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NORTH CAROLINA DECLARATION OF COVENANTS,
CONDITIONS AND

RESTRICTIONS FOR
WATAUGA COUNTY

WEEKAPAUG-GROVE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this ____ day of _____, _____, by EcoLogic Development Corporation, (hereinafter called "Declarant");

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property (hereinafter called "Property") described in this Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Covenants") and is desirous of subjecting a portion or portions of the Property as hereafter determined by Declarant to the protective covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, for the benefit of the parcels or tracts located thereon, whether now already or hereafter subdivided and platted (hereinafter called the "Tracts"), and for the benefit of each owner of the parcels or tracts which are now already or may hereafter be subdivided and platted within the Property (hereinafter called the "Property Owners") and shall apply to and bind the owners thereof, their heirs, successors and assigns; and

WHEREAS, the Property is subjected to these Covenants in order to insure the best use and the most appropriate development and improvement of the Property and the tracts located therein; to protect the owners thereof against such improper use of surrounding tracts as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to encourage and insure the highest and best development of the Property; to encourage and secure the building of attractive homes thereon, with appropriate locations thereof on the Property; to prevent haphazard and inharmonious improvement of the Property; to secure and maintain an aesthetically pleasing quality of development and improvement of the property, and thereby to enhance the values of the Property.

WHEREAS the owners and residents of this community wish to affirm that the development and habitation of this land will be guided by the following values: respect for all life, especially human life; a strong sense of social and environmental responsibility; an appreciation of beauty; and interest in cultivating as much individual liberty as possible within a commitment to the common good. These covenants are to be read and interpreted within this

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context;

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

ARTICLE I: PROPERTY DESCRIPTION

Section 11: The Property. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to these covenants for **Weekapaug Grove** is a portion or portions of the property, as hereafter determined by Declarant, **The Town of Boone, Brushy Fork Township, Watauga County, North Carolina, and more particularly described in the Plat recorded in the public records of Watauga County at Page ____, Book ____ and which is attached hereto as Exhibit "A" and incorporated herein by reference.**

ARTICLE II: MEMBERSHIP, NOTICE, VOTING RIGHTS AND CERTAIN OBLIGATIONS OF MEMBERS OF THE **WEEKAPAUG GROVE** **PROPERTY OWNER'S ASSOCIATION, INC.**

Section 21: General. Every Property Owner shall be a member of the Weekapaug Grove Property Owner's Association, Inc., a nonprofit corporation to be organized and to exist under the laws of the State of North Carolina (hereinafter called the "POA"). The purpose of said nonprofit corporation shall be, inter alia, to promote the welfare of the Property Owners and the Property, to enforce these Covenants, to maintain the common properties and roads within **Weekapaug Grove**, to fix, levy and collect payment of charges and assessments, to pay expenses in connection with the POA, and such other purposes as may be set forth in the Articles of Incorporation and ByLaws of the POA. As soon as two tracts have been sold, Declarant will cause the POA to be activated by the issuance of Membership Certificates to the Property Owners. Upon activation, the POA shall then assume management of the affairs of the POA. There shall be one (1) membership for each tract owned. All unsold tracts are owned by the Declarant, who retains one membership for each tract. At such time as the POA becomes active, a meeting shall be called of all Property Owners, the purpose of which shall be the adoption of ByLaws and election of the Board of Directors. The types or classes of members, voting rights, Board of Directors matters, etc. shall be determined by the ByLaws of the POA. Until the POA

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has become active and assumes the affairs of the POA. Declarant shall manage the common areas, and related matters, including, but not limited to, maintenance of the common properties and roads, and retain all powers granted to the POA in these covenants.

ARTICLE III: GENERAL LAND USE RESTRICTIONS AND PROCEDURE FOR APPROVAL OF DEVELOPMENT.

Section 3-1: Building and Use Requirements. The Property and the tracts located therein are intended, for single-family attached or detached residences, exclusively. All permanent structures or improvements on any part of tract are subject to the approval process outlined in Section 3-2.

