

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

PHASE ONE, THE COTSWOLDS

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

THIS DECLARATION is made on the day hereinafter set forth by THE COTSWOLDS DEVELOPMENT CO., INC., a North Carolina corporation, hereinafter referred to as "Declarant."

RECITALS:

1. Declarant is the owner of that certain tract or parcel of land described on Exhibit "A" attached hereto and made a part hereof ("the Property"), which Property is, at the option of Declarant, to be developed in phases or sections and divided into approximately ninety (90) residential building lots, the entire property to be known as THE COTSWOLDS.
2. Declarant intends, at its option, to subject to the restrictive scheme of development set forth herein the various phases of THE COTSWOLDS.
3. Declarant desires, pursuant to the restrictions herein contained that portion of the Property known as Phase One of THE COTSWOLDS, as the same is shown on a plat recorded in the Office of the Register of Deeds for Buncombe County, N.C. in Plat Book 72, at Page 119, hereinafter referred to as "the Plat."
4. This Declaration is made pursuant to the provisions of the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina.

RESTRICTIVE AGREEMENT:

NOW THEREFORE, Declarant hereby declares that all of the property described on the Plat shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property shown on the Plat and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

SECTION 1. "ASSOCIATION" shall mean and refer to THE COTSWOLDS HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation organized under the laws of the State of North Carolina, including G.S. 47E-3-101, its successors and assigns. As of the recording date of this Declaration, "Association" shall mean and refer to the Association which is provided for herein; Declarant may, at its option, subject additional portions of the Property to restrictions which are similar in form to those contained herein, in furtherance of the scheme of development set forth herein. Owners of Lots in additional phases of the Cotswolds shall become members of the Association upon recordation of Declarations for such additional phases which define Association as that Association which is formed hereby.

SECTION 2. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of this or subsequent phases of The Cotswolds, but excluding those having such interests merely as security for the performance of an obligation.

SECTION 3. "PROPERTY" shall mean and refer to that certain real property shown and described on Exhibit "A" as attached hereto.

SECTION 4. "COMMON ELEMENTS" shall mean all real property owned by the Association for the common use and enjoyment of Owners and shown on the Plat, together with any area in which the Association has an easement or right and an obligation of maintenance thereof.

SECTION 5. "COMMON EXPENSES" shall mean and include: (a) all sums lawfully assessed against the Lot Owners by the Association; (b) expenses of administration, operation, maintenance, repair and replacement of the Common Elements and facilities; (c) expenses agreed upon as Common Expenses by the Association; (d) hazard and liability insurance premiums as required.

SECTION 6. "LOT" shall mean and refer to any numbered plot of land shown on the Plat, with the exception of the Common Elements.

SECTION 7. "DECLARANT" shall mean and refer to The Cotswolds Development Co., Inc. and its successors and assigns. The rights and obligations of the Declarant as described herein may be conveyed and transferred by Declarant by instrument recorded in the Office of the Register of Deeds for Buncombe County.

SECTION 8. "DWELLING" shall mean and refer to a building situated upon a Lot and intended for use and occupancy as a residence.

SECTION 9. "MEMBER" shall mean and refer to any person or entity who holds membership with voting rights in the Association, which membership shall be derived from ownership of any Lot within Phase One or subsequent phases of The Cotswolds.

SECTION 10. "THE ACT" shall mean and refer to the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina.

SECTION 11. "ALLOCATED INTERESTS" shall mean and refer to the Common Expense liability and votes in the Association allocated to each Lot within The Cotswolds.

ARTICLE II
THE ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 2. The Association shall have two (2) voting memberships:

A. CLASS A: Class A Members shall be all Owners (with the exception of Declarant) each of whom shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

B. CLASS B: The Class B Member shall be the Declarant as hereinabove defined and such Member shall be entitled to three (3) votes for each of the ninety (90) Lots contemplated within the various phases of THE COTSWOLDS. The Class B membership shall cease and be converted to CLASS A membership upon the happening of either of the following events, whichever occurs first:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (2) On the first day of December, 2014.

