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STATE OF NORTH CAROLINA  
COUNTY OF RUTHERFORD

**DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS,  
RESERVATIONS, TERMS AND CONDITIONS GOVERNING TRANQUILITY AT  
LAKE LURE IN RUTHERFORD COUNTY, NORTH CAROLINA**

**THIS DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND CONDITIONS**, made and entered into this the 23 day of March, 2007, by and between **01 VICTOR LLC**, a Florida limited liability company (hereinafter "Declarant" or "01 Victor"), and the future owners of properties within the Tranquility at Lake Lure Subdivision located in the Chimney Rock Township, Rutherford County, North Carolina (hereinafter "the Subdivision"), as hereinafter described.

**W I T N E S S E T H:**

**WHEREAS**, Declarant is the developer and owner of that certain 31.22 acre tract, more or less, located in Rutherford County, North Carolina and described in Deed Book 919, at Page 864 of the Rutherford County, North Carolina Register of Deeds Office (hereinafter "the Property"); and

**WHEREAS**, Declarant plans to develop on some or all of the Property parcels of land for lots and common areas along with supporting infrastructure to be locally known as Tranquility at Lake Lure; and

**WHEREAS**, Declarant desires for the benefit of future purchasers of lots or properties making up the Subdivision that Tranquility at Lake Lure shall be developed as a restricted area and used exclusively as hereinafter set forth.

**NOW THEREFORE**, in consideration of the premises and for the advantage which Declarant and future owners of lots or properties in the Subdivision will receive from the sale and ownership of restricted land, Declarant and its successors and assigns do hereby covenant and agree with all other persons, firms, or corporations now owning or hereafter acquiring any portion of Tranquility at Lake Lure, for full value received, and the Owner, as hereinafter defined, covenants and agrees upon acceptance of a deed or deeds of conveyance to any of the Lots as hereinafter defined or properties making up the Subdivision that Tranquility at Lake Lure as described on Exhibit A is hereby subjected to the following covenants and restrictions as to the use and occupancy thereof, running with the land by whomsoever owned, to wit:

**ARTICLE I**

**PURPOSE; LAND SUBJECT TO RESTRICTIONS**

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of the same has been the creation of a planned community which is aesthetically pleasing, functionally convenient and environmentally-sound; attracting residents seeking privacy and security in a beautiful environment. Subject to the Special Declarant Rights as hereinafter defined, Declarant submits the land described on Exhibit A attached hereto and incorporated herein by reference to the covenants, restrictions, easements, reservations, terms

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EXHIBIT A

Property Subject to Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions Governing Tranquility at Lake Lure, a Planned Community

BEING all the property identified as the Tranquility at Lake Lure Subdivision as shown on a plat prepared by Donald R. McIntire dated 11-13-06, and recorded in Plat Book 28, Page 34-35 of the Rutherford County, North Carolina Register of Deeds Office, reference to said plat being made for a more particular description of said property.

and conditions contained in this Declaration and to the Act as hereinafter defined. Declarant reserves the right to submit additional platted Lots as hereinafter defined or other properties to the general scheme of development set forth in this Declaration by the recording of a supplemental or amended Declaration.

ARTICLE II

**DEFINITIONS**

The following are terms that shall be considered as defined terms under this Declaration and the same definition shall be applicable whether the word is shown as singular or plural, capitalized or not.

1. "Annexed Properties" shall mean any tract of land not included within the boundaries of the Subdivision as described on Exhibit A attached hereto and incorporated herein by reference which may be added to Tranquility at Lake Lure as provided in Article IX below.

2. "Architectural Review Committee" shall mean the committee established by the Association as hereinafter defined to review and approve structures, improvements or alterations to a Lot pursuant to Article VI hereof.

3. "Association" shall mean the Tranquility at Lake Lure Property Owners Association, Inc., its successors and/or assigns.

4. "Board" shall mean the Board of Directors of the Association as defined herein.

5. "Bylaws" shall mean the Bylaws of the Association and any amendments thereto. The original Bylaws of the Association are on file with the Secretary of the Association and incorporated herein by reference.

6. "Common Elements" shall mean the common areas of the Subdivision, including, but not limited to: i) the road right(s) of way depicted on any recorded Plat of the Subdivision providing access to the Lots, except Lillians Drive as noted on any Plat; ii) any real estate owned or leased by the Association, other than a Lot; and iii) those areas expressly designated by Declarant as "Common Elements" or "Common Areas" on recorded plats of Tranquility at Lake Lure for the use and enjoyment of all Lot Owners as defined herein except as may be expressly limited by Declarant in writing; provided, that property shall not be irrevocably dedicated as a Common Element until said property is described as a Common Element (i) in a Supplemental Declaration filed in the Rutherford County Registry; or (ii) in an instrument of conveyance as hereinafter set forth. Declarant shall convey by Special Warranty or NonWarranty deed or by an easement instrument ownership and/or use of the Common Elements to the Association. **PROVIDED HOWEVER**, before the recording, as provided above, of the Supplemental Declaration or the instrument of conveyance, Declarant has the right to remove, withdraw or alter any portion of the property denoted as "Common Elements" on a recorded plat, including, but not limited to, road rights of way, and subject said area to its exclusive dominion whether for future sale or to build upon and without the need for any Lot Owner approval or Association

consent, including the right to enlarge, reduce and/or modify the boundaries of any Common Element. "Common Elements" do not include those areas denoted as "Future Development" or as "Reserved" or those areas not labeled on the plats of record for Tranquility at Lake Lure. Subject to Special Declarant Rights as hereinafter defined, the governance, management and/or control of the Common Elements shall reside with the Association unless otherwise provided in writing by Declarant or unless such governance, management and control has been delegated or dedicated to a Governmental Entity as hereinafter defined. Common Elements are more fully described in Article V below.

7. "Common expenses" shall mean the expenditures made by or financial liabilities of the Association, together with allocations for reserves, if any.

8. "Community-Wide Standard" means the standards of conduct, maintenance, or other activity generally prevailing in Tranquility at Lake Lure. Such standards may be more specifically determined and established by the Board or any committees delegated such responsibility by the Board, and such standards may vary depending, in part, on the characteristics of the parcels of land in question.

9. "Tranquility at Lake Lure" or "Subdivision" shall mean the restricted community made up of Lots, Common Elements and infrastructure located within the boundaries described on Exhibit A attached hereto and incorporated herein by reference and described on future recorded plats and Supplemental Declarations executed by Declarant at such times and in such phases as determined in Declarant's sole discretion.

10. "Declarant" shall mean 01 Victor LLC, a Florida limited liability company, its successors and/or assigns, including any person which succeeds to any Special Declarant Rights as set forth herein.

11. "Declarant Control Period" shall mean the time in which Declarant has to exercise certain exclusive rights such as, but not limited to, Special Declarant Rights as hereinafter defined. Declarant Control Period shall be the earlier of (i) twenty-five (25) years after the date of the recording of this Declaration, (ii) when all of Tranquility at Lake Lure (platted at such times and in such phases as determined in Declarant's sole discretion) has been sold or transferred to parties other than Declarant, or (iii) such earlier time as determined in Declarant's sole discretion by the recording of a written instrument in the Rutherford County Registry executed by Declarant and expressly terminating or modifying Declarant Control Period. **THE FUTURE OWNERS OF LOTS IN TRANQUILITY AT LAKE LURE ACKNOWLEDGE, BY THEIR PURCHASE OF SAID PROPERTY, THE REASONABLENESS OF THE ABOVE TIME PERIODS. SEE ARTICLE VIII FOR ANNEXATION RIGHTS RESERVED TO DECLARANT.**

12. "Declaration" shall mean this Declaration of Terms, Conditions, Restrictions and Protective Covenants and any amendments thereto.