Section 3-2: Architectural and Site Plan Review of Specifications for New Construction or Additions, Reconstruction, Alterations or Changes to Structures and Landscaping. No driveway, home, building, fence or other structure shall be constructed, erected, placed, or altered on any tract until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), landscaping plan, outdoor lighting plan and construction schedule have been approved in writing by the POA. Property owners or prospective owners are strongly encouraged to share their intentions with the POA prior to submitting these formal plans. Minimizing total square footage, previous surfaces, and disturbance to the land are central criteria for acceptance of plans. When all aforementioned plans are completed and submitted, the POA shall have ~~fourteen~~ (14) days to provide written approval or disapproval of the plans. In the event of failure to approve or disapprove within ~~thirty~~ (30) days, said approval shall be deemed accepted, unless the POA requests a reasonable extension of time within which to provide approval or disapproval of said plans.

Refusal of approval of plans, location or specifications may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the POA shall be deemed sufficient. No alterations in the exterior appearance of any building or structure shall be made without approval by the POA. One copy of all plans and related data shall be furnished the POA for its records.

a. Owners are strongly encouraged to build to the highest environmental standards possible and all houses must achieve a minimum of North Carolina HealthyBuilt Homes certification or a more rigorous third party certification.

Section 3-3: Temporary Structures and Vehicles: No structure of a temporary character shall be placed upon any tract at any time, provided, however, that this prohibition shall not

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apply to equipment shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the tract after completion of construction.

The POA reserves the right to regulate or prohibit placement of mobile home, motor home, trailer, house trailer, barn, tree house or other similar outbuilding placed on the Property, and approval in writing must be obtained from the POA prior to erecting or placing any such structure or vehicle on any property within the Subdivision.

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Section 34: Tree and Bush Removal. No large trees measuring six (6) inches or more in diameter at ground level may be removed without the written approval of the POA unless located within five (5) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building. Unless the POA gives prior written approval, no trees shall be removed from any tract until the owner shall be ready to begin construction, following submission of building plans and approval of the same.

Section 35: Completion of Construction. The exterior of all buildings and other structures must be completed within twelve (12) months after the construction of a particular building or structure shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to strikes, fires, national emergency or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. Substantially all of the landscaping shown in plans submitted to and approved by the POA must be completed within two (2) year(s) of the initial occupancy.

Section 36: Minimizing Construction Disturbances. During the continuance of construction, the Property Owner shall require the contractor to maintain the site of the building in a reasonably clean and uncluttered condition, and construction may not commence before 8:00 a.m. or be continued after 7:00 p.m., nor may construction activities take place on any Sunday. POA may waive the time and day restrictions if POA deems no undue nuisance is caused to any other Property Owner in the area.

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Section 3.7: Service Yards. The appearance of all garbage receptacles, electric and gas meters, heat pumps and airconditioning equipment, clotheslines, water pumps, fuel tanks, and other such equipment and devices can be regulated in a reasonable manner by POA for aesthetic, safety, or other considerations, and approval in writing must be obtained from the POA prior to erecting or placing any such structure on any property within the Subdivision.

Section 3.8: Lights, Signs and Advertising Devices. All signs, advertisements, lights, banners, flags, ornaments, whether fixed or mobile, may be regulated or prohibited by POA in a reasonable manner for aesthetic, safety, or other considerations. POA reserves the right to require the removal thereof and, after two (2) days' written notice to the Property Owner, to enter upon the lands or premises of any Property Owner to remove any such nonconforming sign, light, banner, flag, ornament or advertising device at the expense of the owner thereof.

Section 3.9: Antennas and Power Lines. No television or radio receiver or transmitter or other antennas which are visible from any Common Area, street or adjoining Lot will be permitted without written approval from POA. All telephone, electrical and other wires of all kinds running from the poles or transmission cables located within the utility easements reserved in this Declaration to any dwelling, building or other structure must be installed underground, unless POA provides written approval.

Section 3.10: Parking. Each Property Owner shall provide space for parking a minimum of one (1) automobile off the street rightofway prior to the occupancy of any dwelling constructed on said tract in accordance with reasonable standards established by POA.

Section 3.11: Animals. Unless approved in writing by the POA, no animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than household pets kept in any one house. Each person who keeps a pet within a house shall abide by the following restrictions and affirmative obligations: (a) no pets may be kept, bred or maintained on the Property for any commercial purpose; (b) all solid pet waste will be promptly cleaned up; (c) pets will remain closely supervised in the common space; (d) human safety and enjoyment of common space takes precedence over animals' use of space; (e) no pet shall be allowed to be kept if the pet causes unreasonable disturbance or annoyance to other Property Owners.