SECTION 3. ORGANIZATION OF THE ASSOCIATION. The Cotswolds Homeowners' Association shall be organized pursuant to North Carolina law as a non-profit corporation.

SECTION 4. POWERS OF THE ASSOCIATION. Pursuant to Section 3-102 of the Act, the Association shall have all those powers enumerated in said Section, except Item (10) thereof. The Executive Board of the Association shall be organized and run pursuant to Section 3-103 of the Act. The Association shall adopt Bylaws in accordance with Section 3-106 of the Act. Meetings of the Association shall be held as provided for in Section 3-108 of the Act. Unless altered by a vote of the Association and amendment of the Bylaws, the necessary quorum at an Association shall be those minimum

requirements set forth in Section 3-109 of the Act. Qualifications for voting and use of proxies shall be as provided for in Section 3-110 of the Act, except that Subsection 3-110(c) of the Act shall not be applicable to the Association.

ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant hereby covenants and each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments to be established and collected as hereinafter provided. Such assessments shall not accrue or be collectable by the Association until conveyance by Declarant to the Association of a Common Area, except in case of annual assessments to defray costs of street maintenance pursuant to Section 3 of this Article. The Declarant shall bear the responsibility of maintenance of the Common Area from the time of the recording of this Declaration until the conveyance of a Common Area from the Declarant to the Association, and the Association shall thereafter be obligated to maintain the Common Area so conveyed. Assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment together with interest, costs and reasonable attorney fees, shall be the personal obligation of the person or entity who was the Owner of a Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to maintain Common Elements, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, procurement and maintenance of insurance related to the Common Elements, its facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. Any assessment charged and collected shall relate to the cost of maintenance of the Common Area and those costs associated with such maintenance and may include a reserve fund in reasonable amount in anticipation of such costs. The Declarant intends to construct as a portion of Phase One an entrance area which shall consist of a subdivision sign, landscaping and entrance street lighting; the cost of maintenance and replacement of said sign, landscaping, and street lighting shall be Common Expenses, as well as the electric power required for such entrance street lighting.

SECTION 3. STREET MAINTENANCE. The streets within The Cotswolds shall be designed and constructed pursuant to specifications issued by the North Carolina Department of Transportation for secondary roads or subdivision streets. After the completion of construction of said streets and satisfaction of other requirements by the North Carolina Department of Transportation, said streets shall be submitted to said

Department for inclusion within the North Carolina Secondary Road System. After the completion of such construction and approval thereof by said Department, but prior to acceptance by said Department and inclusion of said streets in the secondary road system, the cost of continuing maintenance of said streets shall be a Common Expense as described herein and shall be subject to annual assessment.

SECTION 4. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) per cent of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 5. UNIFORM RATE OF ASSESSMENT. Assessments must be fixed at a uniform rate for all Lots.

SECTION 6. DUE DATES OF ANNUAL ASSESSMENTS. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment against each Lot and send written notice of each assessment to every Owner subject thereto. The due dates of such assessments shall be established by the Board of Directors; such assessments shall be payable on the due date, but may be collected in monthly, quarterly or annual assessments, as established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days of the due date shall bear interest from the due date at a rate of eight (8%) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose its lien against the Lot against which the delinquent assessment has been levied. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Elements or abandonment of his Lot.

SECTION 8. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall

prevent and any mortgagee may, at its option, pay any delinquent obligations of an Owner. The Association shall notify by registered mail, return receipt requested, any mortgagee of any delinquency or default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgagee.

ARTICLE IV ARCHITECTURAL CONTROL

SECTION 1. APPROVAL OF PLANS AND SPECIFICATIONS. No building, fence, wall, deck, mailbox or other structure shall be commenced, erected or maintained within The Cotswolds, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications shall have been submitted and approved in writing by an Architectural Committee composed of two (2) or more representatives appointed by the Declarant. The Declarant may transfer to the Association its right to appoint members of the Architectural Committee.