13. "Future Development" or "Reserved Areas" shall mean any parcel of land owned by Declarant depicted on Site Plans or other advertising material for Tranquility at Lake Lure as "Future Development," "Reserved," or not designated at all as Lots as hereinafter defined or Common Elements, which property may or may not be included within the Subdivision as determined in Declarant's sole discretion and wherein Declarant reserves the right to impose use restrictions that may differ from those set forth in this Declaration.

14. "Governmental Entity" shall mean any and all federal, state or local governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of Tranquility at Lake Lure as provided by law or in written agreements with Declarant.

15. "Limited Common Elements" shall mean a portion of the Common Elements within Tranquility at Lake Lure designated by Declarant or the Association, in their discretion, as being either i) for the exclusive use of one or more but fewer than all of the Lots; or ii) benefiting, either directly or indirectly, one or more but fewer than all of the Lot Owners. "Limited Common Elements" may be designated by Declarant on plats for the Subdivision or other recorded instrument and may include, but not be limited to, driveways. The Board may designate Limited Common Elements as reflected in the minutes of any Association Board meeting; provided, however, such designation must receive the written consent of Declarant during Declarant Control Period.

16. "Lot" shall mean a physical portion of the Subdivision designated with a number on a recorded plat of Tranquility at Lake Lure, intended for separate ownership or occupancy by an Owner, and expressly made subject to the terms and conditions of this Declaration by a recorded instrument. A Lot designated on a recorded plat of Tranquility at Lake Lure shall be deemed "Improved" when a residence has been constructed thereon and a permit authorizing occupancy has been issued by the applicable Governmental Entity. All other Lots designated on a recorded plat of Tranquility at Lake Lure shall be deemed "Unimproved".

17. "Lot Owner" or "Owner" shall mean and refer to the owner or owners as shown by the real estate records in the Rutherford County Registry of fee simple title to any Lot situated within Tranquility at Lake Lure. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

18. "Member" shall mean each owner or owners of a Lot who shall also then be a Member of the Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to only one vote. A "Qualified Voting Member" shall mean a Member who is designated as the voting Member for a Lot as set forth in the Bylaws who is not otherwise disqualified from voting as provided in Article III, Section 1(e) below.

19. "Plat" shall mean any existing or future plat of the Subdivision signed by Declarant and placed of record in Rutherford County Registry, together with all amendments

thereto, as approved by the Governmental Entity, if any, having authority to regulate subdivisions.

20. "Reasonable attorneys' fees" shall mean attorneys' fees as allowed by the North Carolina Planned Community Act, Chapter 47F.

21. "Rules and Regulations" shall mean the procedural and substantive requirements adopted by the Board in accordance with the Bylaws and imposed upon Members of the Association, concerning the use of any Lot or Common Element. Unless provided otherwise in writing, Declarant reserves, during Declarant Control Period, the right to consent *in writing* to the Rules and Regulations prior to the application of such restrictions on Lot Owners. A copy of the Rules and Regulations shall be kept on file with the Secretary of the Association.

22. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or having a guardian/ward relationship created by decree of a Court of competent jurisdiction, or a group of not more than four persons not all so related, who maintain a common household in a dwelling.

23. "Single-Family Residence" shall mean a dwelling constructed in accordance with the restrictions and conditions set forth in Article VI hereof. Timeshares and cooperatives are expressly prohibited, including the use of a dwelling for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the dwelling rotates among participants in the program on a fixed or floating time schedule over a period of years, or (ii) for the operation of a reservation or time-use system among co-owners of the dwelling managed by a party other than the co-owners themselves or a system whereby co-owners are required as a condition of purchase of a fractional interest in the dwelling to subject the fractional interest to a pre-determined reservation or time-use system among co-owners, regardless of whether or not the co-owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

24. "Single-Family Residential Use" shall mean the occupation or use of a Single-Family Residence in conformity with this Declaration.

25. "Special Declarant Rights" shall mean rights reserved for the benefit of Declarant including, but not limited to, the right (i) to construct and/or complete improvements indicated on plats and plans filed with this Declaration or any Supplemental Declaration; (ii) to add properties to Tranquility at Lake Lure as provided in Article VIII below (iii) to designate, withdraw or alter Common Elements as provided in Article II.6. above; (iii) to redesignate a previously designated Lot as an easement or right of way for access and/or utilities to property whether or not owned by Declarant and whether or not outside Tranquility at Lake Lure; (iv) to remove properties from Tranquility at Lake Lure as provided in Article VIII below; (v) to maintain sales offices, management offices, signs advertising Tranquility at Lake Lure and models; (vi) to use or grant easements through the Common Elements for the purpose of accessing properties or making improvements in Tranquility at Lake Lure or areas outside Tranquility at Lake Lure, whether or not said areas are added to the Subdivision; (vii) to use or grant easements, without limitation, that are reserved to Declarant in Article III, Section 6 below;

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(viii) to designate (or re-designate) streets within the Subdivision as private and maintained by the Association or for dedicated public use to be maintained by a Governmental Entity; (ix) to make the Subdivision part of a larger planned community or group of planned communities; (x) to make the community subject to a master association; (xi) to appoint or remove any one or more members of the Board of Directors of the Association during Declarant Control Period; (xii) to exercise special voting rights as may be provided in the Bylaws; (xiii) to modify, amend, change, vary or release all or any part of this Declaration; (xiv) to consent to any amendments proposed by the Lot Owners; or (xv) any other rights provided Declarant in this Declaration or by North Carolina law.

26. "Structure" shall mean any building, (including, but not limited to, house, barn, garage), lampposts, driveway lights, fence, wall, swimming pool, tennis court, detached antennae, satellite dishes or other receivers/transmitters, mailboxes, fuel tanks, septic systems, dog lots, play sets, and sports equipment or any other thing artificially erected or installed on or under a Lot.

27. "Supplemental Declaration" shall mean a recorded supplement to this Declaration, which may submit additional property to this Declaration, create easements over the property described in the Supplemental Declaration, or impose additional obligations or restrictions on such property.

