, and reference to such public document for a more full and complete description of the premises is hereby made.

ELEVENTH: Located in Prices Creek Township, Yancey County, North Carolina, and being all of that certain tract or parcel of land containing an unspecified acreage, more particularly described in a Deed dated 15 May 1968 from W. G. Ball and wife, Martha M. Ball to Rosser E. Weeks and wife, Jane E. Weeks, recorded in Yancey County Deed Book 140, page 42, and reference to such public document for a more full and complete description of the premises is hereby made.

TWELFTH: Located in Prices Creek Township, Yancey County, North Carolina, and being all of that certain tract or parcel of land containing 15 acres, more or less, more particularly described in a Deed dated 2 July 1979 from Robert William Ball and wife, Martha Ball to Mary Ella Ball, recorded in Yancey County Deed Book 176, page 561, and reference to such public document for a more full and complete description of the premises is hereby made.

THIRTEENTH: Located in Prices Creek Township, Yancey County, North Carolina, and being all of the First Tract containing 60 acres, more or less and the Second Tract containing 10 acres, more or less, more particularly described in a Deed dated 7 February 1945 from W. K. Boone and wife, Mary Boone to Wm. G. Ball and wife, Sarah Ball, recorded in Yancey County Deed Book 94, page 170, and reference to such public document for a more full and complete description of the premises is hereby made.

FOURTEENTH: Located in Prices Creek Township, Yancey County, North Carolina, and being all of that certain tract or parcel of land containing 20 acres, more or less, and right of way more particularly described in a Deed dated 1 February 1918 from R. N. Boone and wife, A. J. Boone to W. G. Ball and wife, Martha Ball, recorded in Yancey County Deed Book 53, page 16, and reference to such public document for a more full and complete description of the premises is hereby made.

FIFTEENTH: Located in Prices Creek Township, Yancey County, North Carolina, and being all of that certain tract or parcel of land containing 103 acres, more or less, more particularly described in a Deed dated 27 October 1972 from Elaine T. Reed to Gerald W. Hall and wife, Jean S. Hall, recorded in Yancey County Deed Book 190, page 431, and reference to such public document for a more full and complete

description of the premises is hereby made.

SIXTEENTH: Located in Burnsville Township, Yancey County, North Carolina, and described as follows:

BEGINNING on an existing iron pipe, a corner of Cooper and Crane, in the line of Mountain Air Development Corporation and running with the Mountain Air Development Corporation line N 05-27-40 E 418.98 feet to a 12" Ash at the creek, N 03-37-46 E 1071.48 feet to an existing 1/2" rebar, N 35-18-51 E 244.53 feet to a 40" Chestnut Oak; thence a new line with Crane S 65-20-22 E 84.22 feet to a set iron pin, S 33-46-12 W 138.68 feet to a 6" Ash, S 25-52-08 W 306.77 feet to a 4" Ash, S 02-38-09 W 281.49 feet to an 8" Beech, S 01-36-27 W 362.75 feet to a 42" Hemlock, S 50-56-49 E 185.46 feet to a 20" Red Oak, S 17-33-57 E 87.38 feet to a 20" White Oak, S 46-38-47 E 251.15 feet to a 20" Hickory, S 11-48-06 E 146.75 feet to a set iron pin in the Cooper line being located S 88-55-00 W 167.11 feet from a 28" Chestnut Oak and N 11-48-06 W 51.51 feet from a set iron pin; thence with the Cooper line, S 88-55-00 W 73.89 feet to a set iron pin, S 80-00-00 W 241 feet to a set iron pin, S 71-00-00 W 172.76 feet to the BEGINNING, containing 5.04 acres by coordinate computation. This description is according to a survey and plat by John E. Keen, RLS L-2991, dated 6 June 1988 (Map File No. 88-201A-L-H) for Mountain Air Golf and Country Club. Title Reference: Yancey County Deed Book 197, page 266.

SEVENTEENTH: Located in Burnsville Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 400 acres, more or less, more particularly described in a Deed dated 2 September 1955 from Mrs. Frances Lowe to David N. Low and wife, Betty Bright Low, recorded in Yancey County Deed Book 115, page 61, and reference to such public document for a more full and complete description of the premises is hereby made.

EIGHTEENTH: Located in Burnsville Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 2.81 acres by D.M.D., more particularly described in a Deed dated 15 November 1985 from David Garber and wife, Jill Garber to David Low and wife, Betty B. Low, recorded in Yancey County Deed Book 202, page 313, and reference to such public document for a more full and complete description of the premises is hereby made.

NINETEENTH: Located in Pices Creek Township, Yancey County, North Carolina, and being the First Tract containing 35 acres, more or less and the Second Tract containing 35 acres, more or less, more particularly described in a Deed dated 2 January 1956 from Arthur Ray and wife, Edna Ray to L. E. Briggs, recorded in Yancey County Deed Book 106, page 205, and reference to such public document for a more full and complete description of the premises is hereby made.

