

1. That the following is hereby substituted for the original section 5 of Paragraph 8 of the Declaration, thereby amending said section 5 to read as follows:

"Section 5A. No Temporary Buildings. No tents, trailers, mobile homes, modular homes, manufactured housing, vans, shacks, tanks, or temporary or accessory building or structure shall be erected or permitted to remain on any lot without prior written consent of the Association."

"Section 5B. Modular, Manufactured, Mobile Homes. No on-frame modular homes, mobile homes or similar manufactured homes shall be permitted."

2. That a new section 23 of paragraph VIII of said Declaration is hereby added and reads as follows:

"Section 23. Damage to Paved Roads, Ditches, Utility Equipment, and Land Improvements. Any damage to a paved road, a ditch, culvert, drainage system, telephone line/box, electric line/box, street light, unpaved portion at the top of Carriage Drive, and any improved right of way land subject to Association control above what the Association considers usual wear caused by activities permitted and/or accidental by a Lot owner, relative or visitor of a Lot owner, by construction equipment, moving or delivery vehicles in connection with an owner's lot shall be inspected by the Board of the FPHA. If it is determined that beyond usual wear has occurred, a Notice to repair such damage will be issued to the Lot owner. The owner will be given 30 days to make repairs acceptable to the Board. If repairs are not done in 30 days, the Board will make repairs and bill the Lot owner for the cost of the repairs. If the amount demanded is not paid in 60 days, such legal action will be initiated by the Board to collect the cost of repairs plus any and all legal fees incurred. It is agreed that the Lot owner will pay all fees, costs and legal fees."

3. That the remainder of the Declaration of Covenants and Restrictions shall be unchanged by the Amendment and remain in full force and effect.

IN WITNESS WHEREOF, Declarant and members/lot owners of the Association have caused this First Amendment to Declaration of Covenants and Restrictions of The Creeks of Fairview Pointe to be duly executed on the day and year first above written.

FAIRVIEW POINTE HOMEOWNERS' ASSOCIATION

BY: Robert E. Leslie
President

ATTEST:

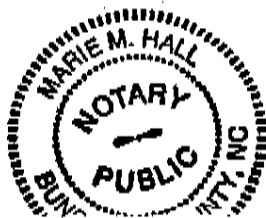
Stanley W. Blum
Secretary

(CORPORATE SEAL)

STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Stanley W. Blum personally came before me this day and acknowledged that he is Acting Secretary of FAIRVIEW POINTE HOMEOWNERS' ASSOCIATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Robert E. Leslie, President, ~~sealed with its corporate seal~~ and attested by him self as its Secretary.

WITNESS my hand and official stamp or seal, this 6th day of November, 2004.



Marie M. Hall
SIGNATURE OF NOTARY PUBLIC
MARIE M. HALL
PRINTED NAME OF NOTARY
6/26/2005

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Prepared by Gary Morgan of Fairview Pointe, A Joint Venture
Return to: Roberts Stevens & Cogburn, P.A.

REGISTERED

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

93 MAY 24 11:12

THE CREEKS OF FAIRVIEW POINTE
DECLARATION OF COVENANTS AND RESTRICTIONS
AND AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE
CRYSTAL FALLS DEVELOPMENT

THIS DECLARATION AND AMENDMENT, made this 28th day of April 1993, by Fairview Pointe, a Joint Venture, (hereinafter referred to as the "Developer"), which declares that the real property hereinafter described, which is owned by Developer (hereinafter referred to as "Fairview Pointe") is and shall be held, transferred, sold conveyed and occupied subject to the covenants, restrictions, ~~elements~~ changes and liens (sometimes herein after referred to as "Declaration") hereinafter set forth.