ARTICLE III

**PROPERTY RIGHTS AND EASEMENTS**

Section 1. Owners' Easements of Enjoyment to Common Elements. Subject to the provisions of this Declaration, and the Rules and Regulations established by the Board, every Owner of a Lot shall have a right and easement of enjoyment in and to the Common Elements, existing now or in the future, which shall be appurtenant to and shall pass with the title to any Lot, subject to:

(a) the right of the Board to convey any Common Element that is irrevocably dedicated as provided in Article II above or subject same to a security interest with a concurring vote of 80% of the Qualified Voting Members of the Association as set forth in the Bylaws;

(b) the right of the Board to lease or grant easements or licenses of use over the Common Elements without a vote of the Members of the Association;

(c) the right of the Board to charge and collect usage fees for a Common Element recreational facility, if any, at the time that a Member and/or guest intends to use such facility;

(d) the right of the Board to dedicate any road and utility rights of way within Tranquility at Lake Lure to any Governmental Entity or public utility without a vote of the Members of the Association;

(e) the right of the Board, after an opportunity for a hearing to suspend voting rights in the Association and the use of the Common Elements (except for access to a Lot) by an Owner, his tenant or their invitees for any period during which any assessment against his Lot remains unpaid or for any infraction of the use restrictions contained in this Declaration or the Rules and Regulations promulgated by the Board;

(f) the right of the Board to reasonably regulate, locate, and direct access routes and to designate parking locations;

(g) the right of Declarant, as determined in Declarant's sole discretion, to grant and reserve unto itself, its successors and/or assigns the right of access for road and utility purposes over or under the Common Elements or Lots owned by Declarant to any parcel of land, whether located within or outside the Subdivision, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel;

(h) Special Declarant Rights as hereinabove defined, including, but not limited to, the right of Declarant to alter Common Elements or to add additional properties to be subject to this Declaration and to allow the owners of those properties to become Members of the Association; and

(i) the right of Declarant or the Board to impose conditions on the use of the Common Elements consistent with any conservation easement that may apply to said properties.

Section 2. Waiver of Unlimited Access. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does waive all rights of unlimited and uncontrolled access, ingress to and egress from such Lot, and agrees that:

(a) To attempt to provide a more secure environment, access, ingress, and egress to and within Tranquility at Lake Lure may be controlled, restricted, and limited to exclude uninvited members of the general public; and

(b) Access, ingress and egress from any Lot shall be limited to the roads, walkways, and paths designated as Common Elements on the Plat.

Provided, however, that subject to the provisions of this Declaration, vehicular and pedestrian access to and from all Lots shall be available at all times.

Section 3. Gates and Attendants. Declarant shall provide a gate(s) at or near the entrance(s) to Tranquility at Lake Lure which gate(s) may or may not be attended by one or more attendants for the purpose of limiting vehicular and pedestrian access to the Subdivision.

Section 4. Easements to Government Entities. Subject to the provisions of this Declaration, Declarant does hereby grant a permanent, perpetual and non-exclusive easement to each department, branch or agency of any Governmental Entity, and to any agents or employees of said Governmental Entity, over, across and through all roads within Tranquility at Lake Lure,



now or in the future, for the purpose of performing such duties and activities as may be necessary or desirable for the common welfare of all Owners or for the Association which may include, but are not limited to, duties and activities related to law enforcement, fire protection, garbage collection, mail delivery and medical and emergency services.

Section 5. Easements to Utilities. Subject to the provisions of this Declaration, Declarant does grant to the Association, to Rutherford County EMC, and to any other utilities designated in writing by Declarant, and their successors and/or assigns, a permanent, perpetual and non-exclusive easement over, across, under and through:

- (a) all Common Elements; and
- (b) as shown on the Plat

now or in the future, for the purpose of installing, replacing, constructing, maintaining, and operating utilities or utility systems which are necessary or desirable for the use of any part of Tranquility at Lake Lure which include, but are not limited to, publicly or privately owned and operated electrical service, communication service, water service, sewer service, gas service, cable television, drainage systems, pipes, lines, conduits, storage devices, equipment, machinery or other devices necessary to the provision of such utility services. The easements established, reserved and granted herein shall include the right, where reasonably necessary, to cut and remove trees and other vegetation, to dig, excavate fill and take any other action necessary to provide for the installation, maintenance, replacement, relocation or operation of any utility service.

Provided, however, that the easements herein granted or reserved shall not cause any undue interference with the use or occupancy of any Lot and further, that Declarant and/or the Association shall use good faith efforts to attempt to cause any utility provider, utilizing this easement, to repair any damage caused by such utility.

The above services may require an initial payment and/or a continuing monthly payment to the utility provider by either some or all of the Lot Owners. All utility services from a Lot line to the residence shall be installed underground.

Section 6. Easements Reserved to Declarant.

(a) Easements for Access. Declarant reserves to itself, its successors and/or assigns, a perpetual alienable right to provide access over and across the roads and other Common Elements, if any, or across any Lot or parcel owned by Declarant to any parcels of land, whether within or outside the Subdivision, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(b) Easements for Utilities. Declarant reserves to itself, its successors and/or assigns the utility easements referred to in Section 5 above and Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside the



Subdivision, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(c) Easements for Stormwater and Drainage. Declarant, its successors and/or assigns, may cut drainage channels or utilize existing natural channels for surface or storm water wherever and whenever such action may appear to Declarant to be necessary in order to maintain proper drainage and reasonable standards of health, safety and appearance. Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside the Subdivision, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(d) Easements for Vegetative, Pest or Fire Control. Declarant reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on and over and under all areas within the Subdivision to dispense pesticides and take other action which in the opinion of Declarant is necessary or desirable to control insects, vermin and undesirable vegetation. Declarant reserves the right to cut fire breaks and other activities on, over and under all areas within the Subdivision which in the opinion of Declarant are necessary to control fires. Declarant, however, is under no duty to take such actions as herein above provided.

Section 7. Easements Appurtenant Upon Transfer of Lot or Common Element

All easements referred to in this Article III that are reserved unto Declarant, its successors and/or assigns or the Association shall be automatically appurtenant to any Lot or Common Element at the time of transfer of said Lot or Common Element from Declarant, its successors and/or assigns, regardless of whether the deed of conveyance expressly reserves such easements.

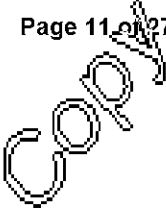
ARTICLE IV

**ASSOCIATION MEMBERSHIP AND ASSESSMENTS**

Section 1. Membership in the Association. Every Owner of a Lot shall be a Member of the Association and bound by this Declaration, the Articles of Incorporation of the Association and its Bylaws and Rules and Regulations as hereafter promulgated. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Powers of the Association. The Association shall have such powers as are enumerated in its Articles of Incorporation, its Bylaws or as provided in N.C. Gen. Stat. §47F-3-102 and §47F-3-116 of the North Carolina Planned Community Act. It is expressly understood that so long as the Subdivision is exempt from the North Carolina Planned Community Act (the "Act") as provided in N.C. Gen. Stat. §47F-1-102, then only those provisions of the Act expressly incorporated into this Declaration shall apply.

Section 3. Creation of the Lien and Personal Obligation Assessments. Except for Declarant as provided below, each and every Owner of a Lot by acceptance of a deed therefore,



whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and as stated in the Bylaws. All such annual and special assessments, together with interest, costs and reasonable attorney's fees for the collection thereof shall be a charge and lien upon a Lot and its improvements. The amount owed shall be a continuing lien upon the applicable property against which such assessment is made, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Lot and (ii) liens and encumbrances recorded before the recordation of the Declaration.

Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Lot owner or owners at the time when the assessments became due. The personal financial obligation for delinquent assessments shall not pass to successors in title to any such Lot unless expressly assumed by such purchaser: PROVIDED, HOWEVER, the same shall be and remain a charge and lien upon any such Lot and improvements until paid or otherwise satisfied except as may herein otherwise be provided.