Section 3.12: Unsightly Conditions. Each Property Owner shall prevent and remove the accumulation of litter, trash, or rubbish; prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds, either before, during or after construction; prevent and remove accumulations on his tract which tend to substantially decrease the beauty of the specific tract or the Property as a whole, as determined by POA.

Section 3.13: Sound Devices. The POA reserves the right to regulate exterior speakers, horns, whistles, bells or other sound device, except devices intended for use and used exclusively (and with reasonable regard to neighbors) for safety or security purposes, at its discretion, when said devices are a nuisance to other property owners.

Section 3-14: Outside Use of Chemicals: The POA shall have the right to set standard for use of chemicals to be used outside any structure. Any Property Owner who wishes to use toxic, potentially toxic, or dangerous chemicals, pesticides or herbicides in the development must obtain prior written approval from the POA, due to possible negative human health and environmental impacts. Property Owners are urged to be cautious in this regard, and highly respectful of the community's intent to minimize negative impact on the region and its inhabitants.

Section 3.15: Offensive Activity. No offensive or noxious activity shall be carried on upon the Property. "Offensive or noxious" activity or behavior shall include but not be limited to a public nuisance *per se* and shall also include any behavior which is inconsistent with both the reasonable pleasurable use of the Property by Property Owners and their reasonable expectations of vacationing, yearround living, studying, or working free of excessively noisy behavior disrespecting the rights of others, flashing or excessively bright lights, racing or loud vehicles, significantly loud electronic music distractions, or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the Property by others who are not participating in such offensive or noxious activity.

Section 3.16: Subdivision of Property. No tract shall be subdivided other than by Declarant except by means of a written and recorded instrument indicating that such subdivision has been approved by Declarant.

Section 3.17: Prohibition of Motorcycles. No motorcycles or motorpowered bicycles shall be permitted within the Property for recreational purposes without express written permission of POA; however, licensed motorcycles or motorpowered bicycles may drive on roads within the Property to and from specific tracts only.

Section 3.18: Willful Destruction of Fish and Wildlife. No hunting shall be allowed within the Property. Fishing may be allowed under controlled conditions approved by POA.

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Section 3.19: Drainage. The POA may establish reasonable regulations and restrictions pertaining to drainage and siltation, originating on construction sites and parking lots, porosity of pavement materials used on roadways and parking lots, and similar provisions relating to hydrological factors on the Property.

Section 320: Duty to Insure.

- (a) Property Owners. Each Property Owner shall insure his buildings for their replacement value against loss by fire or other hazards, and if Declarant has outstanding deed of trust against said property, then he shall be named also as "loss payee" on insurance policy.

- (b) Repair or Replacement of Damaged or Destroyed Property. In the event of damage or destruction by fire or other casualty to any building, the owner of such building shall within thirty ~~(30)~~ days of the receipt of the insurance proceeds paid pursuant to an insurance policy covering such building but in no event later than three ~~(3)~~ months from the date of such damage or destruction either (i) commence reconstruction of the damaged or destroyed building; or (ii) clear the tract upon which the damaged or destroyed building is located of all debris and reseed the entire tract. In the event: (i) restoration of the building is commenced but is terminated before completion of the building and such termination continues for a period of at least thirty ~~(30)~~ days; or (ii) the tract is not cleared of debris within thirty ~~(30)~~ days after commencement of clearance of the tract; or (iii) restoration or commencement of clearance of the tract does not occur within said three ~~(3)~~ month period, the POA_A shall have the right to clear the tract of debris and reseed the tract. The cost of such repairs shall be an expense attributable to the tract collectible in the same manner as any assessment.

In the event a tract shall be cleared and reseeded, then it shall be the obligation of the owner of such tract to continue to maintain the tract.

Section 3.21: Duty of Property Owners to Inform POA of Current Address. Each Property Owner shall have the affirmative duty and obligation to inform POA in writing of any change of ownership of the Property, the Property Owner's current address, and of any known failure of the Property Owner to receive any information from the POA at the correct address of the Property Owner. No Property Owner may be excused from his obligations established in these Covenants if the POA mailed notice of such obligation, assessment, bill, statement, or other notice to the last address of said Property Owner which is recorded on the books of POA and for which POA has not received the Property Owner's current address or notice of change of ownership from the Property Owner.