WITNESSETH

WHEREAS, the Property hereinafter referred to was previously subjected to Declaration of Covenants, Conditions and Restrictions for the Crystal Falls Development as described in Deed Book 1551 at Page 157 of the Buncombe County, North Carolina, Public Registry and as amended in Deed Book 1559 at Page 426 of the aforesaid Registry; and

WHEREAS, the Declarations of Covenants, Conditions and Restrictions for the Crystal Falls Development referred to above provided in ~~Article X, General Provisions, Section 1, Duration~~, that: "These covenants may not be revoked or amended without the written consent of Mackay Fisher Partners or their assigns, including a successor Homeowner's Association"; and

WHEREAS, a successor Homeowner's Association of the Crystal Falls Development was never formed; and

WHEREAS, the property owners, James E. Anderson, Jr. and wife, Betty A. Anderson (hereinafter referred to as "Owner") who recorded said Declarations of Crystal Falls Development and the Developer, Fairview Pointe, a Joint Venture, desire with the consent of Mackay Fisher Partners (hereinafter referred to as "Mackay") to remove the

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EXHIBIT A

Being all of the property shown on a Plat of Fairview Pointe recorded in the Office of the Register of Deeds, Buncombe County, NC, in Plat Book 60 at page 156, reference to which is hereby made for a more particular description.

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Declaration of Covenants, Conditions and Restrictions for the Crystal Falls Development described above and substitute the following restrictions ONLY for the development hereinafter to be known as THE CREEKS OF FAIRVIEW POINTE, which consists of the real property described on the attached Exhibit A; and

WHEREAS, the Owners and Mackay Fisher Partners entered into a Road Maintenance Agreement recorded in Deed Book 1551 at Page 153 of the aforementioned Registry and said Owners and Mackay desire that said Road Maintenance Agreement be amended such that the property shown on the attached Exhibit A shall be removed from and no longer subject to said Agreement; and

WHEREAS, notwithstanding anything hereto to the contrary, no property or lots may be added or withdrawn from being subject to these Covenants and Restrictions without the consent of Mackay Fisher Partners, and these covenants and restrictions may not be revoked or amended without the written consent of Mackay Fisher Partners.

NOW, THEREFORE, Owner, Developer, and Mackay hereby amend the Declaration of Covenants, Conditions and Restrictions of the Crystal Falls Development and substitute the following Restrictions for The Creeks of Fairview Pointe as follows:

I. PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO AND DELETIONS THEREFROM

Section 1. Legal Description. The real property which is and shall be held, transferred, sold conveyed and occupied subject to this Declaration is located in Buncombe County, North Carolina, and is described on the attached Exhibit A. (All filing references refer to the office of Register of Deeds, Buncombe County, North Carolina.)

Section 2. Additions to Property. The Developer may add such additional property or lots, as Developer, its successors or assigns, may from time to time designate as being subject to this Declaration by the placing of record an instrument executed with formalities of a deed, making such designation, it being specifically understood that said designation may, in Developer's sole discretion, apply to all or part of this Declaration, and in addition, that this Declaration may apply in full, in part, as modified, or as amended to any additional property or Lots designated by the Developer as being subject hereto. Under no circumstances shall this Declaration or any Supplemental Declaration bind the Developer to make any further additions of properties to this Declaration. No one other than the Developer or its successors or assigns shall have the right to place additional lands to be entitled to the benefits arising hereunder unless the Developer shall agree in writing that additional lands may be included hereunder. Notwithstanding any provision contained herein, should any property or lot for any reason fail to be validly bound by the terms of this agreement, by virtue of any description as to such Lot, Lots or Parcel then such property or lot shall in no way

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prevent or limit the effectiveness of this agreement with respect to all other properties that are properly included hereunder; provided, however, that all future additions shall require owners to participate in a comparable fashion in the maintenance of common areas, including roads.

Notwithstanding anything herein to the contrary, no property or lots may be added or withdrawn from being subject to these covenants and restrictions without the consent of Mackay Fisher Partners, and these covenants and restrictions may not be revoked or amended without the written consent of Mackay Fisher Partners.

II. PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Title to Common Properties. The Common Properties shall consist of roads, rights of way and other Common Properties shown on the plat of Fairview Pointe, further described on the attached Exhibit A. Developer may retain the legal title to the Common Properties so long as he owns at least one Lot in Fairview Pointe. On or before conveyance by Developer of the last Lot which he owns in Fairview Pointe, Developer shall convey the Common Properties to FAIRVIEW POINTE HOMEOWNER'S ASSOCIATION, INC. (sometimes hereafter referred to as "Association"), subject only to any restrictions, conditions, limitations, reservations and easements of record.