Section 4. Purpose of Assessments. The assessments levied by the Board of the Association shall be used for the purposes in keeping with a nonprofit corporation as set forth in the Association's Articles of Incorporation. Specifically, the assessments shall be used to promote the health, safety and welfare of the Members, including the Owners and residents of Tranquility at Lake Lure, and for the improvements, maintenance and repair of the Common Elements (including any conditions imposed as a consequence of said property being subject to or part of a conservation easement); for the protection of the community from pollution or erosion; for the enforcement of these covenants; the provision of reserve funds, the employment of attorneys, accountants, and other professionals to represent the Association, when necessary, and for payment of local taxes, insurance and special governmental assessments on or to the Common Elements together with payment of services, if any, provided to the residents by the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of the Association may levy in accordance with its Bylaws, in any fiscal year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including, but not limited to, fixtures and personal property (such as road signs) related thereto and to pay special governmental assessments.

Section 6. Rate of Assessment. The determination of the total amount of Common Expenses for any given fiscal year of the Association shall be within the sole discretion of the Board. The Board shall allocate assessments for Common Expenses in such amounts to be fixed from year to year and the Board may establish different rates for various general classifications of Lots after considering factors that include (but are not limited to) the use and location of said Lots. For example, the Board may allocate in any given fiscal year assessments for Common

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Expenses based, at least, in part on whether a Lot is Improved or Unimproved. It is within the Board's discretion to determine what assessment is warranted in cases where a Lot is combined or subdivided. The Board may also allocate assessments in any given fiscal year for Common Expenses based, in whole or in part, on the number of Lots owned by a Member. For example, as a result of some perceived minimal impact on the community infrastructure, the Board may, in its discretion, levy a reduced assessment for each additional Unimproved Lot that a Member owns in Tranquility at Lake Lure. For purposes of illustration only, a Board may charge a full annual and/or special assessment for a Member's Lot and twenty-five percent (25%) of said annual and/or special assessment for every additional Lot that said Member may own. The Board may also assign different assessment rates based on a designation of Limited Common Elements for one or more persons. **BY ACCEPTING A DEED FOR A LOT IN TRANQUILITY AT LAKE LURE, A PURCHASER ACKNOWLEDGES HIS OR HER UNDERSTANDING OF THE STANDARD IN THIS DECLARATION BY WHICH TO MEASURE A MEMBER'S ASSESSMENT LIABILITY AND THE PURPOSES FOR SAID ASSESSMENTS.**

Section 7. Effect of Nonpayment of Assessments.

(a) Remedies of the Association. Any assessments which are not paid when due as determined by this Declaration and the Board shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against his property, and interest, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated in those sections of the North Carolina Planned Community Act referenced in Section 2 above. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all Members of the Association. The Association, acting on behalf of its Members, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient. No Owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his/her Lot.

After notice and opportunity to be heard, the Association may restrict the voting rights and/or use of Common Elements (not including rights of access to a Lot) by a Lot Owner who is delinquent in paying assessments.

(b) Remedies of Declarant. To the extent that any Lot Owner fails to pay his assessments relating to the Common Elements, then Declarant shall have, during Declarant Control Period, in addition to the Association, the right, but not the obligation, to use any of the

remedies enumerated above, including filing a lien against the defaulting Owner and pursuing the enforcement of such lien and other remedies as set forth in the Act.

The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or the Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement.

Section 8. Association Responsibility of Maintenance/Repair/Improvement of Common Elements. Unless otherwise provided in writing by Declarant, the Association and its Members shall be responsible for the maintenance, repair and improvement of all Common Elements as identified on recorded plats for Tranquility at Lake Lure and/or in a Supplemental Declaration in accordance with the Community-Wide Standard that may be established by the Board every fiscal year; provided, however, in any given fiscal year, the Board shall have the discretion to vary from such Community-Wide Standard based on the availability of Association funds, including any reserve funds or for any other reason of the Board exercising reasonable business judgment. During Declarant Control Period, Declarant has the right, at Declarant's expense, to build improvements on the Common Elements without Association consent (See Article II, subparagraph 25i) or to maintain, repair or improve the Common Elements over and above the standards referred to in this Section 8.

Section 9. Reserve Funds, Operating Expense Surplus and Surplus Funds. The Board shall have the right, but not the obligation, within its sole discretion, to impose assessments on Lot Owners for the maintenance of reserve funds or operating expense surpluses. The Association, within its sole discretion, may apply surplus funds to any purpose of a non-profit corporation or may credit such funds to its Members as determined in the Board's sole discretion.

Section 10. Architectural Review Fees; Impact Fees; Cash Bonds; Usage Fees. The Board shall have the right, but not the obligation, within its sole discretion, to impose a uniform schedule of fees to be applied to any Owner of a Lot at the time that Owner applies for approval to construct a residence on a Lot to offset the costs of architectural review and to mitigate the effect that Owner's development plans will have on the infrastructure and environment within Tranquility at Lake Lure. These fees may take the form of Architectural Review fees and/or Impact fees and any such fees may be non-refundable in the sole discretion of the Board. In lieu of fees, the Board may accept cash bonds in its sole discretion. The Board shall also be authorized to collect usage fees as provided in Article III, Section 1(c) above.

Section 11. Declarant Exemption from Assessments. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be responsible for the payment of assessments, however denominated. Declarant may make voluntary contributions to the Association in such amounts and at such frequencies as Declarant determines in its sole discretion.

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Section 12. Pre-condition to Suits Against Declarant. The affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Association shall be required in order for the Association to (1) file a complaint, on account of an act or omission of Declarant, with any Governmental Entity which has regulatory or judicial authority over the Subdivision or any part thereof; or (2) assert a claim against or sue Declarant.

ARTICLE V

COMMON ELEMENTS

Section 1. Roads; Subdivision Street Disclosure Statement; Lillians Drive. As of the recording of this Declaration, Declarant is in the early stages of developing Tranquility at Lake Lure. At this early stage, Declarant intends that the roadways within the Subdivision shall be privately maintained and not intended to be developed for takeover by the North Carolina Department of Transportation ("DOT"), the Town of Lake Lure or any other Governmental Entity. As private roads, the roadways will not necessarily be constructed to minimum standards sufficient to allow their inclusion on the State highway system for maintenance. The schedule and completion of the design and construction, including paving, shall be within the sole discretion of Declarant. As private roads, the maintenance of same shall be borne, through Member assessments as provided in Article IV above, by the Association. This disclosure is given in accordance with N.C. Gen. Stat. §136-102.6. Notwithstanding the above, Declarant reserves the right to designate or re-designate any street within the Subdivision as dedicated for public use and offer same for maintenance by a Governmental Entity, including, but not limited to, DOT or a local Governmental Entity. In that event, Declarant shall certify at the time of acceptance by the applicable Governmental Entity that the right of way and design of the street in question has been approved by said entity and that the street has been or will be constructed to the standard of such Governmental Entity. Lillians Drive as noted on any Plat shall not be dedicated as a Common Element as of the recording of this Declaration. Declarant reserves the right to designate in the future Lillians Drive as access to any or all Lots in Declarant's sole discretion.

