

NORTH CAROLINA - ASHE COUNTY

The foregoing certificate (s) of
SUSAN F. MAST
Notary Public - Ashe County, North Carolina
is (are) certified to be correct.

SHIRLEY B. WALLACE
Register of Deeds

By *Debett A. Peters*
3-19-2003 Assistant / Deputy

FILED in ASHE County, NC
on Mar 19 2003 at 04:07:15 PM
by: SHIRLEY B. WALLACE
REGISTER OF DEEDS
BOOK 290 PAGE 1524-1542

By: Debett A. Peters Deputy

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

VILLAGE ON THE NEW III

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 19th day of March 2003, by PHOENIX COLVARD DEVELOPMENT, LLC, a North Carolina limited liability company, herein referred to as "Declarant."

STATEMENT OF PURPOSE

WHEREAS, Declarant, together with those persons and/or entities executing this Declaration as Current Owners (as defined herein), are the owners of certain real property located in Ashe County, North Carolina comprising greater than sixty-seven percent (67%) of (i) the Village on the New III Lots (as defined herein), which real property is a portion of the Property (as defined herein). Declarant desires to create a residential community on the Property together with private streets, roads, walking trails, footways, entrances, drainage facilities and access easement for the benefit of owners of the Property. In order to preserve the values and amenities of the Property and to provide for the maintenance of the common facilities located on the Property, Declarant desires to subject the Property to the covenants, conditions, restrictions and easements set forth herein, as well as the provisions of the North Carolina Planned Community Act as set forth in North Carolina General Statutes Chapter 47F (the "Act"), all of which are for the benefit of the Property and each owner of a portion thereof; and

WHEREAS, Declarant has caused to be incorporated a North Carolina non-profit corporation, Village on the New Owners Association, Inc., for the purpose of maintaining and

CHARLOTTE 357863v4

Drawn By and Mail To:
Wm. Ruffin Pearce, Jr., Esq.
Womble Carlyle Sandridge & Rice, PLLC
301 South College Street
Charlotte, North Carolina 28202-6025

improving the common areas in the Property and of administering the covenants, conditions, restrictions and easements established hereby; and

WHEREAS, In executing this Declaration, the Declarant as the owner of the Village on the New intends to adopt these Restrictive Covenants and Restrictions for the lands shown on that certain plat of record in the Ashe County Public Registry in Plat Book 6, at page 120.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to the following covenants, conditions, restrictions and easements, as well as the provisions of the Act, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions, restrictions and easements shall run with the land and be binding upon all persons having or acquiring any right, title or interest in the above described property or any part thereof, and shall inure to the benefit of each owner thereof.

The covenants, conditions and restrictions imposed herein shall be in addition to, and not in lieu of, any other covenants, conditions, easements, or restrictions currently encumbering any portion of the Property.

ARTICLE I. DEFINITIONS

For the purpose of this Declaration the following definitions shall control.

Section 1.1 "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, more commonly known as the North Carolina Planned Community Act, as amended from time to time.

Section 1.2 "Affiliate" means any individual, trust, corporation, partnership, limited liability company, or other entity which (i) controls or is controlled by the Declarant, (ii) is owned, controlled or managed by the Declarant's Manager, or (iii) has over 50% commonality of ownership with the Declarant.

Section 1.3 "Architectural Review Committee" shall mean and refer to the Architectural Review Committee established under Article VI hereof.

Section 1.4 "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Village on the New Owners Association, Inc., and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof.

Section 1.5 "Association" shall mean and refer to Village on the New Owners Association, Inc., a North Carolina non-profit corporation.

Section 1.6 "Bylaws" shall mean and refer to the Bylaws of Village on the New Owners Association, Inc., and all exhibits which are attached thereto and made a part thereof, and shall include such amendments, if any, as may be adopted from time to time pursuant to the terms thereof.

Section 1.7 "Common Areas" are all parts of the Property, including any additional Property added to the Property pursuant to the filing of Supplemental Declarations as provided in Section 2.3, excluding the Lots, which area may, at the option of the Declarant, be conveyed by the Declarant to the Association for the benefit of the Members.

Section 1.8 "Current Owner" shall mean and refer to any record owner, whether one or more persons or entities, who is an Owner as of the date hereof.

Section 1.9 "Declarant" shall mean and refer to Phoenix Colvard Development, LLC, LLC, a North Carolina limited liability company, and its successors, assigns and Affiliates, and any additional declarants and/or property owners executing Supplemental Declarations as provided in Section 2.3 hereof.

Section 1.10 "Declaration" shall mean this instrument, together with those exhibits which are attached hereto and made a part hereof, and shall include such amendments, if any, and any Supplemental Declarations (as defined in Section 2.3) as may be adopted from time to time pursuant to the terms hereof.

