

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## INTRODUCTION

This is the basic document for establishing the regime of LEATHERWOOD MOUNTAINS. An interest in a lot or dwelling unit in LEATHERWOOD MOUNTAINS consists of three (3) elements:

A. The fee simple title in the lot (including any dwelling unit located thereon).

B. The easement of enjoyment in the Common Properties.

C. The membership in LEATHERWOOD MOUNTAINS HOMEOWNERS ASSOCIATION, INC. (The "Association").

These interests are subject to various easements, restrictions and covenants, and more particularly the obligation to pay the proportion of assessments established by the Board of Directors for each lot including any dwelling unit located thereon. Failure of individual owners to pay such assessment can result in, among other sanctions, the creation of a lien on the title interest in their respective lots (dwelling units), and can be foreclosed. Thus, the Association is assured of an adequate budget to provide its services and maintain the properties and the program making up Leatherwood Mountain and its style of life.

The Association provides certain services including: access to all facilities and all roads and open space; the provision of certain exterior maintenance; and liability coverage for acts of the Association.

Membership in the Association and acts of the members (owners) are subject to restrictions sufficient to provide order and facilitate reasonable opportunities for maximum, and most enjoyable, uses of the common facilities. Sanctions or suspension of privileges and the levying of liquidated damages are provided to enforce the restrictions.

Although a lot (dwelling unit) owner actually owns the footage on the exterior of his building, any permanent structure or improvements erected or placed in that space must have the approval of an architectural review board. This is necessary to prevent unsightly additions, fences and structures which are inconsistent with the character of Leatherwood Mountains as a planned residential community.

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STATE OF NORTH CAROLINA  
COUNTY OF WILKES

## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

WITNESSETH:

WHEREAS, LEATHERWOOD PROPERTIES, a Limited Partnership herein called the "Declarant", is the fee simple owner of certain real property located in ELK TOWNSHIP, WILKES COUNTY, North Carolina, and desires to establish on a portion thereof a residential community consisting of single-family residential dwellings to be governed by LEATHERWOOD MOUNTAINS HOMEOWNERS ASSOCIATION, INC., and further desires that said property be used, developed, maintained and managed for the benefit and welfare of owners of property in LEATHERWOOD MOUNTAINS; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the real property in the Leatherwood Mountains Homeowners Association, Inc.; and for the continued maintenance and operation of the private streets and common areas in the community and for a security system for the protection of property; and

WHEREAS, the Declarant has deemed it desirable for the efficient preservation of the values and the maintenance and operation of the private roads and common areas that certain covenants, conditions, easements, assessments, liens and restrictions governing the subdivision and development of tracts of land, and the use and occupancy of tracts in the Leatherwood Mountains Homeowners Association, Inc., be established and declared to be covenants running with the land; and that an agency be created to which will be delegated the powers and duties of maintaining the roads and common areas, providing security, enforcing the covenants and restrictions, and collecting and disbursing assessments;

NOW, THEREFORE, in consideration of the premises, the Declarant hereby declares that all of the property hereafter described at Map Book 8, Page 312, Wilkes County Registry of Deeds, or that property that hereafter may be made subject to this Declaration of Covenants, Conditions and Restrictions (hereafter called the "Restrictions") are and shall be held, transferred, sold, conveyed, occupied and used subject to the restrictions and matters hereinafter set forth, said Restrictions and matters to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title or interest in the described property, or any part thereof, and which shall inure to the benefit of each owner thereof, for and during the time hereinafter specified. Every party hereafter acquiring any lot, or portion thereof, in the described properties, by acceptance of a deed conveying title thereto or by execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such lot, shall accept such deed or contract subject to each and all of the covenants, restrictions and agreements contained within these Restrictions, as well as any additions or amendments hereto, and also subject to the jurisdiction, rights and powers of the Declarant, the Leatherwood Mountains Homeowners Association, Inc., and their successors and assigns. Each grantee of any lot subject to these Restrictions, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Declarant, the Association, and with grantees and subsequent owners of each of the lots within the Subdivision to keep, observe, comply with and perform said Restrictions and agreements.

## **ARTICLE I DEFINITIONS**

1. "Association" shall mean and refer to the Leatherwood Mountains Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns.

2. "Common Areas" shall mean and refer to any and all real property owned or held by the Association for the common use and enjoyment of all members and all riding trails, streets and roads, greenways and recreational areas and other common areas located within the Development which are maintained by the Association.

3. "Declarant" shall mean and refer to the Declarant herein, Leatherwood Properties, a Limited Partnership, its successors or designated assigns.