Section 2. Other Common Elements. Declarant may, but is not obligated to, provide other properties within Tranquility at Lake Lure as Common Elements. The designation and transfer of these areas are solely in the discretion of Declarant and no parole or oral agreement or claims of estoppel shall be asserted by any resident providing rights to areas not explicitly denoted as "Common Elements" on the Plats for Tranquility at Lake Lure and described in a Supplemental Declaration or instrument of conveyance for such areas. The Association's application of assessments to the maintenance, repair or improvement of a Common Element shall not interfere with or alter Declarant's rights concerning the modification of the designation or boundaries of Common Elements not otherwise irrevocably dedicated as provided in Article II above. **BY ACCEPTING A DEED FOR A LOT IN TRANQUILITY AT LAKE LURE, A PURCHASER ACKNOWLEDGES HIS OR HER RESPONSIBILITY TO ABIDE BY THE TERMS OF THIS DECLARATION, INCLUDING THE ASSESSMENT OBLIGATIONS IN ARTICLE IV, FOR ANY COMMON ELEMENT, WHETHER OR**

**NOT SAID COMMON ELEMENT WAS ACQUIRED BY THE ASSOCIATION BEFORE OR AFTER HIS OR HER LOT PURCHASE.**

Section 3. Conveyances. Any Common Element conveyed by Declarant to the Association shall be conveyed subject to:

- (a) All restrictions on use contained in this Declaration or in the instrument of conveyance;
- (b) All existing mortgages, provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgage;
- (c) The right of access for ingress, egress and regress and utilities of Declarant, its successors and/or assigns over and across such property; and
- (d) During Declarant Control Period, the right of Declarant, its successors and/or assigns, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Element prior to the commencement of such activities or location of any object therein.

**BY ACCEPTING A DEED FOR A LOT IN TRANQUILITY AT LAKE LURE, A PURCHASER ACKNOWLEDGES THAT THE CONSENT OF THE ASSOCIATION OR ANY MEMBER IS NOT REQUIRED PRIOR TO ANY CONVEYANCE OF A COMMON ELEMENT AS SET FORTH IN THIS ARTICLE AND EACH PURCHASER AGREES TO HOLD DECLARANT HARMLESS FROM ANY CLAIMS ARISING FROM SAID CONVEYANCE, INCLUDING CLAIMS OF BREACH OF FIDUCIARY DUTY, EXCEPT FOR CLAIMS FOR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.**

ARTICLE VI

**SITE IMPROVEMENTS; ARCHITECTURAL REVIEW COMMITTEE**

Section 1. Construction Within Tranquility at Lake Lure. Except as provided for Declarant or the Association below, no structure shall be commenced, erected or maintained upon any Lot in the Subdivision; nor shall any exterior addition to any existing structure or change or alteration therein; nor shall any site work be done until complete final construction plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location, and floor plan therefore, and showing front, side and rear elevations thereof, and septic system plans have been submitted to and approved in writing by an Architectural Review Committee (the "Committee") appointed by Declarant or the Board as provided in Section 2 below. Prior to the construction or erection of any structure, a site plan to scale must be approved showing the location of the structure, including all drives, walks and parking areas, with each clearly indicated. A landscaping maintenance plan may also be required by the Committee, indicating what measures shall be taken to insure the longevity and vitality of any landscaping improvements.



Prior to any physical disturbance of a Lot, special drainage and/or irreplaceable features are to be identified and provisions for their protection clearly established. This includes large and/or specimen trees, rock outcroppings, springs and streams, and concentrations of azaleas, rhododendrons, and other shrubs and wild flowers. Silt fences shall be required prior to any physical disturbance. Culverts needed for ingress or egress shall be provided by the Owner of a Lot and shall be as specified by the Committee. The Owner of a Lot shall insure that all development performed by said Owner conforms to all applicable federal, state and local laws and regulations. The Committee shall have the right to establish reasonable procedures for the preparation, submission, and determination of applications for any structure construction or alteration or landscaping work. Prior to construction, every Lot Owner shall comply with the erosion control provisions in Article VII, Section 16 below.

Section 2. Architectural Review Committee; Other Committees.

(a) Organization. The Committee shall consist of a minimum of three (3) members, one being a Chairperson. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association. The Committee shall meet upon the call of the Chairman or of any two (2) members. At any meeting, a majority of Committee members, one of which may be the Chairman, shall constitute a quorum. During Declarant Control Period, Declarant reserves the right to appoint the members of the Committee. Declarant may delegate its right to appoint to the Board at any time; however, even with such delegation, Declarant automatically reserves the right to remove any member and re-appoint a person to said position. After Declarant Control Period, the Board shall appoint the members of the Committee. The term of each Committee member shall be established by the appointing person or entity. For Board-appointed members, no member may be removed except by a vote or written consent of a majority of the Board. Any members of the Committee may at any time resign from the Committee by giving written notice thereof to Declarant and to the Board. No member of the Committee who is a member of the Association shall receive from the Association, any compensation for services, provided that the Board may pay reasonable compensation to any member of the Committee who is not a member of the Association. All members of the Committee shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any Committee functions. Notwithstanding the above, Declarant reserves unto itself the right, but not the obligation, to perform the functions of the Committee during Declarant Control Period, including, but not limited to, the preparation of architectural, design and landscaping standards as provided in Section 5 below and any references herein to Committee or Committee approval shall also include Declarant.

(b) Other Committees. During Declarant Control Period, Declarant reserves the right to assign some of the functions, tasks or duties of the Committee to one or more committees. Said assignment shall be stated in writing and a copy of which shall be provided to the Secretary of the Association. With the consent of Declarant during Declarant Control Period, the Board may create additional committees to handle some of the functions, tasks or duties of the Committee, the organization of which, and assigned duties shall be made a part of the Board's Rules and Regulations.



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Section 3. Declarant and Association Exemption. During Declarant Control Period, Declarant reserves the right to erect or alter a Structure or perform any site work on a Lot without the need to submit any plans or obtain the prior approval of the Association or the Committee. The Association shall also be exempt from the Committee as specified in this Article for any improvements or site work.

Section 4. Approval of Plans, Fees, Contractors and Enforcement. The Committee's refusal or approval of plans, specifications, or location of any structure may be based upon any grounds including purely aesthetic considerations which at the sole discretion of the Committee, for projects within Tranquility at Lake Lure, shall be deemed sufficient. In passing upon construction plans, specification plans, or landscaping plans, and without any limitation of the foregoing, the Committee shall have the right to take into consideration the suitability of the proposed building or other Structure, and of the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the building or other Structure on the appearance from neighboring property. Notwithstanding that improvements meet or exceed specified minimum size requirements, the quality and attractiveness of every Structure must also meet high standards contemplated for the Subdivision and the Committee is hereby granted broad discretion in judging the compatibility of proposed Structures. All landscape, driveways and parking areas will be subject to the same requirements.

Upon failure of the Committee to respond within sixty (60) days after receipt of each completed application and particular plan the Committee is presumed to have approved any plans referenced above. In the event any Owner violates the terms of this Article, the Association shall give written notice to the Owner or responsible party to cure such violation within thirty (30) days. The Association or its agents shall be entitled to enter upon the property of the Owner and remedy such defect including removal of any Structure built in violation hereof, all at the expense of the Owner. This right of the Association shall be in addition to all other general enforcement rights which the Association may have for a breach or violation of the terms of these covenants and restrictions and shall not be deemed a trespass by the Association or its agents.