Section 1.11 "Lot" shall mean and refer to any of those lots of land so designated upon the Plat of the Property which have been or are intended to be conveyed to individual Owners, and any additional such lots added to the existing Property pursuant to the filing of Supplemental Declarations as provided in Section 2.3.

Section 1.12 "Member" shall mean and refer to each Owner of a Lot in the Property and to the Declarant.

Section 1.13 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those persons or entities having such interest merely as security for the performance of an obligation.

Section 1.14 "Plat" shall, collectively, mean (i) that certain plat entitled "Village on the New III" and recorded in Map Book 6, Page 120 of the Ashe County Public Registry (Village on the New III Lots).

Section 1.15 "Property" shall mean the real property which is subject to the terms of this Declaration and which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference and shown on the Plat, and, at such time as any additional property is added to the existing Property pursuant to the filing of Supplemental Declarations as provided in Section 2.3, the Property shall be deemed to include such additional property.

Section 1.16 "Single Family Dwelling" shall mean a residential dwelling for one or more persons, each related to the other by blood, marriage, legal adoption or, alternately, a group

of not more than four (4) persons not so related who shall maintain a common household in such dwelling.

Section 1.17 "Village on the New III Lots" shall mean those ~~fifty-~~^{nine} (59) Lots within the Property shown on that certain plat entitled "Village on the New III" and recorded in Map Book 6, Page 120 of the Ashe County Public Registry.

**ARTICLE II.
PROPERTY SUBJECT TO THIS DECLARATION**

Section 2.1 Property Subject to This Declaration.

The property described in Exhibit "A" attached hereto, and any additional property described in any exhibits to Supplemental Declarations filed pursuant to Section 2.3 below, is the property hereby declared to be held, transferred, sold, conveyed, encumbered, leased, used, improved and occupied subject to this Declaration.

Section 2.2 Revision of Plat by Declarant.

The Declarant does hereby reserve unto itself, its successors and assigns, with regard to each Lot, the right, until such time as the Lot is sold by Declarant, to revise, recombine or otherwise change the size, shape, and dimensions of Lots in the development. Upon such revision, recombination or modification of a Lot or Lots, the covenants, conditions, restrictions and reservations hereby imposed shall be applicable to the resulting lot(s) in lieu of the Lot(s) as originally shown on said Plat prior to such revision, recombination or modification. At such time as Declarant has conveyed all Lots to third parties, no Lots shall be combined or subdivided.

Section 2.3 Additions To Existing Property; Accordance With A Master Plan Of Development.

(a) The Declarant, its successors, assigns, and Affiliates, shall have the right but not the obligation, without further consent of the Association or its Members, to bring within the scheme and operation of this Declaration all or any portions of the real property that adjoins or is otherwise in the immediate vicinity of the Property which is currently owned or acquired by Declarant, its successors, assigns and/or Affiliates, as added to under the terms hereof from time to time.

(b) The additions authorized under this and the succeeding subsection shall be made by filing of record in the Office of the Register of Deeds of Ashe County one or more supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property or properties, executed by the Declarant and, if different, the owner(s) of the additional property, which shall extend the operation and effect of this Declaration to such additional property or properties (hereinafter sometimes referred to as a "Supplemental Declaration").

(c) Any Supplemental Declaration(s) may specify such additional specific use restrictions and other covenants, conditions and restrictions to be applicable to the added

property and may contain such complementary additions and modifications of this Declaration as may be necessary or convenient, in the sole judgment of the Declarant and, if different owner(s), the owner(s) of the additional property, to reflect and adapt to any difference in character of the added properties subject, however, to the terms of Section 12.3 below. In no event, however, shall any such supplementary Declaration modify or add to the covenants and restrictions established by this Declaration so as to negatively affect the existing Property; however, this proviso shall not be interpreted to prohibit or prevent any properly instituted change in the amount of the assessments payable by a Member of the Association by reason of any such additions; nor shall any such supplement adversely affect the common development scheme of the Property for use as a residential subdivision.

**ARTICLE III.
ROADS**

Section 3.1 Section 3.1. Declarant's Authority to Retain Rights in Roads.

So long as Declarant shall remain a Class "B" Member, Declarant shall have the right to retain as to any roads or drives in the Common Areas of the development, such rights thereto, including but not limited to, the use thereof and the right to improve and maintain said roads, drives and rights-of-way, for ingress and egress, installation of utilities and use and enjoyment of such roads, drives, rights-of-way and utilities by Declarant, its successors and assigns. Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant shall remain a Class "B" Member, Declarant reserves, for itself and its successors and assigns, the right to relocate or create any roadway, walking path or trail, to or in the Common Areas.

Section 3.2 Owner's Right and Easements of Enjoyment.