Documents submitted to the Architectural Committee shall include a site plan showing landscaping which complies with standards published by the Architectural Committee showing the location of all planned improvements, driveways, walks and parking areas, where applicable, and the relation of the location of such improvements to the building setback lines provided for in this Declaration. The documents submitted shall also name the licensed general contractor who shall be responsible for building of the Dwelling and complying with this Article. Plans for Dwellings shall show front, side and rear elevations and shall include the kind, material and basic exterior finishes and colors to be used in the construction of such Dwelling. The Architectural Committee shall have the right to enforce compliance with this Declaration and the then existing Architectural Committee.

In the event the Architectural Committee fails to approve or disapprove such submission of plans and specifications and site plan within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

The Architectural Committee shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an amount not to exceed Fifty (\$50.00) Dollars. Upon giving approval to such plans and specifications, the Owner shall be obligated to begin construction and complete the same in conformity with such plans as have been previously approved by the Architectural Committee, and the Architectural Committee shall be entitled to stop, through injunction or other legal means, any construction which is in violation of these restrictions.

SECTION 2. ARCHITECTURAL STANDARDS. In addition to those general rules of the Architectural Committee promulgated pursuant to this Article, construction of improvements on any Lot shall conform to the following standards:

1. No log homes shall be permitted.
2. All Dwellings shall be constructed pursuant to the North Carolina Building Code by duly licensed building contractors and shall be constructed with framing assembled on-site. Construction of Dwellings shall not utilize modular wall

sections or other off-site construction of major structural portions of the Dwelling, with the exception of roof and floor trusses.

3. Landscaping shall be provided for in the plan and construction of the Dwelling and shall be completed within five months after receiving a Certificate of Occupancy or Certificate of Compliance upon completion of construction of the Dwelling located on the Lot.

SECTION 3. APPROVAL OF CONTRACTORS. The Architectural Committee shall have the right to approve or reject documents submitted to it by an Owner based on the licensed general contractor named in the application.

ARTICLE V PROTECTIVE COVENANTS

SECTION 1. RESIDENTIAL USE. All Lots shall be used, improved and devoted exclusively to residential use. No buildings shall be erected, altered, placed or permitted to remain on any Lot other than one single-family dwelling (with attached garage) not to exceed two stories in height above the highest natural ground elevation existing under the foundation of same and not including more than one underground, one-story basement or crawlspace, unless the same shall be approved in advance by the Architectural Committee provided for herein. Nothing herein shall be deemed to prevent the Owner of any Lot from leasing a Lot, subject to all provisions of this Declaration.

SECTION 2. BUILDING SIZE AND REQUIREMENTS. In the case of a one-story residence, the main floor shall contain not less than 2,000 square feet of heated, finished living area. In the case of 1 ½ or 2-story dwelling, the dwelling shall contain not less than 2,600 square feet of heated, finished living area with a minimum of 1,500 square feet thereof on the first or main floor; except that in those instances in which a two-story Dwelling has an attached two-car garage, such Dwelling shall have a minimum of 1,300 square feet of heated living space on the main floor and a total of not less than 2,600 square feet of heated living space on both floors. For the purpose of this restriction, split-level and split-foyer homes shall be considered two-story residences. Heated, finished living space excludes basements, whether daylight or underground, porches, breezeways, garages, patios and greenhouses. Additionally, no floor or level of any Dwelling, which floor or level is wholly or partially below the natural grade of the front elevation of the Dwelling shall be considered heated, finished living space.

SECTION 3. DRIVEWAYS, PARKING AREAS AND LANDSCAPING. All driveways and parking areas must be paved with asphalt, concrete or other paving materials approved in advance by the Architectural Committee and shall be completed at occupancy of the dwelling or within sixty (60) days thereafter. Landscaping shall be completed within five (5) months of the completion of the Dwelling Unit, which completion shall be determined by issuance of the Certificate of Completion by the applicable governmental unit having power to inspect construction thereof, which

landscaping shall be done pursuant to the landscaping plan approved in advance by the Architectural Committee. If the Owner shall default under his obligations described in this section, the Declarant may provide for the completion of the landscaping pursuant to said approved plan and shall thereafter hold said Owner liable for the reimbursement of said costs of completion of the landscaping (including reasonable fees of attorneys' incurred by reason of such default) and may enforce the same by suit and or filing of a mechanics/materialsman lien against the Lot of such Owner.