The Board of the Association shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications. The Board has the right to modify, waive or increase such application fee. Construction shall thereafter be completed in strict conformity with such approved plans and specifications and the Association or Declarant shall be entitled to stop any construction which is in violation of these restrictions. Improvements shall be constructed or installed only by a builder or landscaper who has been approved by the Board or Declarant. The Association and Declarant reserve the right to approve the builder and/or landscaper and to from time to time compile a list of approved builders and/or landscapers, which approval shall be in their discretion. During Declarant Control Period, Declarant's approval of a builder or landscaper will supersede that of the Association.

Notwithstanding the above, Declarant reserves unto itself the right, but not the obligation, to perform the functions of the Committee during Declarant Control Period, including, but not limited to, the preparation of architectural, design and landscaping standards as provided in

Section 5 below and any references herein to the Committee or Committee approval shall also include Declarant.

Section 5. Architectural Review Committee Design and Development Standards. The Committee may, from time to time in its sole discretion, adopt, amend, and repeal rules and regulations to be known as "Design and Development Guidelines" which shall establish policies for review procedures and standards for site improvements, including landscaping, within Tranquility at Lake Lure. Such architectural, design and landscape guidelines shall be explanatory and illustrative of the general intent of the development of the Lots and are intended to guide Lot Owners and their home designers and builders and to assist the Committee in reviewing plans and specifications for improvements. Such architectural, design and landscape guidelines may be revised and amended at any time by the Committee, in its sole discretion, and shall not constitute, in every event, the sole basis for approval or disapproval of plans, specifications and other materials submitted to the Committee for approval. Any committee established pursuant to Section 2(b) above shall have the authority to adopt, amend and repeal its own set of rules, regulations and development standards.

Section 6. Waiver. The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

Section 7. Liability. Declarant, the Association or any committee or any member thereof shall not be liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

- (a) The approval or disapproval of any plans, drawings, specifications, whether or not defective.
- (b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.
- (c) The development of any property, including, but not limited to, defective construction of any portion of the residences.

Section 8. Right of Inspection. Any member of the Committee shall have the right to go upon any Lot during reasonable hours to inspect any property or improvements with respect to which construction or work is underway to determine whether or not the plans and specifications thereof have been approved and are being complied with.

Section 9. Appeal of Committee Decisions. Any party aggrieved by a decision of the Committee may appeal such decision to the Board in accordance with the appeal process established by the Board in the Bylaws or its Rules and Regulations or to Declarant during Declarant Control Period. If the Board's Bylaws or Rules and Regulations are silent as to an appeal process or if the appeal is to Declarant, then such appeal must be filed in writing within

thirty (30) days of an adverse decision. If the appeal is to the Board, said appeal must be filed in the above time period to the Secretary of the Association. The decision of the Committee is final, unless overridden by a vote of two-thirds (2/3) of the Board or Declarant as the case may be. No Owner or any other party shall have recourse against the Committee, the Board or Declarant for their refusal to approve any plans, specifications or contractors.

## ARTICLE VII

### USE RESTRICTIONS

Subject to the Special Declarant Rights, the following use restrictions shall apply to all Lots within the Subdivision unless modified by a Supplemental Declaration for Annexed Properties as provided in Article VIII below:

Section 1. Single-Family Residential Purposes; Principal Building; Accessory Structures; Guesthouse. All Lots shall be used for Single-Family Residential purposes only. No more than one principal building shall be permitted on any Lot. Accessory Structures may be allowed subject to Committee approval. A guesthouse may be built at any time subject to the following conditions:

(a) The guesthouse must be approved by the Committee and the Committee is afforded sole discretion in approving or disapproving the Structure based on aesthetic or environmental grounds, and in determining location, style and landscaping for the Structure; and

(b) The guesthouse cannot exceed 1200 square feet in size, unless modified in writing by the Board; and

(c) A site for the principal dwelling shall be designated at the time that construction of the guesthouse is considered by the Committee and thereafter maintained as such.

Section 2. Subdividing, Combination and Boundary Relocation. Except as provided herein, no Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot. No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assigns or Board except, however, Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat, combine or subdivide any Lot or Lots, shown on the recorded Plats, prior to the conveyance thereof, in order to create a modified Lot or Lots. These restrictions herein apply to each Lot which may be so created. Following the combination of two Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Lot may only be subdivided with the consent of Declarant, its successors and/or assigns or the Board. The Board, in its sole discretion, shall determine what effect, if any, the combination or subdivision of a platted Lot has on the assessments for that modified Lot.

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Section 3. Commercial Use. Except for home occupations as defined below, no commercial or industrial enterprise, undertaking or use is permitted within the Subdivision, unless specifically shown on a recorded plat that has been signed by Declarant. If no such enterprise, undertaking or use is shown on a signed recorded plat, then no such enterprise undertaking or use is permitted. Notwithstanding the above, a "home occupation" on a Lot is allowed with the written consent of Declarant or the Association. A "home occupation" is a use of a residence by an Owner-occupant wherein not more than twenty-five percent (25%) of the residence is dedicated to business use and there is no traffic generated by the business.

Section 4. Duty to Maintain and Rebuild.

(a) Each Owner shall, at his sole cost and expense, maintain and repair his residence, keeping the same condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) Each Owner shall keep the grass on the lot properly cut, shall keep the lot free from trash, and shall keep it otherwise neat and attractive in appearance. This shall not be construed as requiring natural areas on a Lot to be mowed.

(c) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then the Owner shall, with all due diligence, promptly rebuild, repair or reconstruct such apparent condition existing immediately prior to the casualty. Alternatively, the Lot Owner shall completely raze the residence and sod or seed the entire Lot until such time construction of a new residence is begun.

Section 5. Temporary Structures; Mobile Homes and Modular Homes No Structure of a temporary character shall be placed upon any portion of a Lot at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any Single-Family Residence. Basements or partially complete Single-Family Residences will be considered temporary and may not be inhabited. Mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be used as temporary or permanent residences or be permitted to remain on any portion of a Lot after completion of construction thereon as herein above provided. Modular homes will be allowed provided they are of architecture comparable to a quality stick-built home, subject to the discretion and approval of the Committee. Additionally, there shall be no storage of any kind on vacant Lots except for shelters used by contractors during the construction of any Single-Family Residence.

Section 6. Exterior Construction. The exterior of a Single-Family Residence on a Lot as well as site work and landscaping must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of a Lot due to strikes, fire, natural emergencies or natural calamities. If the exterior is not completed within twelve (12) months, the Board may require a responsible Lot Owner to pay the Association the sum of One Hundred and No/100 Dollars (\$100.00) in liquidated damages for each day after twelve (12) months that the exterior is not completed.