Declarant hereby grants and conveys, and every Owner shall have a non-exclusive right and easement of enjoyment for ingress, egress and regress in and to any roads, drives, walking paths, trails or other undeveloped areas located in the Common Areas in common with all other Owners, subject to:

- (a) All rules and regulations governing the use and enjoyment of the roads by the Association;
- (b) The right of the Declarant and the Association to establish easements over the roads or other areas of the Common Areas for service to or in favor of any private or governmental bodies or utilities for the installation and maintenance of electrical and telephone conduit and lines, gas pipes, sewers, water pipes, cable television lines or hook-ups or any other utility services serving any Lots within the Property or any other Property adjacent to the Property.
- (c) All provisions of this Declaration not enumerated above, and all restrictions and provisions contained on the Plat of the Property.

Section 3.3 Association's Right to Maintain.

The non-exclusive right to use all roads, drives and rights-of-way within the Property shall be an appurtenance to each Lot within said Property subject, however, to the reserved right and obligation of the Association and its assigns to use, maintain, improve, and/or replace the roadways, ditches, slopes and culverts, and to install, maintain and replace public and private utilities within the right-of-way of all roads within the Property for the benefit of the Property.

ARTICLE IV.

ADMINISTRATION, MAINTENANCE AND IMPROVING OF ROADS, AND COMMON AREAS; FINANCIAL RESPONSIBILITY OF OWNERS THEREFOR; AGREEMENT FOR ASSESSMENTS AND ENFORCEMENT THEREOF.

Section 4.1 Administration, Maintenance and Improvement.

In accordance with Section 47F-3-107 of the Act, the Association shall be responsible for the administration, maintenance and improvement of the roads, bridges, water and sewer system, if any (to the extent not publicly maintained), and other Common Areas of the Property. The Association shall be permitted to contract with a third party manager or contractor to perform the administration, maintenance and improvement of such common facilities. Notwithstanding the above, each Owner shall be solely responsible for the construction, maintenance and improvement of private drives and utility lines leading from the primary access road as shown on the Plat to each individual Owner's Lot.

Section 4.2 Financial Responsibility of Owners; Assessments by Association.

The Owners of each lot are responsible for providing funds necessary to the Association to carry out the above obligations and other obligations as set forth in this Declaration. The Association shall assess each Owner as provided herein for its pro rata share of such expenses as set forth in this Article IV and in accordance with Section 47F-3-115 of the Act.

Section 4.3 Assessments; Personal Obligations of Owners; Creation of Lien.

(i) Each Owner of any Lot by is deemed to covenant (which covenant shall run with the land and be binding on every Owner) and agree to pay to the Association:

(ii) Annual assessments for administration and maintenance.

(iii) Annual assessments for capital improvements, not to exceed in any year an amount that is equal to one hundred percent (100%) of the amount of the annual assessments for administration and maintenance for such year.

(iv) Special assessments for administration, maintenance and capital improvements.

(v) An "impact" assessment for abnormal road usage during the construction of improvements, to be due and payable at the time a building permit is issued for construction on any Lot.

(vi) A “damage” assessment for injury to or destruction of the Common Area by a Member or guest of a Member, said injury and destruction not to include ordinary wear and tear and shall be based on actual costs or expenses necessary to repair such injury or destruction plus reasonable administrative and attorney fees.

(b) The Declarant may not unilaterally amend this Declaration to modify Declarant's obligation to pay the assessments set forth hereinabove.

Section 4.4 Rate of Assessment.

(a) All annual and special assessments shall be fixed at a uniform rate for all Lots.

(b) The Executive Board of the Association shall fix the amount of the annual assessment and the “impact” assessment at least thirty (30) days in advance of each annual assessment period as a part of the proposed annual budget. Written notice of annual and special assessments, a summary of the budget and the date of a meeting of the Association to consider such budget shall be sent to every Owner not later than thirty (30) days after the budget is adopted by the Board, and as required by Section 47F-3-103(c) of the Act. The due dates shall be established by the Executive Board but shall be no sooner than after the date of the meeting of the Association to consider such budget. The Executive Board shall also determine the amount of any damage assessment and notify the Owner(s) responsible for such assessment of the amount due and the date which such payment is due (which shall be not less than thirty (30) days after the date such notice is mailed to such Owner(s)). The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. In no event shall annual assessments increase by more than ten percent (10%) annually without the consent of a majority of the Members of the Association, taking into account the special voting rights of the Declarant as a Class B member, as set forth in Section 8.3 below. Assessments shall begin on all Lots as of the date the first Lot is conveyed by the Declarant to a third-party Owner.

Section 4.5 Effect of Non-Payment of Assessments; Remedies of The Association; The Personal Obligation of Owner; The Lien.

(a) In accordance with Section 47F-3-116 of the Act, as the same may be amended from time to time, the Association may place a lien on a Lot as follows:

(i) Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Ashe County, North Carolina. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. Fees, charges, late charges, fines, interest, and other charges may be imposed by the Association pursuant to N.C.G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115. Such fees, charges, late charges, fines, interest and other charges, as well as any and all costs or expenses incurred by the Association in enforcing the provisions of this Declaration (including without limitation the enforcement of the restrictions contained in Article 5 below), are enforceable as assessments under the Act and this Section 4.5.