Section 2. Owner's Easements of Enjoyment. Every owner shall have a right and easement of use and enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Lot, subject to suspension for the following:

- A. Violation of rules and regulations governing use and enjoyment of the common areas adopted by the Association, not to exceed thirty (30) days.
- B. For any period during which any Assessment remains unpaid.

III. MAINTENANCE OF ENTRYWAY AND LANDSCAPED RIGHT-OF-WAY AREAS.

The Developer has planned an entrance at Garren Creek Road, landscaped the Right-of-Way on most roads, provided various community signs and street markers. Maintenance of these areas shall be the responsibility of the Association. When completed, the Association shall maintain the entrance wall and landscaped areas in a manicured and quality condition at all times. The Developer reserves the right to provide and dedicate additional areas as he deems beneficial to the overall benefit of Fairview Pointe. Maintenance of said Landscaped Right of Way areas (which includes maintenance of all rights of way shown on the Plat described on the attached Exhibit A and all future additions to said subdivision pursuant to Article I, Section 2, above in an all weather condition) shall be provided by the Developer until such time as Developer

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conveys title to said Rights of Way to the Fairview Pointe Homeowner's Association, Inc. At the time of said conveyance, maintenance of the Rights of way as shown on the attached Exhibit A and any future additions as provided for in Article I. Section 2. above shall be governed by the aforesaid Homeowner's Association.

Notwithstanding the provision for Amending the Declaration, no owner may paint or alter the entrance in any manner whatsoever without first obtaining the written consent of all owners of Fairview Pointe.

IV. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record fee simple owner of a Lot, including the Developer, at all times as long as he owns all or any part of the Property subject to this Declaration, shall be a member of the Association, provided that any such person or entity who holds such as security for the performance of an obligation shall not be a member. Each Lot shall be subject to assessment.

Section 2. Voting by voting Members. After turnover of control of the Association to the owners other than the Developer, each owner of a Lot shall be entitled to one vote for each lot owned in Fairview Pointe. The Developer shall exercise total control of the Association so long as it owns one lot in Fairview Pointe.

V. COVENANTS FOR MAINTENANCE ASSESSMENTS.

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned by him within Fairview Pointe, hereby covenants, and each owner of any Lot(s) (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessment or charges, and any special assessments for capital improvements or major repair; such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of eighteen percent (18%) per annum and costs of collection thereof (including reasonable attorney's fees), shall be a charge and lien on the land and shall be a continuing lien upon the Lot(s) against which each such assessment is made, and shall also be the personal obligation of the owner.

Section 2. Purpose of Assessments. The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in Fairview Pointe, and in particular for the improvement and maintenance of Common Property, Roads, the Entrance, Signs and Landscaping areas and any easements in favor of the Association, including but not limited to, the cost of taxes, insurance, labor, equipment, material, management, maintenance and supervision thereof, as well as for such other purpose as are permissible activities of, and undertaken by the Association.

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Section 3. Members Approval of Annual Assessments. Assessments set by the Association's Board of Directors (hereinafter sometimes referred to as the "Board") must be approved by simple majority of the voting membership of the Association present at the meeting called to approve such assessments.

Section 4. Uniform Rate of Assessment. All regular and special assessments shall be at a uniform rate for each Lot in Fairview Pointe.

Section 5. Special Assessment for Capital Improvements and Major Repairs. In addition to any annual assessments, the Association's Board of Directors may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto provided that any such assessment shall have the assent of two-thirds ($2/3$) of the voting membership who are voting in person or by proxy at the meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 6. Date of Commencement of Annual Assessments: Due Date. The assessments for which provision is herein made shall commence on the date or dates (which shall be the first day of the month) fixed by the Board to be the date of commencement. The due date of any assessment shall be payable in advance in monthly, quarterly, semi-annually or annual installments, as determined by the Board.

Section 7. Duties of the Board of Directors. The Board of Directors shall fix the date of commencement, and the amount of, the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be sent to each owner(s) at their last known address. Written notice of the assessment shall be sent to every Owner subject thereto not later than thirty (30) days after fixing the date of commencement thereof.