TWENTIETH: Located in Pices Creek Township, Yancey County, North Carolina, and being Lot No. 82 containing 103.5 acres, Lot No. 84 containing 22.8 acres, Lot No. 85 containing 80 acres, and Lot No. 87 containing 102.8 acres, more particularly delineated on a Map or Plat entitled "Sheet 5, Ogle Meadows," appearing of record in Map File 2, page 164B, Yancey County Registry, and reference to such public document for a more full and complete description of the premises is hereby made.

TWENTY FIRST: Located in Pices Creek Township, Yancey County, North Carolina, and being that certain tract or parcel of land containing 17 acres, more or less, more particularly described in a Deed dated 5 August 1944 from Dullely Flack to G. B. Hensley, recorded in Yancey County Deed Book 93, page 149, and reference to such public document for a more full and complete description of the premises is hereby made.

TWENTY SECOND: Located in Pices Creek Township, Yancey County, North Carolina, and being the First Tract containing 9 acres, more or less, the Second Tract containing 20 acres, more or less, and Third Tract containing 4 acres, more or less, and the Fourth Tract containing 46-2/3 acres, more or less, more particularly described in a Deed dated 21 November 1962 from G. B. Hensley and wife, Mary Alice Hensley to Mrs. Lotus H. Riddle, et al, recorded in Yancey County Deed Book 131, page 24, and reference to such public document for a more full and complete description of the premises is hereby made.

TWENTY THIRD: Located in Prices Creek Township, Yancey County, North Carolina, and being the First Tract containing 35 acres, more or less, and the Second Tract containing 35 acres, more or less, more particularly described in a Deed appearing of record in Yancey County Deed Book 84, page 415, and reference to such public document for a more full and complete description of the premises is hereby made.

TWENTY FOURTH: Located in Prices Creek Township, Yancey County, North Carolina, and being the First Tract containing 3.62 acres and the Second Tract containing 2 acres, more particularly described in a Deed dated 15 June 1990 from Terry Lee Rogers et al to Virginia A. Banks, recorded in Yancey County Deed Book 224, page 216, and reference to such public document for a more full and complete description of the premises is hereby made.



EXHIBIT D

AN ATTACHMENT TO THE LAND USE COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MOUNTAIN AIR COUNTRY CLUB COMMUNITY, A DEVELOPMENT BY MOUNTAIN AIR DEVELOPMENT CORPORATION, AS REFERENCED IN SECTION 9-8 OF THE COVENANTS.

The lands described in this Exhibit D to the Covenants consist of any of the lands now or hereafter dedicated to Land Use Classes D-2, D-3 and D-5, including any improvements thereon, which are located within the same and identical premises delineated in Exhibit A to these Covenants, reference to which is hereby made.



AMENDMENT TO BY-LAWS OF  
MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC.

Prepared by:  
Ward and Smith, P.A.  
PO Box 7068  
Wilmington, NC 28406

Return to:  
Mountain Air Property Owners Association, Inc.  
c/o IPM Corporation  
PO Box 1037  
Burnsville, NC 28714  
Attention: Mr. Justin Field

AMENDMENT TO BY-LAWS OF  
MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC.

THIS AMENDMENT TO BY-LAWS OF MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC. (the "Amendment") is made this 5th day of June, 2010 by MOUNTAIN AIR PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation (the "Association").

WITNESSETH:

WHEREAS, the Association adopted the By-Laws of Mountain Air Property Owners Association, Inc. (the "By-Laws") on July 26, 1990; and

WHEREAS, the Association, pursuant to Article VIII, Section 8.4 of the By-Laws and N.C. Gen. Stat. § 55A-10-21(a), may amend the By-Laws upon the proposal of a majority of the Board of Directors and approval in person or by proxy by a majority vote of the Members; and

WHEREAS, the Association has obtained the approval of a majority of the Board of Directors and the approval of a majority vote of the Members; and

NOW, THEREFORE, the Association, acting pursuant to Article VIII, Section 8.4 of the By-Laws, does hereby amend the By-Laws as follows:

1. Article IV, Section 4.3 is deleted in its entirety and the following is inserted in lieu thereof:

4.3 **Annual Meetings.** The annual meetings of Members of the Association shall be held at least once a year. The Annual Membership Meeting shall be held at such date, time, and place as may be determined on an annual basis by the Board of Directors and stated in the notice of such Members' meeting. The Annual Membership Meeting shall be held for the purpose of electing Directors of the Association, and for such other purposes as may be included in the notice of such meeting.