(ii) The lien under this Section is prior to all liens and encumbrances on a Lot except (a) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court of Ashe County, North Carolina, and (b) liens for real estate taxes and other governmental assessments and charges against the Lot. This subsection does not affect the priority of mechanic's or materialmen's liens.

(iii) A lien for unpaid assessments shall be extinguished in the event that no proceeding to enforce the lien is instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court of Ashe County, North Carolina.

(iv) This Section does not prohibit other actions to recover the sums for which subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(v) A judgment, decree, or order in any action brought under this Section shall include costs and reasonable attorneys' fees for the prevailing party.

(vi) Where the holder of the first mortgage or first deed of trust of record, or other purchaser of the Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all the Lot Owners including such purchaser, its heirs, successors, and assigns.

Section 4.6 Owner May Not Escape Liability by Non-use of Roads, and/or Common Areas.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of all or any part of the Common Areas or by abandonment of his Lot, except as may otherwise be set forth herein.

Section 4.7 Suspension of Owner's Rights While Delinquent.

By way of a hearing conducted in accordance with the provisions of Section 47F-3-107 of the Act, the Association may suspend the exercise of any rights or privileges of membership of any Owner or of any persons claiming through or under such Owner until all assessments and charges have been paid in full and/or may charge a fine for any Owner's failure to abide by the terms of this Declaration as set forth in Section 47F-3-107.1 of the Act.

**ARTICLE V.
RESTRICTIONS ON USE**

Section 5.1 Use of Lots Restricted to Residential Purposes.

No Lot shall be developed or used except for one single family residential dwelling, one guest house for bona fide, non-paying guests, and ancillary buildings approved by the Architectural Review Committee. There shall be no commercial activity on any Lot; however, rental of the premises for single family residential purposes or the use of a portion of a dwelling as an office or as an area for the creation or works of art by an occupant of such dwelling shall not be construed as commercial activity if such use does not result in an increase of vehicular traffic over the roads of the development and provided that all other requirements as to such rental activity set forth in this Declaration are met.

Section 5.2 Site Location.

Residences and permitted improvements and vehicles shall be reasonably located on each Lot in a manner which shall not encroach on the privacy of the other Lots or roads. Such locations must be approved by the Architectural Review Committee, which shall be the sole determiner of the above criteria. Residence and permitted improvements shall be constructed in compliance with the North Carolina Administrative Code, Title 15A, Department of Environment, Health, and Natural Resources, Chapter 4, Sedimentation Control, Subchapter 413, Erosion and Sedimentation Control, Paragraph .0025 Buffer Zone Requirements and in compliance with all other applicable laws, rules and regulations. Each Owner shall be solely responsible for compliance with such laws, rules and regulations.

Section 5.3 Height and Size Requirements.

No dwelling or ancillary structure shall exceed two (2) stories in height above grade, excluding the basement, unless otherwise approved by the Architectural Review Committee as set forth in the Architectural Standards adopted by the Association, from time to time. Each dwelling on Lot 36 and Lots 38-43 and Lots 45-48 shall have at least 1800 square feet of heated floor space. Each dwelling on all other lots within Village on the new III shall have at least 1300 square feet of heated floor space.

Completion of Construction.

Construction and improvements, once commenced, shall be completed within twelve (12) months. Improvements not so completed or construction which has been partially or totally destroyed and not rebuilt or cleaned away so as to leave a neat and tidy appearance, within twelve (12) months shall be deemed a nuisance by the Association. If the Association deems the incomplete construction a nuisance, the Association shall have the right, after thirty (30) days written notice to the Owner, to take such action as it deems appropriate to eliminate the nuisance and the costs thereof shall be the obligation of the Owner of the Lot upon which the nuisance existed. The Association shall have the right to seek reimbursement of any such costs from such Owner together with interest from the date demand is made by the Association to the Owner for such reimbursement at the rate of eighteen percent (18%) per annum or as otherwise permitted under the Act. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from actions to eliminate a nuisance.

Section 5.4 Maintenance of Lots and Improvements.

All Lots and all improvements, if any, placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. If not so maintained, the Association shall have the right, after thirty (30) days written notice to the Owner, to eliminate any condition which it, in its sole discretion, determines to be in violation of this Section 5.5, the costs thereof shall be the obligation of the Owner of the Lot upon which the violation is found to exist. The Association shall have the right to seek reimbursement of any such costs from such Owner together with interest from the date demand is made by the Association to the Owner for such reimbursement at the rate of eighteen percent (18%) per annum or as otherwise permitted under the Act. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so enforce the provisions of this Section 5.5.