The Association shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Non-Payment of Assessment: the Lien, the Personal Obligation, Remedies of Association. If an assessment is not paid on the date when due, such assessment shall then become delinquent and shall together with such interest hereon and the cost of collection thereof, become a continuing lien on the Lot(s) in the hands of the Owner(s), his heirs, devisees, personal representatives, successors and assigns, and shall also be the continuing personal obligation of the Owner(s) against whom the assessment is levied.

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If the assessment is not paid within thirty (30) days after the delinquency date, which shall be set by the Board of Directors, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot(s) in like manner as a foreclosure of a mortgage on real property, and/or a suit on the personal obligation against the Owner(s), and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action (including a reasonable attorney's fee), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court, together with the costs of the action.

Section 9. Subordination to Lien of Mortgages. The lien of the assessment for which provision is herein made, as well as in any other Article of this Declaration, shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State Savings and Loan Association. Such subordination shall apply only to the assessment which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No sale or transfer shall relieve any Lot from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 10. Exempt Property. The Common Area and Lots owned by the Developer shall be exempt from assessment. Notwithstanding any provisions herein, no land or improvements devoted to dwellings shall be exempt from said assessments, charges or liens.

VI. EXTERIOR MAINTENANCE ASSESSMENT.

Section 1. Exterior Maintenance. In addition to maintenance of the Common Area(s), the Association may provide maintenance upon any Lot requiring same after reasonable notice to lot owner, when necessary in the opinion of the Board of Directors to preserve the beauty, quality of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, down spouts, exterior building surfaces, and yard cleanup and/or maintenance.

Section 2. Assessment of Cost. The cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed or, in the opinion of the Board of Directors, benefitting from same. The assessment shall be apportioned among the Lots involved in the manner determined to be appropriate by the Board of Directors of the Association. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessment shall not be considered part of the annual or special assessment. Any exterior maintenance assessment shall become due and payable in all respects, together with interest and fees for the cost of collection, as provided for the other assessments of

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the Association, and shall be subordinate to mortgage liens to the extent provided by Section 9 of Article V hereinabove.

Section 3. Access at Reasonable Hours. For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or the exterior of any improvements thereon at reasonable hours on any day except Saturday or Sunday.

VII. ARCHITECTURAL CONTROL

Section 1. Necessity of architectural review and Approval. No improvement or structure of any kind, including without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, decorative building, landscape device or object, or other improvement shall be commenced, erected placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and locations of same shall have been submitted to and approved in writing by the Architectural Review Committee ("ARC"). All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the Architectural Planning Criteria of the Association, as adopted and amended, from time to time by the Board of Directors of the Association.

Section 2. Architectural Review Committee. The architectural and control function of the Association shall be administered and performed by the ARC, which shall consist of at least three (3) but no more than five (5) members, who need not be members of the Association. The Developer shall have the right to appoint all of the members of the ARC or such lesser number as he may choose, as long as he owns at least one Lot in Fairview Pointe. All members of the ARC, after Developer no longer owns at least one Lot in Fairview Pointe, shall be appointed by and shall serve the pleasure of the Board of Directors. A majority of the ARC shall constitute a quorum to transact business at the meeting of the ARC, and the action of a majority present at any meeting at which a quorum is present shall constitute the action of the ARC. Any vacancy occurring on the ARC because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors; except that Developer, to the exclusion of the Board, shall fill any vacancy created by the death, resignation, removal or other termination of services of any member of the ARC appointed by the Developer.

Section 3. Power and Duties of the ARC. The ARC shall have the following powers and duties:

- A. To recommend, from time to time, to the Board of Directors Architectural Planning Criteria which shall be consistent with

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the provisions of this Declaration, and shall not be effective until adopted by a majority of the members of the Board of Directors of the Association at a meeting duly called and noticed and at which a quorum is present and voting.

- B. To promulgate the Architectural Planning Criteria in writing to all members of the Association.

Section 4. Purpose of the ARC. The ARC shall provide for a systematic and uniform review of all proposed improvements and construction of any type or nature whatsoever within Fairview Pointe. The ARC shall review all plans for said improvements, it being the intent of the Developer to provide for a sound and aesthetically pleasing development of the subdivision. The ARC shall assure itself of the soundness of the proposed improvement in order to prevent, to the extent possible, rapid and early deterioration. In addition, the ARC shall assure itself of the soundness of the proposed improvements into the community as a whole and with specific emphasis on external design, location of the improvements, Topography, and conformity to this Declaration.