[^]Section 3.22: Stormwater Systems. The stormwater detention system for the subdivision consists primarily of four bioretention areas located on lots 6, 7, and 8. The property owners of said lots shall have the option of maintaining the portion of the system, or requesting that the POA maintain it. Notwithstanding, the POA shall have the right at any time to enter onto any of the lots on which the stormwater detention system is located for the purpose of maintenance and upkeep of the system. Additionally, owners of lots 1, 2, 3 and 9 are required to construct small grass swale detention areas on their respective property in order to meet their stormwater detention requirements. The size of these detention areas is included in the table reflected on the Plat attached hereto as Exhibit "A" and incorporated herein by reference.

Section. 3-23. Renting Restrictions. No dwelling may be leased without prior written approval from POA. The POA shall provide a standard lease application form to property owners who shall submit it to the POA, which shall have the right to conduct due diligence on all potential renters.

ARTICLE IV: RIGHTS RESERVED BY DECLARANT, ITS SUCCESSORS AND ASSIGNS

Section 4.1: Other Rights and Reservations. The omission of any right or reservation in this Article shall not limit any other right or reservation by Declarant which is expressly stated in or implied from any other provision in these Covenants.

Section 4.2: No Affirmative Obligation Unless Stated. Any reservation or right of Declarant which is stated in or implied from these Covenants shall not give rise to any affirmative obligation or duty on the part of Declarant unless expressly stated in these Covenants.

Section 4.3: Utility Easements. Declarant reserves unto itself, its successors and assigns, a perpetual, alienable, and releasable easement over, on, across, and under each tract for the erection, maintenance, installation, and use of electrical and telephone poles, wires, cables,

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conduits, and other suitable equipment for the conveyance and use of electricity, telephone equipment, or other public conveniences or utilities and Declarant may further cut drainways for surface water wherever and whenever such action may appear to Declarant to be necessary in order to maintain reasonable standards of health, safety, and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by licensee of Declarant to provide or maintain any such utility or service. Declarant is responsible for returning disturbed land back to original, or near original, condition. In exercising the rights of this easement all necessary work shall be located in an area not more than ~~ten~~ (10) feet from the property line of each tract. This reservation shall not be considered an obligation of Declarant to provide and maintain any such utility or service.

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Section 44: Repurchases by Declarant. In the event the Owner of any Tract desires to sell his tract, then said Property shall be first offered for sale to Declarant at the same price and terms at which the highest bona fide offer has been made for the Property. Declarant shall have ~~three~~ (3) business days from receipt of such written offer within which to exercise its option to purchase said Property at this price and terms, and Declarant shall have an additional period of not less than ~~sixty~~ (60) days within which to close said transaction. In the event Declarant fails or refuses within ~~three~~ (3) days after receipt of such written notice of the price and terms to exercise its option to purchase said Property at the offered price and terms, then the Owner of said Property shall have the right to sell said Property, pursuant to said bona fide offer, subject, however, to all Covenants and limitations herein contained. Should, however, such sale by the Owner to a third party not be consummated within ~~three~~ (3) months from the date of presentation of the offer to Declarant of the price and on the terms offered, the terms and limitations of this Section shall again immediately be imposed upon any sale by the Property Owner.

Section 45: Compliance. In the event that any Owner fails to comply with any of the restrictions set forth in this Article or the rules and regulations subsequently promulgated by the Declarant, or its successors or assigns, the Declarant and its successors or assigns, or the authorized agents of Declarant and its successors or assigns, shall have the right, but not the obligation, to enter any Lot or Unit and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Declarant or its successors and assigns or their authorized agents in curing such default shall be charged to the defaulting Owner and shall be payable by such Owner to the Declarant or its successors and assigns immediately upon demand. Declarant, its successors or assigns and their authorized agents shall not be liable for any damage which may result from such entry unless such damage results from the willful misconduct of Declarant, its successors or assigns or their authorized agents.