Section 5.5 Burning of Garbage, Trash or Rubbish Prohibited.

No Owner shall burn any trash, garbage or refuse on the Property without the approval of the Association and a permit issued by the appropriate governmental agency.

Section 5.6 Storage of Garbage, Trash or Rubbish.

No Owner shall accumulate on his Lot any junk vehicles, or any litter or garbage except in receptacles provided by Owner for such purposes. All rubbish, garbage, and trash receptacles shall be buried, covered, or screened in a manner so as not to be visible from any roadway or from other Lots. All fuel tanks shall be buried or screened from view. No Owner shall conduct any activity, including without limitation, the operation of radio, television, tape recorder, stereo or other such devices, in a manner such that the resulting sound or noise adversely affects the peaceful enjoyment of other Owners. The Association shall have the right, after thirty (30) days written notice to Owner, to eliminate any condition which the Association, in its sole discretion, determines to be in violation of this Section 5.7, and the costs thereof shall be the obligation of the Owner of the Lot upon which the violation is found to exist. The Association shall have the right to seek reimbursement of any such costs from such Owner together with interest from the date demand is made by the Association to the Owner for such reimbursement at the rate of eighteen percent (18%) per annum or as otherwise permitted under the Act. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so enforce the provisions of this Section 5.7.

Section 5.7 Portable Structures Prohibited.

No travel trailer, mobile home, modular home, manufactured home, relocated dwelling, or other non-custom built structure may be placed or erected on any Lot except that temporary structures, trailers or the like may be permitted by the Architectural Review Committee when used in the process of erection of improvements thereto. In such event, the location, type and time of existence must be approved by the Architectural Review Committee.

Section 5.8 Resubdivision of a Lot.

No Lot shall be subdivided, except as permitted by Declarant under Section 2.2 above.

Section 5.9 Animals.

No animal not usually considered to be a household pet may be kept or maintained on any Lot. All pets shall be kept reasonably confined and controlled so as not to become a nuisance. No Owner shall have more than three (3) permanent household pets on its Lot. The Association shall have the right to determine, in its sole discretion, which animals have become nuisances, and request the Owner of said animal to take actions, which, in the sole discretion of the Association, will eliminate the nuisance.

Section 5.10 Access to Lots.

There shall be no access to any Lot within the Property except from designated roads as contained on the Plat of Phase III or on the Plats of Phase I (Map Book 6, at page 107) and Phase II (Map Book 6, at page 108). There shall be no access from any Lot within the development to any adjacent lands not within the development. No Owner may grant a right-of-way through its Lot for the purpose of affording access to property not within the development; provided, however, that Declarant reserves the right to grant easements for access and utilities across the Common Areas for the benefit of owners of land adjacent to the Property.

Section 5.11 Signs.

No signs, billboards or other advertising devices other than the Owner's name or identification of the Owner's property shall be permitted on any Lots; provided, however that the Architectural Review Committee shall have the right to determine the kind, size and location of all permitted signs. This provision shall not apply to temporary "for sale" signs not to exceed 2 feet by 3 feet.

Section 5.12 Recreational Vehicles. Boats and Trailers.

No recreational vehicles (RVs), inoperable equipment, campers, "pop-up" campers or tents, junk automobiles, inoperable automobiles not currently tagged and inspected, or boats, unless garaged, or completely screened from view from any road or any other Lot, shall be permitted to park on the Property for longer than twelve (12) hours. [For purposes of this section, a recreational vehicle is defined as a motorized vehicle having sleeping, cooking and/or restroom facilities, or a motorized vehicle exceeding nineteen (19) feet in length.] No mobile home or house trailer shall be permitted on any Lot.

Section 5.13 Street Lights.

No street lights or bright outdoor lights shall be permitted on any Lot without the prior written consent of the Architectural Review Committee. Flood lights attached to the house are permissible, the location of which shall be reviewed by the Architectural Review Committee at such time as it reviews the plans and specifications for improvements on Lots as set forth in Article VI, hereinbelow.

Section 5.14 Removal of Trees.

Trees and vegetation may be removed from the area of the actual home site on a Lot and the area consisting of 50 feet from such actual home site (together such areas are referred to as the "Home Site Area") without the prior written consent of the Architectural Review Committee,

so long as such removal is reasonably necessary for construction of the home and/or the creation or preservation of a reasonable mountain view corridor from the Home Site Area. Otherwise, without the prior written consent of the Architectural Review Committee, (i) no trees of any kind whatsoever larger than four (4") inches in diameter, measured at the stump, may be removed from a Lot, unless such trees are damaged, dead, or are reasonably considered to pose a danger, and (ii) no native flowering shrubs and trees such as wild Azalea, Laurel, Dogwood and Rhododendron be removed from any Lot.

Section 5.15 Ancillary Structures.