Section 5. Procedure before the ARC. Prior to the commencement of any work on the premises contemplated for improvement, the applicant must submit to the ARC three complete sets of plans and specifications for any improvement or structure of any kind, together with such fully executed application form and fees as may then be required by this Declaration. No later than thirty (30) days after receipt of said plans and specifications, the ARC shall respond to the application in writing by approving said application or disapproving said application. In the event the ARC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed approved. In the event of disapproval of plans and/or specifications as submitted, no work or construction shall be commenced in furtherance of the proposed improvement. The conclusion and opinion of the ARC shall be binding, if for any reason, including purely aesthetic reasons, the ARC determines the improvements, construction or alterations are not in harmony with the development of the community as a whole. In the event of approval of said plans and specifications, the applicant shall provide the ARC with written notice of completion of the staking of the property, no further work shall be performed upon the property until the ARC has inspected the premises and approved said stakeout. In the event the ARC fails to respond within seventy-two (72) hours (excluding Saturdays, Sundays and Legal Holidays), after receipt of said notice, said work shall be deemed approved, and this requirement shall be deemed waived by the ARC.

Section 6. Decision of the ARC. The decision of the ARC shall be final. The right of any property owner to make any improvement(s) or alteration(s) is subject to the approval of the ARC. The ARC may determine that the improvement(s) or alteration(s) is not aesthetically in keeping with the community as a whole and, accordingly, deny any property owner's request.

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Section 7. Enforcement-Right to Remove or Correct Violations. In the event any building, fence, wall or other improvements or structure shall be commenced, erected, placed, moved or maintained upon any Lot, other than in accordance with the provisions and requirements of this Article, then the same shall be considered to have been undertaken in violation of this Article and without approval of the ARC required herein, and, upon written notice from the Board of Directors of the ARC, such building, fence, wall, or other structure or improvements shall be removed. In the event the same is not removed, or the violation is delivered to the Owner of the Lot upon which such violation exist, then the Association shall have the right, through its agents and employees (but only after resolution of the Board of Directors) to enter upon such Lot and take such steps as may be necessary to remove or otherwise terminate such violation occurred and, when so assessed, a statement for the amount thereof shall be rendered to Owner of said Lot at which time the assessment shall become due and payable and a continuing lien upon such Lot, and a binding personal obligation of the Owner of said Lot, in all respects (and subject to the same limitations) as provided in Article V of this Declaration. The Association shall have the further right, through its agents, employees or committee(s), to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article, or any of the other provisions or requirements of this Declaration exist on such Lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful Act by reason of such entry or inspection.

VIII. RESTRICTIONS.

Section 1. Residential Use. The Property subject to this Declaration may be used only for single-family residential living and for no other purpose. No business or commercial building may be erected on any Lot and no business, including garage sales, may be conducted in any part thereof. No building or other improvement shall be erected upon any Lot without prior ARC approval thereof as elsewhere herein provided. No Lot shall be divided, subdivided or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous Lots under one Ownership. In the event of the division or subdivision of any Lot(s) as aforesaid, the obligation for Association expenses attributable to the divided or subdivided Lot(s) shall be and become proportionately attributable and chargeable to the contiguous Lot(s), and the Owner(s) thereof, to and with which all or portion of the divided or subdivided Lot(s) become consolidated. In the event that one or more Lots are developed as a unit, the provisions of this Declaration shall apply thereof as a single Lot. No dwelling or other structure or improvement shall be erected, altered, placed or permitted to remain on any site not including at least one (1) full platted Lot according to the recorded Plat of Fairview Pointe.