SECTION 4. NUISANCES. No noxious or offensive activities shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No plant, animal, device or thing of any sort whose normal use or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in The Cotswolds by the Lot Owners, tenants and guests thereof may be maintained.

SECTION 5. RESTRICTION ON FURTHER SUBDIVISION. No Lot shall be further subdivided or separated into smaller lots by an Owner so as to create more Lots than are shown on the Plat. 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 or of size equal to the original Lot. The Declarant, however, hereby expressly reserves to itself and its successors in interest, the right to replat any Lot or Lots shown on the recorded plat referred to herein, prior to conveyance thereof, in order to create a modified Lot or Lots; the restrictions contained herein shall thereafter apply in their entirety to such modified Lot or Lots.

SECTION 6. ANIMALS. Generally recognized house or yard pets, in reasonable numbers, may be kept and maintained at a Lot, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of their Owner when they are outside the occupant's premises and must not become a nuisance to other residents at any time.

SECTION 7. PARKING. No parking of unlicensed, uninspected or non-operable vehicles shall be allowed on any Lot outside a Dwelling. Except for emergency repairs, no person shall repair, restore or store any vehicle, boat, trailer or recreational vehicle upon any Lot outside a Dwelling.

SECTION 8. MOTOR VEHICLES. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles shall be driven on pathways, unpaved Common Elements, or roadway shoulders within The Cotswolds.

SECTION 9. OUTSIDE ANTENNAE. No outside radio or television antennae or satellite dishes shall be erected on any Lot, except as approved in writing by the Architectural Committee. Satellite dishes of no more than twenty-four (24) inches in diameter will be allowed within The Cotswolds, subject to approval by the Architectural Committee of the placement of the same on any Lot.

SECTION 10. TRASH RECEPTACLES. All trash shall be kept only in trash receptacles and in areas upon a Lot which conform to standards published in the Architectural Guidelines by the Architectural Committee.

SECTION 11. EROSION CONTROL. The Owner of any Lot shall, by acceptance of a deed for a Lot, be obligated to provide adequate erosion control measures as a part of the construction process in order to minimize siltation or erosion of areas outside the Lot of such Owner. It shall be the duty of such Owner to design and execute such control measures so as to avoid damage to adjoining Lots or properties. If such Owner has not provided adequate control measures which comply with applicable erosion control regulations, or if the Owner is in violation of this Section, Declarant may, after five days written notice to such Owner, perform such measures, in which case the Owner agrees to reimburse Declarant within thirty days the cost of such control measures performed by the Declarant.

SECTION 12. SIGNS. No permanent signs of any kind shall be displayed to the public view on any Lot. After occupancy, a sign of not more than five square feet advertising the property for sale or rent shall be allowed upon a Lot. Nothing in this paragraph shall be construed to prevent Declarant from erecting entrance display signs or signs designed to designate areas within The Cotswolds, including street signs.

SECTION 13. EXTERIOR FINISHES. All exposed chimneys and foundations shall be veneered with brick or stone. Materials used on exteriors of Dwellings shall be approved in advance by the Architectural Committee. Retaining or decorative walls shall be of brick, stone, railroad ties, or other material approved in advance by the Architectural Committee. Unpainted sheet metal may not be exposed to the exterior. All roof stacks and vents shall conform in color to the roofing material used and shall be installed on the rear side of the roof ridge line of a dwelling.

SECTION 14. TEMPORARY STRUCTURES. No structure of a temporary character, including trailers, mobile homes, tents or shacks shall be placed upon any portion of The Cotswolds at any time; provided, however, that this shall not apply to shelters used by contractors during construction. Outbuildings or partially completed buildings shall not at any time be used as residences, temporarily or permanently.

SECTION 15. SETBACK. No building shall be located on any Lot in violation of setback requirements of the Limestone zoning ordinance, or other applicable zoning ordinance.

SECTION 16. TRADE OR BUSINESS. No trade or business shall be carried on upon any Lot, but this restriction shall not prohibit a home occupation which does not cause any noxious or offensive activity within The Cotswolds.