Section 46: Subdivision and Replatting of Property. No tract shall be subdivided, or its boundary line changed, except with the written consent of Declarant, or POA when activated. Declarant hereby expressly reserves to itself, its successors or assigns, the right to replat any tract shown on the plat of any said subdivision prior to its sale in order to create a modified building tract or tracts. The Covenants herein shall apply to any of said modified tracts resulting from said subdivision as if the resulting tracts had been originally platted in such manner. No tract shall be used as access to other property not a part of the POA, except as approved by Declarant. Declarant, however, retains the right to add additional property to the development provided such additional property be subject to these Covenants.

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ARTICLE V: COMMON PROPERTIES

Section 51: General. Title to all Common Property within the Subdivision shall be held by the **Weekapaug Grove** Property Owners' Association, Inc. (the "POA"). All Common Property shall be devoted to and intended for the common use and enjoyment of the Property Owners, Declarant, their guests and invitees. Common Property may be deeded to the POA by Declarant as soon as two (2) of the tracts have been sold or conveyed, and thereafter as determined by Declarant.

Section 52: Extent of Members' Easements in Common Property. Every member of the POA shall have a right and easement of access, use and enjoyment in all Common Property and such easement shall be appurtenant to and shall pass with the title to every tract within the Property; provided, however, that the rights and benefits created hereby shall be subject to the rights and functions of Declarant and the POA as set forth in these Covenants and subject to such Rules and Regulations, as may from time to time be established by Declarant, or POA when activated.

ARTICLE VI: ASSESSMENTS AND OTHER CHARGES

Section 61: Collection and Use of Assessments and Other Charges. The assessments, fees, charges and liquidated damages described in these Covenants or hereafter established by the **Weekapaug** Property Owners' Association, Inc. (the "POA") shall be collected by Declarant until activation of the POA as herein provided, and thereafter by the POA, and used exclusively for carrying out the functions described in these Covenants and the ByLaws and/or the Rules and Regulations of the POA. All fees for standard maintenance of the Common Space will be divided evenly among Property Owners, and the Board of Directors of the POA will annually fix this assessment charge for members and give notice to every Property Owner thereto. Over and beyond standard maintenance and repairs in Common Space, Individual Property Owners may opt out of financially contributing to specific improvement projects in the Common Space, for example gardens or tree houses, provided that said Property Owners and/or their guests shall not be permitted to utilize these projects. Declarant shall be subject to any assessments set forth herein or hereafter established for any property or tracts still owned by Declarant.

For as long as Developer owns a majority of the lots within the Subdivision, Developer, its successors and/or assigns shall have the right to amend the covenants and restrictions contained herein provided all action in accordance with the legal documents creating the Association.

Section 62: Standard Assessment. Unless otherwise amended, each Property Owner shall pay an annual assessment of two hundred and 00/000 Dollars (\$200.00), due on March 1, per tract owned until such time as Declarant activates the POA as herein provided, after which the POA shall establish the amount or type of the Standard Assessment.

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Section 63: Time and Method of payment of Assessments. Any assessment year shall run from March 1_▲ to the last day in February_▲. For any assessment year, each Property Owner shall pay in advance, either annually or periodically, all annual assessments due on said property.

Section 64: Effect of NonPayment of Assessments and Other Charges. The following actions may be taken by the Declarant until activation of the POA as herein provided and thereafter by the POA in the event a Property Owner fails to make payment of any assessments set forth above or other charges and obligations when due:

- (a) Interest on Late Payment. An interest charge at an ANNUAL PERCENTAGE RATE OF five PERCENT (5%) will be charged on all late payment of assessments.
- (b) Personal Liability. If the assessment or charge is not paid within ninety (90) days after the past due date, the POA may bring an action at law or in equity against the Property Owner personally, and there shall be added to the amount of such assessment the cost of preparing and filing the legal documents in such action, and in the event a judgment order against the Property Owner is obtained, such judgment shall include interest on the assessment as provided in (a) above, reasonable attorney's fees and expenses to be fixed by the court and the costs of the action.
- (c) Execution on Lien. Subject to Section 72 relating to subordination of the lien to mortgages and other encumbrances, the POA may execute its lien upon the subject property according to procedures prescribed by the laws of North Carolina.
- (d) Other Rights. In addition to the above, the POA shall reserve the rights it may have under and according to applicable law to attach and execute against any personal assets of a Property Owner in order to receive assessments due.