Section 2. Set Back Lines. Since the establishment of standard inflexible building set back lines for location of houses on Lots tends to force construction of houses both directly behind and directly to the side of other homes with detrimental effects of

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privacy, preservation of important trees, etcetera, no specific set back lines are established by this Declaration. In order to assure, however, that location of houses will be staggered where practical and appropriate, so that the maximum amount of view will be available to each house; such that the structure will be located with regard to topography of each individual Lot, taking into consideration the location of large trees and similar considerations, the ARC shall have the right to control absolutely; provided, however, that such location shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site. The ARC may provide for minimum set back lines in the architectural planning criteria, in its sole discretion. The establishment of such minimum set back lines shall not be deemed a conflict with Article VII and the architectural planning criteria shall control.

Section 3. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat of Fairview Pointe further described on the attached Exhibit A. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage swales in the easements, or which may obstruct or retard the flow of water through drainage swales in the easements, or which are or might be prohibited by public authority to whom said easement is giving. These easements are of each Lot and all improvements thereon and shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 4. Vehicles and Repairs. The parking of commercial vehicles, which description shall include but not be limited to trucks, truck-trailers, recreational trailers, including self-propelled or those towed, as well as any mobile homes, at any time on driveways or otherwise on said premises or on the public streets of said subdivision, is prohibited except for loading or unloading purposes or when parked entirely within a garage permitted to be built under the provisions of these restrictions. Although boats and/or boat trailers may not be parked at any time on driveways or otherwise on said premises or on the public streets of the subdivision, they may be stored within the garage or behind a screened wall of a minimum height of six (6) feet, provided, however, under no circumstances shall a parked boat or boat and trailer be visible from the street, public areas or adjoining Lots, which storage screen, however, must be located no closer to the front Lot line than paralleling the front building wall of the dwelling. There shall be no repair, except emergency repair, performed on any motor vehicle on or adjacent to any Lot in this subdivision. It is acknowledged and agreed by all Owners of Lots in this subdivision by purchasing said property that a violation of any of the provisions of this paragraph shall impose irreparable harm to the other Owners in this subdivision. Said Owners further agree that a reasonable assessment of such damages would be \$50.00 for each day that such violation persists after an Owner of a Lot is notified in writing of such violation by a duly elected representative of the Association.

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Section 5. No Temporary Buildings. No tents, trailers, mobile homes, modular homes manufactured housing, vans, shacks, tanks or temporary or accessory building or structure shall be erected or permitted to remain on any Lot without written consent of the Association.

Section 6. Antennas. Aerial antenna or satellite dishes as shall be placed or erected upon any Lot, or affixed in any manner to the exterior of any building in Fairview Pointe, only in such locations as approved by the ARC.

Section 7. Artificial Vegetation. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot.

Section 8. Automobile Storage Areas. No carports shall be permitted.

Section 9. Clothes Drying Areas. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on the Lot.

Section 10. Landscaping. A basic landscaping plan for each home must be submitted to and approved by the ARC.

Section 11. Nuisances. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to the neighborhood. In the event of a dispute or question as to what may be or become a nuisance, such dispute or question shall be submitted to the Board of Directors, which shall render a decision in writing, which decision shall be dispositive of such dispute or question.

Section 12. Signs. No sign of any kind shall be displayed to the public view on any Lot except those approved by the ARC.

Section 13. Pets. No animals, birds or fowl shall be kept or maintained on any part of the property except dogs, cats and pet birds, which must be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants, but not for any commercial use or purpose. All pets must be kept under control at all times and must not become a nuisance by barking or other acts. If the Developer shall elect to provide a stable as a part of the Common Grounds, horses may be ridden through Fairview Pointe.

Section 14. Boarding Up. There shall be no "boarding up" of houses while the homes are vacant for a long period of time. There shall be allowed storm protection only in the event of and during the period of time of a storm likely to cause damage to the house.

Section 15. Topography. There shall be no change of topography of the Lot

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either for construction or for landscaping without permission of the ARC.

Section 16. Windows or Wall Air Conditioning Units. No window or wall air conditioning units shall be permitted.

Section 17. Rentals. Homeowners may rent their property for a period of no less than one year, except as approved in writing by the Board of Directors.

Section 18. Garage Doors. Garage doors and doors of any other storage room or the like shall be kept closed whenever possible.

Section 19. Model Houses. No provision of this Declaration shall preclude the Developer in furtherance of its sales program from erecting, maintaining and utilizing Model Houses on any Lot(s).