SECTION 17. LIVESTOCK. No livestock or poultry may be kept on any Lot.

SECTION 18. SEWAGE. Every Dwelling unit shall have permanent plumbing, running water and a permanent sewage disposal system approved by the Buncombe County Health Department. No temporary plumbing, water or sewage systems shall be allowed.

SECTION 19. STORAGE TANKS. Fuel, gas, oil, or water storage receptacles may not be exposed to view and must be installed either within the Dwelling or buried underground.

SECTION 20. STREETS. The streets, roadways and rights of way shown on the Plat are intended to provide perpetual, non-exclusive ingress, egress and regress to the following described tracts or parcels of land:

- (a) All those Lots shown on the Plat;
- (b) All the remaining Property shown and described on the attached Exhibit "A", it being the intent of the Declarant to extend the roadways shown on the Plat to provide access to the remainder of the Plat;
- (c) That certain tract conveyed to Benjamin J. Youngblood and wife, Denise J. Youngblood by deed recorded in the Office of the Register of Deeds for Buncombe County in Deed Book 1779, at Page 396;
- (d) That certain tract conveyed to Thomas W. Youngblood and wife, Brenda S. Youngblood by deed recorded in the Office of the Register of Deeds for Buncombe County in Deed Book 1779, at Page 398; and
- (e) That certain tract conveyed by Benjamin J. Youngblood and wife, Denise J. Youngblood to Randy E. Wilkie and wife, Teresa H. Wilkie by deed recorded in the Office of the Register of Deeds for Buncombe County in Deed Book 1927, at Page 249.

The Declarant reserves the right to dedicate or convey rights of way over the Property for the benefit of the tracts above described. No Lot shall, however, be used by any Owner for laying out any right of way, cartway, street, alley or roadway to provide access to any area outside the boundaries of the tracts above described.

SECTION 21. FENCES. Chain link, barbed, chicken wire or any similar fencing shall not be permitted on any Lot. Any other fencing or fencing of a decorative nature must be approved in writing by the Architectural Committee. Pet fencing or fencing other than of a decorative nature shall be confined to the rear yard of the Dwelling Unit.

SECTION 22. PLAYGROUNDS, ETC. All play or sports equipment, vegetable garden and swimming pools shall be located only in side or rear yard of a Dwelling. Above-ground swimming pools shall not be permitted.

SECTION 24. GRASS. Grass and weeds are to be kept down on all Lots to a height not to exceed eight (8) inches in order to prevent an unsightly and unsanitary condition. This obligation shall apply to the area of the Lot shown on the Plat and that area within the right of way of the roadway adjoining such Lot, which obligation is that of the Owner of the Lot in question and is to be done at his expense. Declarant may enter a vacant Lot for the purpose of mowing grass and weeds.

SECTION 25. MOTORCYCLES. Motorcycles, minibikes, dune buggies, motorized bikes or similar recreational vehicles may only be operated within the bounds of The Cotswolds while riding to and from a residence to the public road and may not be ridden within the bounds of the Property for any other purpose.

SECTION 26. EASEMENTS. Utility and drainage easements affecting all Lots are reserved five (5) feet in width along interior Lot lines and over the front and rear ten feet of each Lot for installation and maintenance of utilities and drainage facilities. Neither the Declarant, nor any utility company using the easements herein referred to, shall be liable for any damage done by them or their assigns, agents, employees or servants, to shrubbery, trees or flowers, or to the property of the Owner situated on the land covered by said easements.

SECTION 27. CAROLINA POWER AND LIGHT CONTRACT. The Declarant reserves the right to subject the real property in The Cotswolds to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each Lot.

SECTION 28. CONSTRUCTION DAMAGE. It shall be the obligation of the Owner of a Lot to repair any damage to curbs, guttering, paving, water lines, electric lines, or any other improvements within The Cotswolds which occurs during the period of construction and is caused by contractors or subcontractors involved in construction on the Owner's Lot. In case of any such damage to improvements, the Declarant may immediately take such action as is necessary to repair such damage; the Owner of the Lot shall, within thirty days, reimburse the Declarant for the cost of such repair. The Owner of such Lot is similarly responsible for proper removal of any trash or debris which is a result of such construction which is located on such Lot.