ARTICLE VII: DURATION, OBLIGATION AND APPURTENANCY OF RIGHTS AND OBLIGATIONS CREATED HEREIN

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Section 71: Duration. These Covenants shall be in effect, shall run with and bind the land, and shall inure to the benefit of and be enforceable by and against Declarant, the POA, any Property Owner, their respective legal representatives, heirs, successors and assigns for a period of ten (10) years from the date this Declaration is recorded. Upon the expiration of said ten (10) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional 10 year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial ten (10) year period or during the last year of any subsequent ten (10) year renewal period, eighty-five percent (85%) of the members vote in favor of terminating this Declaration at the end of its then existing term. In the event the POA is terminated, all Common Space returns to ownership of the Declarant or its assigns.

Section 72: Protection of Mortgagees and Other Encumbrances. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision or to prevent a violation shall effect, defeat or render invalid or impair the lien of any mortgage, deed of trust or other lien on any property if such lien or deed of trust is taken in good faith and for value and is recorded prior to the time and instrument describing such property and listing the name or names of the owners of fee simple title to the property and giving notice of a claimed violation, breach or failure to comply with the provisions of this Declaration as recorded. Any such violation, breach or failure to comply shall not affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien, nor shall the former owner's violation, breach or failure to comply result in any liability, personal or otherwise, of any mortgage holder or new owner resulting from foreclosure. Any such new owner on foreclosure shall, however, take subject to this Declaration with the exception of the former owner's violations hereof or failures to comply herewith with respect to such new owner, his heirs, personal representatives, successors or assigns; provided, however, that any action of the new owner, after taking title to, or possession of, such property, which constitutes a violation shall cause such new owner to be subject to all assessments, charges, restraints, restrictions, burdens and obligations under these Covenants.

Section 73: Owner's Rights and Obligations Appurtenant. All rights, easements, restrictions and obligations of a Property Owner under this Declaration and all rights of a Property Owner with respect to memberships in the POA under this Declaration are hereby declared to be and shall be appurtenant to the title held by the Property Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the title held by the Property Owner. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of the title held by a Property Owner shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations.

ARTICLE VIII: EFFECT OF COVENANTS AND ENFORCEMENT

Section 81: Effect of Provisions of These Covenants. Each Property Owner, his heirs, successors and assigns, and all others who take an interest in land or realty within the Property do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

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

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and severally.

Section 82: Who May Enforce. The benefits and burdens of these Covenants run with the land and in equity and Declarant, its successors and assigns, the POA, its successors and assigns, or any Property Owner, his heirs, representatives, administrators, successors and assigns with respect to the Property, shall have the right to proceed against a party to compel compliance with the terms hereof or to prevent the violation or breach in any event.

Section 83: Enforcement Remedies. In the event that any residential dwelling or other structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any land use is in violation of these Covenants, Declarant, the POA or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity: (a) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (b) to restrain, correct or abate such violation or breach of these Covenants; (c) to prevent the occupancy of said residential dwelling, structure or land; (d) to prevent any act, conduct, business or use which is in breach of these Covenants; or (e) to compel any affirmative act which, pursuant to these Covenants "shall" be performed. Violators shall be personally obligated for reimbursement in full for all direct and indirect costs or damages resulting from the violation or breach, including but not limited to legal fees and expenses incurred in maintaining compliance with this Declaration, and such obligation shall also constitute a lien upon the property of the violating Property Owner.

ARTICLE IX: INTERPRETATION AND CONSTRUCTION

Section 91: Severability. Should any Covenant or restriction herein contained, or any Article, Section, paragraph, sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matter and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Section 92: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and which will preserve the Property as a situs for a high amenity, attractive, well maintained, privatelygoverned residential community.

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

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any subsequently adopted zoning ordinance which allows a less restricted use of the Property.

Section 93: Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 94: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 95: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 96: No Implied Liabilities or Duties. Any rules or regulations established pursuant to these Covenants shall not expressly or impliedly create any duty of care to any Property Owner.

IN WITNESS WHEREOF, _____ and _____, Declarant, have signed and sealed this Declaration the day and year first above written.

DRAFT

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(SEAL)

(SEAL)

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public, do hereby certify that _____ and _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

This the _____ day of _____, 2009.

(SEAL)
Notary Public

My Commission expires:

DRAFT

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EXHIBIT "A" TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WEEKAPAUG GROVE