Section 20. Conditions of Buildings and Grounds. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkept conditions or buildings, or grounds on such Lot which will tend to decrease the beauty of the community as a whole or the specific area. This restriction shall apply before, during and after construction.

Section 21. Miscellaneous. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep his Lot free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said Lot after reasonable notice to Owner and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from adjoining Lots or public areas.

Section 22. Architectural Planning Criteria. Architectural Planning Criteria promulgated in accordance with the Declaration, and all changes and amendments thereto shall be given the same force and effect and shall become as binding as the restrictions set forth herein.

IX. TRANSFER OF UNIMPROVED LOTS.

Section 1. Developer's Right of First Refusal. No Lot, and no interest therein, upon which a single-family residence has not been constructed (and a certificate of compliance/occupancy issued therefor) shall be sold or transferred unless and until the Owner of such Lot shall have first offered to sell such Lot to Developer and Developer has waived, in writing, its right to purchase said Lot.

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Section 2. Notice to Developer. Any Owner(s) intending to make a bona fide sale of his Lot or any interest therein shall give to Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the "proposed Contract"). Within thirty (30) days of receipt of such notice and information, Developer shall either exercise or waive exercise his right of first refusal. If Developer elects to exercise his right of first refusal, he shall, within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:

A. The price to be paid, and the terms of payment, shall be that stated in the Proposed Contract.

B. The sale shall be closed within thirty (30) days after delivery of said agreement to purchase. If Developer shall fail to exercise or waive exercise of his right of first refusal within the said thirty (30) days or receipt of the Proposed Contract, the Developer's right of first refusal shall be deemed to have been waived and the Developer shall furnish a certificate of waiver as hereinafter provided.

Section 3. Certificate of Waiver. If Developer shall elect to waive his right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the proposed contract, Developer's waiver shall be evidenced by a certificate executed by Developer in recordable form which shall be delivered to the Proposed Contract purchaser and shall be recorded in the Public Records of Buncombe County, North Carolina.

Section 4. Unauthorized Transactions. Any sale of a Lot, or any interest therein, upon which a single-family residence has not been constructed (and a certificate of occupancy issued therefor), without notice of Developer and waiver of Developer's right of first refusal as aforesaid, shall be void.

Section 5. Exceptions. This Article IX shall not apply to a transfer or sale by any institutional lender, including but not limited to, any bank, life insurance company or Federal or State Savings and Loan Association which acquired its title as a result of Owning a mortgage upon the Lot concerned and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings; nor shall this Article IX apply to sale by any such institution which so acquired title. Neither shall this Article IX require the waiver by Developer as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

X. GENERAL PROVISIONS.

Section 1. Duration and Remedies for Violation. This Declaration shall run with

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and bind the property, and shall insure to the benefit of and be enforceable by the Developer, the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said Declaration shall automatically be extended for successive periods of ten (10) years unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded agreeing to change or terminate said Declaration in whole or in part. Violation or breach of any condition, covenant or restriction herein contained shall give Developer and/or Association and/or Owner(s) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants and restrictions and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the then Owner of the subject property, provided such proceedings result in a finding that such Owner was in violation of said Declaration. Expenses of litigation shall include reasonable attorney's fees incurred by the Developer and/or the Association in seeking such enforcement.

Section 2. Notices. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post paid, to the last known address of the person who appears as a member or Owner on the records of the Association at the time of such mailing.

Section 3. Severability. Invalidation of any one Article, Section, or paragraph of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. This Declaration may be amended at any time and from time to time with the execution and recordation of an instrument executed by Owners holding not less than two-thirds (2/3) of the voting interest of the membership, provided, that so long as Developer is the Owner of any Lot or any property affected by this Declaration, or amendment will not be effective without Developer's expressed written joinder and consent.

Section 5. Waiver of Minor Violations. Where an improvement has been erected or the construction thereof is substantially advanced and it is situated on any Lot in such a manner that same constitutes a violation or violations of any of this Declaration, the Association, its successors and/or assigns, shall not release a violation or such violations shall be dependent on a determination by the Association that such violation or violations are minor.

Section 6. Usage. Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 7. Effective Date. This Declaration shall become effective upon its recordation in the Public Records of Buncombe County, North Carolina.