Section 7. Landscaping and Trees. Landscaping and trees (natural or planted) will be placed on the property in a way to create privacy and beauty. Care should be taken to preserve as many natural trees and vegetation as possible. Landscape plans will be submitted to the Committee, or Declarant if during Declarant Control Period, for approval. Owners of completed properties shall maintain lawns and landscaping in a well kept condition. All vegetation will be maintained by Owners of Lots so as not to create an untidy appearance from the street. The Committee or Declarant shall notify an Owner if his/her property is not being kept up and will be given fourteen (14) days to remedy the problem, or the Committee or Declarant may remedy the problem at the expense of that Owner. No trees, living or dead, shrubs or wildflowers may be removed from the Common Elements without the written approval of the Committee. It shall be the responsibility of the Owner to remove dead trees, subject to the discretion and prior approval of the Committee or Declarant. Should an Owner remove any tree or vegetation as herein provided without the above-described written approval, the Board may fine that Owner the sum of One Hundred and No/100 Dollars (\$100.00) for every tree cut without permission, and, thereafter, One Hundred and No/100 Dollars (\$100.00) per tree for each day that a replacement plan acceptable to the Board is not completed. In addition to the above remedies, the Association and its agents may enter the property to replace the removed tree or vegetation and charge the violating Owner the costs of such replacement.

Section 8. Trash. No Lot shall be used or maintained as a dumping ground or disposal site for rubbish, trash, or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers and at all times stored inside of an area screened from view as approved by the Committee. This restriction shall not apply during the period of construction of a residence on the Lot or adjoining Lots, however, upon completion of construction the Owner shall comply with all restrictions with respect to disposal of trash and maintenance of the Lot and property in a neat and attractive manner.

Section 9. Utilities; Antennae; Wireless Communication. All utilities, wires, cables, antennae and the like, of any kind (such as telephone, electrical, television, radio and citizens band radios), must be placed underground except as may be expressly permitted and approved in writing by the Committee. Water and septic locations will be positioned so as not to interfere with the present and future installation of same systems on adjoining properties. No wireless communication towers or antennae shall be permitted within the Subdivision, except with the written permission of the Committee and Declarant.

Section 10. Off-street Parking. Each Owner of a Single-Family Residence on a Lot shall provide sufficient space for parking of any and all vehicles off the roadways for any of said Owner's vehicles or his/her guest's vehicles.

Section 11. Vehicles. The Board shall have the power to place any reasonable restrictions upon the use of roadways, including but not limited to the types and sizes of vehicles, using the roads, the maximum and minimum speeds of vehicles, all other necessary traffic and parking regulations and the maximum noise level of vehicles. No unlicensed or uninsured vehicle of any kind will be permitted to drive or ride on the main road of the Subdivision. Inoperable and/or junk cars are prohibited.

Section 12. Vehicle Storage. Any recreational vehicles, boats, motor homes, campers and the like must be parked in an area screened from view. Garage doors must be closed at all times when not in use.

Section 13. Lot and Limited Common Element Upkeep. It is the responsibility of each Lot Owner to prevent any unclean, unsightly, or unkempt condition of buildings or grounds to exist on the Lot Owner's property or on any Limited Common Element. Declarant or the Association shall have the right, but not the duty, to enter upon any property for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds which tend to decrease the beauty of the specific area as a whole. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot Owner and said entry shall not be deemed a trespass.

Section 14. Nuisances. No obnoxious or offensive activity shall be carried on upon any portions of the Subdivision nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner of a Lot, tenant or guest thereof in any area of the Subdivision thereby diminishing the enjoyment of other Lots by their Owners. No hazardous or toxic substances or wastes as defined by applicable law shall be dumped within the Subdivision. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any portion of the Subdivision by the Lot Owners, tenants, and guests thereof, may be maintained. The Board has the right in its sole discretion to determine a nuisance, and, upon ten (10) days written notification by the Board, the activity must cease.

Section 15. Erosion Control. Declarant and/or the Association shall have the right to protect from erosion the land designated as areas upon which residential building shall take place, by planting trees, plants, and shrubs where and, to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by Declarant and/or Association, to provide and insure against such erosion. Declarant or the Association, however, is under no duty to take such actions as herein above provided. During the improvement of any Lot, every Owner of a Lot shall use best management practices as that term is defined by applicable State of North Carolina environmental regulations to control erosion and prevent off-site damages.

Section 16. Fires. No outdoor fire shall be built within the Subdivision, except that fires within an approved container such as an outdoor fireplace may be allowed by the Committee and any fires are extinguished before being unattended. No leaves, trash, garbage or similar debris shall be burned except as permitted in writing by the Board or Declarant. Outdoor grilling shall be done with the greatest of care in view of fire and smoke hazards and general pollution.

Section 17. Signs. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a Structure on any Lot without the express consent of Declarant or the Board. Declarant or the Board shall have the right to (i) erect signs when advertising the property, (ii) place signs on Lots designating the Lot number of Lots, and (iii) following the sale

of the lot, place signs of such Lot indicating the name of the purchaser of that Lot. This restriction shall not prohibit placement of occupant name signs and Lot numbers. Notwithstanding the above, Declarant or the Board may require an Owner of a Lot to install, at Owner's expense, and at a location designated by Declarant or the Board, common address signage for easy identification for emergency services.

Section 18. Use of Common Elements. No Owner of a Lot shall use the Common Elements or Limited Common Elements for the erection of any improvement, including, but not limited to, signage without the express written permission of the Board or Committee or use the Common Elements in violation of any Rule or Regulation promulgated by the Board.

Section 19. Storage Tanks. Underground gasoline storage tanks are not permitted within the Subdivision. Underground propane or liquid gas tanks and above ground storage tanks may be allowed subject to written approval of the Committee. If approved, the lid of the tank shall remain out of plain view from the road.

Section 20. Animals. No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other commonly domesticated household pets may be kept, provided that they are not bred, maintained or housed (i.e. kennels) for commercial purposes. Pets, when running loose, must be kept strictly within the boundaries of a Lot Owner's property. At all other times, they must be kept securely on a leash. No pets are permitted if they are kept so as to constitute a nuisance as determined by the Board in their sole discretion.

Section 21. Vacant Lots, Reserved Areas and/or Future Development. Unused and/or vacant Lots, or property designated herein as Reserved Areas and/or Future Development, are not to be trespassed upon for any reason.

Section 22. Hunting and Firearms. Hunting, trapping, or the harassing of animals, fowl or game is prohibited, and the discharge of firearms or bows or arrows for any purpose shall be prohibited.

Section 23. Trespass. Whenever the Association or Declarant is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of the Subdivision, including Lots, entering such areas and taking such action shall not be deemed a trespass on the part of the Association or Declarant or their agents.

Section 24. Responsibility for Others. Lot Owners are obligated to assume the responsibility that any and all dependents, guests, servants, visitors and building contractors working for those Lot Owners observe and maintain all the Rules and Regulations, covenants and restrictions binding the Lot Owners themselves.

Section 25. Leasing or Renting. The leasing or renting of a dwelling within the Subdivision is subject to compliance with the Rules and Regulations of the Board. Rentals will be accepted provided the responsibility for the tenant remains with the Owner. If for any reason a rented home becomes a problem for the Subdivision or Lot Owners, the Board may at its

discretion impose (a) restrictions on that Owner as to the particular tenant or method of renting or (b) any other reasonable corrective measure.