No out-buildings, woodsheds or carport shall be built, created or maintained on the granted premises, except that each Owner shall be allowed to construct one detached neatly constructed garage building or one detached neatly constructed guest cottage, the plans and specifications for which must be approved in writing by the Architectural Review Committee.

Section 5.16 Motorized Vehicles.

No motorcycles, mopeds, go-carts, trail bikes or all-terrain vehicles (ATV's) may be operated on the Property, except that duly registered and inspected motorcycles may be operated on the paved roads within the Property in accordance with all applicable laws, ordinances, and regulations.

Section 5.17 Septic Tank.

Each property owner shall install a septic system in accordance with all applicable laws, ordinances rules and regulations.

Section 5.18 Firearms.

No firearms of any caliber, gauge, kind or description shall be discharged on the Property.

Section 5.19 Parking.

Parking shall not be permitted on any street within the Property. Each Owner shall construct ample parking facilities within their Lot.

ARTICLE VI.

CONTROL OF IMPROVEMENT; THE ARCHITECTURAL REVIEW COMMITTEE

There is hereby created an Architectural Review Committee which shall perform the duties required of it by this Declaration.

Section 6.1 Improvements Prohibited Without Approval.

No building, fence, wall, satellite dish, antenna or other structure shall be commenced, erected, maintained or placed upon any Lot nor shall any exterior change or alteration to any residence or improvement thereon be made upon any Lot until the plans and specifications

showing the nature, kind, shape, height, materials, square footage of finished, enclosed, heatable living space, and location of said improvement shall have been submitted to and approved by the Architectural Review Committee. The application shall be submitted in the form prescribed by the Architectural Review Committee, and must be accompanied by a set of plans and specifications which shall show all information, including but not limited to the location of all improvements, if any, existing upon said Lot, the location of the improvements proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping and any other information which the Architectural Review Committee may require. No utility lines other than underground lines shall be placed on or above any Lot. Repainting a dwelling the same color shall not require consent. All plans shall be reviewed for compliance with Architectural Standards approved by the Architectural Review Committee which are attached hereto as Exhibit "B" and incorporated herein by this reference and such other standards as may be adopted by the Architectural Review Committee from time to time.

Section 6.2 Approvals Other Than for Improvements Required by Architectural Review Committee.

Where the approval of the Architectural Review Committee is required in matters other than the above by this Declaration, requests for such approval shall be submitted in writing to the Architectural Review Committee in the manner and form prescribed by it. The application shall show in sufficient detail those factors necessary for the Architectural Review Committee to render a decision on the request.

Section 6.3 Grounds for Disapproval. The Architectural Review Committee may disapprove any applications if, in the sole judgment of the Architectural Review Committee:

(a) The proposed request fails to meet the criteria set forth in this Declaration or the Architectural Standards; provided, however, the Architectural Review Committee shall have the right to grant certain exceptions to strict enforcement of the Declaration or Architectural Standards if the topography or terrain of a Lot make such exception reasonably necessary or practical.

(b) Grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, shape, height, or style of the proposed improvements, the materials used therein, or the kind, pitch, or type of roof proposed to be placed thereon is unsatisfactory;

(c) The proposed improvements would not be harmonious with the improvements erected on other Lots.

Section 6.4 Rules and Regulations.

The Architectural Review Committee shall, from time to time adopt written rules and regulations for general application governing its procedures which shall include, among other things, provisions for the form and content of applications; required number of copies of plats and specifications; provisions for notice of approval or disapproval, including a thirty (30) day time period after approval becomes automatic by reason of failure to disapprove.

Section 6.5 Variances.

The Architectural Review Committee may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

Section 6.6 Certification of Compliance.

At any time prior to completion of construction of an improvement, the Architectural Review Committee may require a certification, upon such forms as it shall furnish, from the contractor, Owner, or a licensed surveyor that such improvement does not violate any set-back, ordinance, or statute nor encroach upon any easement or right-of-way of record.

Section 6.7 Liability.

Notwithstanding the approval by the Architectural Review Committee of plans and specifications or its inspection of the work in progress, neither the Architectural Review Committee, the Association, nor any person acting in behalf of either the Architectural Review Committee or the Association shall be responsible in any way for any defects in any plans or specifications or other material submitted to the Architectural Review Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans for specification shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto.

Section 6.8 Appeals.

Any applicant shall have the right to appeal to the Executive Board of the Association any decision of the Architectural Review Committee within thirty (30) days after entry of such decision.

Section 6.9 Architectural Review Committee Membership.

The Architectural Review Committee shall be composed of three (3) members to be appointed by Declarant. Architectural Review Committee members shall be subject to removal by Declarant. The power to appoint or remove Architectural Review Committee members shall be transferred to the Association upon the earlier of that date upon which Declarant's Class "B" membership shall terminate or at such time as Declarant in its sole discretion elects.