2. Article IV, Section 4.7 is deleted in its entirety and the following is inserted in lieu thereof:

4.7 **Quorum.** Unless the Association's Articles of Incorporation, Covenants, these By-Laws, or applicable law provide a specific quorum requirement for a particular action to be taken, a quorum shall be considered present throughout any meeting of the Association if Members entitled to cast twenty-five percent (25%) of the votes which may be cast for election of the Board of Directors are present in person or by proxy at the beginning of the meeting. Once a Member is present or represented by proxy for any purpose at a meeting, such Member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting pursuant to N.C. Gen. Stat. § 55A-7-07. In the event business cannot be conducted at any meeting of Members because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting of Members, in the event of an adjournment because a quorum is not present, shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

3. Article V, Section 5.2 is amended by deleting the first three sentences in their entirety and inserting the following in lieu thereof: "The Board of Directors shall consist of seven (7) members. Each Director shall be at least eighteen (18) years of age and each Director elected at the 2011 Annual Membership Meeting and thereafter shall be a Member of the Association."

4. Article V, Section 5.4 is deleted in its entirety and the following is inserted in lieu thereof:

5.4 **Election of Directors.** The number of Directors elected at the 2011 Annual Membership Meeting shall be seven (7). The term of the seven (7) Directors elected by the Members at the 2011 Annual

Membership Meeting shall be staggered as follows: (i) the three (3) nominees receiving the most votes shall each be elected to serve three (3) year terms, (ii) the two (2) nominees receiving the next highest number of votes shall each be elected to serve two (2) year terms, and (iii) the two (2) nominees receiving the next highest number of votes shall each be elected to serve one (1) year terms. All Directors elected subsequent to the 2011 Annual Membership Meeting shall hold office for a term of three (3) years. Election of Directors shall be by written ballot. Despite the expiration of a Director's term, the Director continues to serve as such until the Director's successor is elected and qualifies. There shall be no limit on the number of terms a Director may serve. All ties shall be broken by a coin toss.

5. Article VIII, Section 8.4 is deleted in its entirety and the following is inserted in lieu thereof:

8.4 **Amendments.** By-Laws may be amended and repealed and new By-Laws may be altered, amended, or repealed at any time by the members and the Board of Directors as follows:

(a) A special meeting of the Board of Directors must be called in accordance with Section 5.11(b) of these By-Laws. Written notice of such meeting must be given to each director at least three (3) days prior to the time at which the meeting will take place. In addition, the notice must state that the purpose of the meeting is to consider a proposed amendment to the By-Laws. The notice must set forth the date, time, and place of such meeting as well as contain a copy or summary of the amendment to the By-Laws. It will take a majority of directors in office at the time of the meeting to approve the proposed amendment to the bylaws. If the Board of Directors approves the proposed amendment to the bylaws, the Board of Directors must submit the proposed amendment to a vote of the members of the Association. If the Board of Directors fails to adopt the proposed amendment to the bylaws, such amendment shall be

submitted to a vote of the membership of the Association only if ten percent (10%) of the membership makes such a request to the Board of Directors in writing; and,

(b) A special meeting of the membership must be called in accordance with Section 4.5 of these By-Laws. Written notice of such meeting must be given to all the members in accordance with Section 4.6 of these By-Laws. The notice must state that the purpose of meeting is to consider a proposed amendment to the bylaws. The notice must set forth the date, time, and place of such meeting as well as contain a copy or summary of the amendment to the By-Laws; and,

(c) For such amendment to be adopted at a meeting of the membership, at least fifty percent (50%) of the membership must be in attendance either in person or by proxy ("Bylaw Quorum") and two-thirds vote of those members in attendance (either in person or by proxy) or a majority of the total votes entitled to be cast, whichever is less, must vote affirmatively to adopt the proposed bylaw amendment; provided, however, if a larger vote is required to take or refrain from taking a specific action, as Set Forth in these By-Laws, no amendment shall be made unless and until such larger percentage of Members approve thereof.

6. Except as expressly provided in the paragraphs above, the terms and provisions of the By-Laws shall continue in full force and effect according to the terms of the same as modified hereby.

[SIGNATURE FOLLOWS]

IN TESTIMONY WHEREOF, the Association, acting pursuant to the authority above recited, has caused this Amendment to be executed under seal in such form as to be legally binding, effective the day and year first above written.

MOUNTAIN AIR PROPERTY OWNERS  
ASSOCIATION, INC.,  
a North Carolina non-profit corporation

By: William R. Banks (SEAL)  
William R. Banks, President

Yancey COUNTY, NORTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document for the purpose(s) stated therein and, if other than in an individual capacity, in the capacity indicated having been first authorized to do so:

William R. Banks, President of Mountain Air Property Owners Association, Inc.

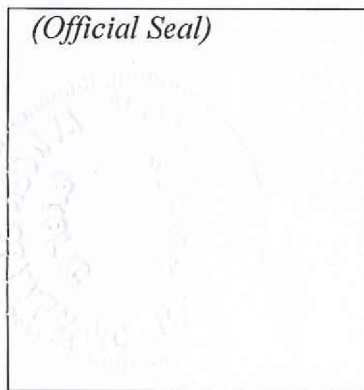
Date 5-25-2011

Janessa W. Wilson

Notary Public

My commission expires:

10-18-2012



Notary seal or stamp must appear within this box.

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ND: 4821-3383-0661, v. 1