SECTION 29. BUILDING WITHIN FIVE YEARS. The Owner of a Lot shall be obligated to begin construction of a Dwelling within five (5) years from the date of conveyance by the Declarant to the first purchaser thereof.

ARTICLE VII OBLIGATIONS TO MORTGAGEES

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgage to include deeds of trust or other security instruments) encumbering any Lots located within The Cotswolds:

A. The Association shall be obligated to notify the holder of any first mortgage on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any of such Owner's obligations described herein (including failure to

pay assessments as and when due) which is not cured within sixty (60) days from the date of such default.

B. Written notice by the Association shall be sent, upon request, to the holder of all first mortgages encumbering any of the Lots located within The Cotswolds setting forth the purpose of the meeting no less than thirty (30) days in advance of any meeting being called for the purpose of amending, extending or renewing any of the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association. No such amendment, extension or renewal shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot located within The Cotswolds unless such mortgage holder shall consent thereto in writing.

C. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) and Owners (other than the Declarant) of the Lots in The Cotswolds have given their prior written approval, the Association shall not be entitled to:

- (1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots in The Cotswolds. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association shall not be deemed a transfer within the meaning of this paragraph;
- (2) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;
- (3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the maintenance of the Common Area, or the upkeep of lawns and plantings in The Cotswolds;
- (4) fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred (100%) per cent of the insurable value (based on current replacement cost);
- (5) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such Common Area property.

D. First mortgagees of lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Entitlement to such reimbursement shall be reflected in

an agreement in favor of all first mortgagees of Lots in The Cotswolds duly executed by the Association, and an original or certified copy of such agreement shall be furnished to Declarant.

E. No provision shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in The Cotswolds pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area property.

ARTICLE VIII
GENERAL PROVISIONS

SECTION 1. DURATION. The covenants and restrictions contained in this Declaration shall run with and bind the properties which are made subject hereto for a period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, after which time, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

SECTION 2. AMENDMENT. This Declaration may be amended:

A. Prior to the conveyance of the Common Area from Declarant to the Association, by the Declarant, in order to correct any obvious error or inconsistency in drafting, typing or reproduction of this Declaration, or to issue rules or regulations which interpret, explain or make more definite and certain provisions hereof and are in furtherance of this Declaration, which amendment can be made without the joinder of Lot Owners or the Association; and

B. By the Association, after conveyance of the Common Area from Declarant to the Association, by an affirmative vote or written instrument executed by the Lot Owners of Lots to which at least sixty-seven (67%) per cent of the votes described in Article III hereof.

SECTION 3. SPECIAL DECLARANT RIGHTS. Pursuant to Section 1-103(28) and 2-121 of the Act, the Declarant does hereby reserve the following "special declarant rights":

A. The right to enter the Lots shown on the Plat and the Common Elements shown thereon for the purpose of construction and maintenance of improvements indicated on the Plat;

B. The right to maintain while it owns Lots it holds for sale a sales office and model homes, together with the right to erect signs advertising Lots for sale;

C. The right to make full use of easements or rights of way over and upon the Common Elements for the purpose of making improvements within The Cotswolds, particularly the right to use said easements and rights of way in adding new phases of The Cotswolds to that shown on the Plat;

D. The right to appoint or remove any officer or Executive Board member of the Association during the period of Declarant control as provided for in Article II hereof; and

E. The right, but not the obligation, to add new phases of The Cotswolds out of the Property, to make all easements, rights of way and improvements of each phase of The Cotswolds equally accessible to all phases thereof, and to allow Owners of Lots in additional phases of The Cotswolds to become members of the Association with the same rights and obligations as those of the Owners of Lots within Phase One of The Cotswolds as described herein.

SECTION 4. ENFORCEMENT. The Association, any Owner or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 5. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

SECTION 6. CONSTRUCTION. This Declaration is made pursuant to the Act and shall be construed and controlled by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized member, who has signed and sealed this instrument, this the 15th day of February, 1999.

(Execution Page Follows)