**ARTICLE VII.
THE ASSOCIATION**

Section 7.1 General. The Association is a North Carolina non-profit corporation organized to further and promote the common interests of property Owners in the Development. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and Bylaws and as otherwise expressly set forth in Section 47F-3-102 of the Act.

Section 7.2 Membership. Every Owner shall be a Member of the Association. The Declarant shall be a Member of the Association until such time as Declarant's Class B membership terminates as set forth in Section 8.3 below.

Section 7.3

(a) Classes of Members. Class "A" Members shall be all those Owners of Lots in the Property, with the exception of the Declarant. The Class "B" Member shall be the Declarant.

(b) Votes. Each Class "A" Member shall be entitled to one (1) vote for each Lot it owns. Each Class "B" Member shall have one (1) vote for each Lot in the Property regardless of whether any Lot is owned by the Declarant and shall increase in the event new Lots are created by the addition of additional Property by the filing of a Supplemental Declaration in accordance with Section 2.3 above; provided, however, that the Class "B" membership shall terminate upon the earlier of (i) January 1, 2013; (ii) within thirty (30) days after Declarant has sold seventy-five percent (75%) of the Lots in the Property, including any additional Lots added by Supplemental Declaration or (iii) at such time Declarant in its sole discretion elects.

(c) Executive Board. The affairs of the Association shall be governed by the Executive Board. Initially, the Board will be composed of three (3) persons designated by the Declarant, none of whom need be Owners of Lots. The initial directors shall be replaced as provided for in the Articles of Incorporation and Bylaws of the Association but in no event later than that date upon which Declarant's Class "B" membership shall terminate (or at such time as Declarant in its sole discretion elects).

(d) Insurance. In accordance with Section 47F-3-113 of the Act, the Association shall obtain and maintain:

(i) A policy of property casualty insurance covering any and all improvements within the Common Areas in an amount to be determined by the Association; and

(ii) A policy of commercial general liability insurance, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance or repair of the Common Areas. The Declarant, its successors and assigns shall also be named as an additional insured. The amount of such policy shall be not less than Three Million and 00/100 (\$3,000,000.00) combined, single limits coverage or such greater amount as determined by the Board. The liability insurance policy shall provide that it may not be canceled or substantially modified without at least thirty (30) days prior written notice to the Association and to all insureds, including all Owners and all mortgagees (if any). The Association shall review such limits annually.

**ARTICLE VIII.
GENERAL PROVISIONS**

Section 8.1 Covenants, Conditions, Restrictions and Easements Run with Land.

All covenants, conditions, restrictions and easements contained in this Declaration shall constitute covenants running with land.

Section 8.2 Grantee's Acceptance.

Each Owner, by accepting title to a Lot or by executing a contract for the purchase thereof, shall accept such deed or contract subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of Declarant and the Association. Such Owner or contracting party, for himself, his heirs, assigns, and successors, covenants, consents and agrees to and with the Declarant, the Association and the Owner of each other Lot to keep, observe, comply, and perform the covenants, conditions and restrictions contained in this Declaration.

Section 8.3 Assignment of Declarant Rights.

Declarant, upon the filing of record in the Office of the Register of Deeds of Ashe County of an assignment of Declarant's rights, may assign all of its rights under this Declaration to an assignee, who shall have all of the rights of the Declarant, including, without limitation: (i) the Class "B" membership of the Declarant, as set forth in Sections 8.3 (A) and (B), (ii) Declarant's right to appoint directors of the Association, as set forth in Section 8.3 (C), (iii) Declarant's right to appoint members of the Architectural Review Committee, as set forth in Section 6.9, and (iv) Declarant's right to file (or have filed) Supplemental Declarations as provided in Section 2.3.

Section 8.4 Information to Non-Owners.

All Owners desiring to rent their dwellings shall insure that tenants or guests are fully informed and familiar with the provisions of this Declaration and all other applicable laws, ordinances, rules and regulations affecting the Property and shall insure that their tenants and guests comply with the same.

**ARTICLE IX.
REMEDIES**

Section 9.1 Enforcement.

In addition to any and all remedies available in accordance with the Act, or as may otherwise be set forth herein, the Declarant, Association and each person to whose benefit this Declaration inures, may proceed at law or in equity to prevent the occurrence, continuance, or violation of any provisions of this Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

Section 9.2 Cumulative Rights.

Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity.

No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provisions of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 9.3 Effect of Waiver of Violation.

No waiver of a breach or violation of any of the covenants, conditions, restrictions and easements in this Declaration shall be construed as a waiver of any succeeding breach of the same covenant, conditions, restriction and waiver.