Section 26. Density and Other Representations; Conflict with Sales Literature. Notwithstanding any representation concerning density on any sales literature, unrecorded or recorded plats or any other document, Declarant has the sole discretion in determining the number of Lots to make up Tranquility at Lake Lure and what acreage will be encumbered by this Declaration and amendments thereto. Any such density projections or figures are speculative in nature, not binding on Declarant, and cannot be relied upon by any purchaser of a Lot. In case of a conflict between the disclaimer in this Section 26 and the information provided in any sales literature or in any other document, this Section 26 shall control. **IN CASE OF ANY CONFLICT BETWEEN THE REPRESENTATIONS IN THIS DECLARATION AND ANY VERBAL REPRESENTATIONS, WRITTEN SALES LITERATURE OR OTHER DOCUMENTS, THIS DECLARATION SHALL CONTROL.**

Section 27. Variances. When unusual circumstances exist that make it difficult or impossible to comply with a particular requirement of the Design and Development Guidelines, the Owner may file a request with the Committee to be excused from complying with such requirement. The Committee has the discretion to determine when a variance is appropriate. The Committee may authorize variances from compliance with any of the Design and Development Guidelines, and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules. No variance shall (b) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Committee from denying a variance in other circumstances. A variance requires written consent of Declarant during Declarant Control Period and, thereafter, requires the Board's written consent.

Section 28. Vinyl Siding. No vinyl siding shall be used as siding for any Structure. A variance may be given, however, for certain architectural vinyl used as decorative trim, such as gable ends, soffit and fascia, at the discretion of the Committee or Declarant during Declarant Control Period.

Section 29. Building Size and Height. Each Single-Family Residence shall have a minimum of 1,600 square feet of heated living space with a minimum footprint of 1,200 square feet, not including basements, garages, decks and patios. A variance may be given by Declarant or the Committee to any Lot that is not practical for reasons of terrain, utility placement or obstruction of view of a neighboring property. Declarant may impose certain height restrictions on individual Lots to help reduce the obstruction of views of neighboring Lots.

Section 30. Setbacks. No Structure shall be built closer than twenty-five feet (25') from a property line or road right of way. Declarant may impose specific setbacks on a per Lot basis to help reduce the obstruction of view of neighboring Lots.

Section 31. Exterior Appearance. All concrete footings or basements shall be covered with stucco, brick, stone or a material like the rest of the exterior. All detached Structures (not



including garages or guest houses) will be screened from view from any road and will have the same external features as the principal dwelling structure. Each roof shall be covered with an architectural shingle or colored metal roofing material and shall have a minimum pitch of  $7/12$ .

Section 32. Street Lighting. Each Lot Owner who has been issued a certificate of occupancy for its Residence shall be required to install or otherwise provide a light within fifteen (15) feet of the property line of the lot which abuts the Subdivision road and shall maintain electric power and maintenance for its operation from dusk to dawn to provide street lighting and security for the Subdivision. The location and installation of the light, as well as the light itself, must first be approved in writing by Declarant or the Committee.

Section 33. Responsibility of Maintenance and Repair. Any damage done to roads, rights of way, or easements, caused by construction, maintenance or repair of any Lot or residence will be the responsibility of the Owner having work done and must be repaired within thirty (30) days from the date the damage occurred. If repairs are not made to the satisfaction of Declarant or the Board within the time allowed, Declarant or the Board may have repairs done to the property at the Owner's expense.

Section 34. Offensive Activity. Offensive activity is prohibited in any of the public areas or individual Lots of the Subdivision.

Section 35. Rules and Regulations. Each Owner and/or occupant of a Lot shall comply with the Rules and Regulations established by the Board, if any, in accordance with the Bylaws. To the extent of any conflict between this Declaration and the Rules and Regulations, the most restrictive provision shall control. Each Lot Owner is encouraged to obtain a copy of the Rules and Regulations from the Association Secretary for easy reference as to matters pertaining to the use and enjoyment of property within Tranquility at Lake Lure.

Section 36. Enforcement.

(a) All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

(b) Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in the North Carolina Planned Community Act (N.C.G.S. Chapter 47F), by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or the Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be

entitled as part of any judgment in favor of the filing party to recover reasonable attorney's fees as a part of such action.

## ARTICLE VIII

### **FUTURE PHASES; ANNEXED PROPERTIES; AND REMOVAL OF PROPERTIES**

During Declarant Control Period, Declarant reserves the right to subject Annexed Properties as hereinabove defined to the terms of this Declaration and the general plan of development for Tranquility at Lake Lure by the filing of a Supplement to this Declaration with a corresponding plat that identifies the property to be added to Tranquility at Lake Lure. Notwithstanding any provision of this Declaration to the contrary, Declarant, in its sole discretion, shall designate in the Supplemental Declaration the permitted uses within the Annexed Properties, which may be other than residential, and any other development restrictions affecting the use and enjoyment of said land. Notwithstanding the differences, if any, in the use restrictions for Annexed Properties, it is the intent of Declarant that properties once annexed be part of the general plan of development for Tranquility at Lake Lure; provided, however, during Declarant Control Period, Declarant reserves the right to modify the boundaries of Tranquility at Lake Lure to remove unsold properties from Tranquility at Lake Lure. This Article is to be construed to give Declarant the broadest flexibility to add Annexed Properties to Tranquility at Lake Lure with use restrictions tailored for each additional tract or to modify the boundaries of Tranquility at Lake Lure when determined in the sole discretion of Declarant to be in the best interest of Tranquility at Lake Lure.

## ARTICLE IX

### **AMENDMENTS**

During Declarant Control Period, Declarant reserves the right, without the consent of the Association or any Lot Owner, to modify, amend or repeal this Declaration or any amendments thereto. This reservation shall not be construed to diminish in any way the right of Declarant, the Association or Lot Owners to enforce these covenants as real covenants running with the land against any Lot to the extent not expressly released by Declarant from this Declaration in whole or in part. Otherwise, this Declaration may be amended only by affirmative vote at a duly called meeting in accordance with the Bylaws or written agreement signed by Qualified Voting Members representing sixty-seven percent (67%) of the eligible votes in the Association. During Declarant Control Period, any amendments to this Declaration require the written consent of Declarant. These covenants are to run with the land and be binding upon all parties purchasing Lots within Tranquility at Lake Lure and all persons claiming by, through or under Declarant until January 1, 2037, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless, by vote of sixty-seven percent (67%) of Qualified Voting Members then owning Lots within Tranquility at Lake Lure (and which are subject to the terms, conditions and provisions of this Declaration), it is agreed to change these covenants in whole or in part.

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ARTICLE X

MISCELLANEOUS

Section 1. Severability. Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 2. Construction of this Declaration. This Declaration and the provisions contained herein shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized representative, this the 23 day of March, 2007.

DECLARANT

01 VICTOR LLC

By: [Signature]  
Name: WALTER PULLER  
Title: MEMBER

\*\*\*\*\*

STATE OF NORTH CAROLINA  
COUNTY OF Rutherford

I certify that the following person(s) personally appeared before me this 23 day of March, 2007, each acknowledging to me that he or she signed the foregoing document: WALTER PULLER, as MEMBER of 01 Victor LLC.

Date: March 23 2007

[Signature]

Notary Public

ANN S WALKER  
(Printed Name of Notary)

My Commission Expires: May 5 2007