**ARTICLE X.
SEVERABILITY**

Each provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

**ARTICLE XI.
AMENDMENT OF DECLARATION**

In accordance with Section 47F-2-117 of the Act, this Declaration may be amended as follows:

Section 11.1 Amendment by Declarant. So long as the Declarant, its successors and assigns, shall still maintain Class B membership in accordance with Section 8.3 herein ("Declarant Control Period"), Declarant may, without the approval or joinder of the Association, any Member of the Association or any mortgagee of any Lot, amend any provision of the Declaration to: (i) make non-material, clarifying or corrective changes not materially or adversely affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie Mae (Federal National Mortgage Administration), Office of Interstate Land Sales Registration of the Department of Housing and Urban Development (OILSR) or other governmental agency; or (iii) establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina. Any such amendment shall be effective upon the later of the date of its recording in the Public Registry or the effective date specified therein.

Section 11.2 Amendment by the Members. Unless amended as allowed under Section 12.1 above, the Declaration may be amended only in accordance with the procedure set forth in Section 47F-2-117 of the Act.

Section 11.3 Prohibited Effects of Amendment. No amendment to the Declaration, whether enacted by the Declarant or the Members, shall do or result in any of the following:

- (a) increase the financial obligations of an Owner in a discriminatory manner;

- (b) further restrict development on any portion of the Property in a discriminatory manner;
- (c) diminish or impair the rights of Declarant without the written consent of Declarant;
- (d) impose additional obligations upon Declarant without the written consent of Declarant; or
- (e) terminate or revise any easement established by the Declaration, without the written consent of the person(s) benefited by the easement or by the Owner of the portion of the Property benefited by the easement, whichever is applicable.

**ARTICLE XII.
DURATION OF DECLARATION; DISSOLUTION OF ASSOCIATION**

Section 12.1 Duration. Unless sooner terminated as required by the Act, as amended from time to time, the Declaration shall run with and bind the Property and each Owner, and shall inure to the benefit of the Association, and each Owner of any portion of the Property, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Public Registry until such time as it is terminated, in accordance with the provisions of Section 47F-2-118 of the Act, by a written termination agreement, executed or ratified in the same manner as a deed by those Members to whom eighty percent (80%) or more of the total votes in the Association are allocated, including the Declarant's Class B membership votes if applicable. Execution or ratification by any one of multiple Owners of a Lot is sufficient for that Lot unless, prior to the time the termination agreement is recorded in the Public Registry, any other Owner of that Lot files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Lot shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Public Registry before that date. The termination agreement may not be recorded in the Public Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Property is to be sold following termination of the Declaration, the relevant terms of the sale shall be set forth therein.

Section 12.2 Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Upon such dissolution, any sale of the Common Areas, if owned by the Association, shall be performed in accordance with Section 47F-2-118 of the Act.

**ARTICLE XIII.
APPLICABILITY OF PLANNED COMMUNITY ACT**

Declarant elects to subject the Property to the provisions of the North Carolina Planned Community Act, in its entirety, as set forth in Chapter 47F of the North Carolina General Statutes, as it may be amended from time to time. Notwithstanding the foregoing, to the extent there is any conflict between the terms of this Declaration and the Act, the terms and conditions of this Declaration shall be controlling, except to the extent the Declaration is inconsistent with the Act.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed under due authority as of the date and year first above written.

PHOENIX COLVARD DEVELOPMENT, LLC, a North Carolina limited liability company

By: [Signature]
Name: JOHN WITHERSPOON
Its: Manager Attorney-in-fact for C. Eric Hunter, Manager of Phoenix Colvard Development, LLC

STATE OF NORTH CAROLINA

COUNTY OF ASHE

I, Susan F. Mast, a Notary Public in and for said County and State, do hereby certify that John Witherspoon, personally appeared before me this day and acknowledged that (s)he is the Manager of PHOENIX COLVARD DEVELOPMENT, LLC, a North Carolina limited liability company, and that as Manager of PHOENIX COLVARD DEVELOPMENT, LLC, the foregoing instrument was signed.

Witness my hand and official seal, this the _____ day of _____, 2003.

Notary Public

NORTH CAROLINA, Ashe County

I, Susan F. Mast, a Notary Public, do hereby acknowledge that John Witherspoon, Attorney-in-Fact for C. Eric Hunter, Manager of Phoenix Colvard Development, LLC, personally appeared before me this day and being by me duly sworn, acknowledges that he executed the foregoing and annexed instrument for and on behalf of C. Eric Hunter, that his authority to execute and acknowledge said instrument is contained in the Power of Attorney duly executed, acknowledged and recorded in the office of the Register of Deeds of Ashe County, North Carolina, in Book 288, Page 1047; that the foregoing and annexed instrument was executed under and by virtue of the authority given by said Power of Attorney; that he acknowledges the due execution of the foregoing and annexed instrument for the purposes therein expressed on behalf of the said C. Eric Hunter.

Witness my hand and seal this 19th day of March, 2003.

My commission expires: 10-21-06 Susan F. Mast Notary Public