4. "Lot" shall mean and refer to (a) any plot of land identified as a lot at Map Book 8, Page 312, Wilkes County Registry of Deeds, or on any deed or contract of conveyance from the Declarant; and (b) any numbered plot of land shown on a recorded map or survey of Leatherwood Mountains or any part thereof with the exception of the Common Areas and non-residential areas.

5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot as herein defined, excluding however, those parties having such interest merely as a security interest for the performance of an obligation.

6. "Development" or "Leatherwood Mountains" shall mean that land divided into residential lots as described at Map Book 8, Page 312, Wilkes County Registry, as well as any adjoining tracts which the Declarant should choose to add and subject to these restrictions.

7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

#### **1. Existing Property.**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Elk Township, Wilkes County, North Carolina, and is more particularly described at Map Book 8, Page 312, Wilkes County Registry.

#### **2. Additional Property.**

The Declarant reserves the absolute right, exercisable in its sole discretion from time to time, to add other lots to Leatherwood Mountains, and to subject such additional lots to the terms of the Restrictions. Such additions shall be made in order to extend the scheme of the Restrictions to other real property that may be developed as part of Leatherwood Mountains and to bring such additional property within the jurisdiction of the Association, thereby subjecting such additions to assessment for their just share of the Association's expenses. Such additions shall be made by filing of record a Supplemental Declaration of Covenants and Restrictions, which shall identify the real property to be included and shall incorporate these Restrictions by reference. The Declarant reserves the right to use any existing roads for the benefit of such additional developments.

#### **3. Excluded Property.**

No property of Declarant shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Declarant shall be subject to any restrictions by implication arising from Declarant imposing these restrictions on the property herein identified.

# **ARTICLE III**

## **COMMON AREA PROPERTY RIGHTS**

### **1. Private Areas.**

Each of the streets in the Development now or hereafter constructed or designated on any recorded or unrecorded map, is a private street with the exception of Wilkes County SR 1162, SR 1155, and SR 1166, and every common area within the Development is a private area, and neither the execution nor recording of any plat nor any other act of the Declarant or Declarant's successor in title to all or any portion of the property is, or is intended to be, or shall be construed as, a dedication to the public of any streets or common areas, except those that hereafter may be dedicated by a specific written and recorded deed or agreement of dedication.

### **2. Reservation of Easement.**

The Declarant reserves for itself the right to offer to dedicate or transfer any streets or other part of the common area to any public agency, authority or utility if it so desires. The Declarant reserves for itself and for its successors and assigns a non-exclusive easement over each of the streets in the Development now or hereafter constructed or designated on any recorded or unrecorded map. The Declarant reserves the right to use said roads for the development of any adjoining properties which Declarant may own now or in the future. The Declarant also reserves for itself, its successors and assigns, the right to grant and reserve easements and right-of-ways through, under, over and across Leatherwood Mountains for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, cable television and other utilities, except this reservation shall not apply to lots in the Development except in easements within such lots shown on any recorded plat of the Development or any part hereof or as reserved in Section 5 of Article VII hereof. An offer of dedication places no liability upon any public agency to accept the dedicated streets or other property. The Declarant acknowledges that the streets, other than existing State Roads, within Leatherwood Mountains Development are not constructed to the State of North Carolina Department of Transportation's minimum standards for subdivision streets. Therefore, the Department will not accept these streets into its secondary roads system. All private street maintenance, including repair and snow removal, will be the responsibility of the Declarant or the Association. The Declarant acknowledges that it is the policy of the Wilkes County Board of Education that school buses will not travel on private streets.

### **3. Ownership of Common Areas.**

The Declarant may retain the legal title to any common properties, other than streets or roads shown on any recorded plat of the properties, until such time as it has completed improvements, if any, thereon and until such time as in the opinion of the Declarant, the Association is able to maintain the same. Prior to the date of any transfer of maintenance of the streets and roads to the Association, said streets and roads shall be maintained by the Declarant. At the time of transfer of maintenance to the Association said streets and roads shall be common properties and the expense of maintenance shall be borne by the Association.

### **4. Owner's Easements of Enjoyment.**

Every lot owner, including lot or homeowners in adjoining areas developed at a future time, shall have a non-exclusive right-of-way, right to and easement of enjoyment in and to the roads and common area which shall be appurtenant to and shall pass with the title to every lot, subject to the provisions of this Declaration and the Charter and Bylaws of the Association as to the following provisions:

- a. The right and easement of enjoyment in and to the roads shall be limited to those roads owned or maintained by the Association.
- b. The right to the Association to limit use of the roads and common areas to owners, their families and guests.
- c. The right of the Association to suspend the voting rights and other rights of membership by an owner for any period during which any assessment against his lot remains unpaid: and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- d. The right of the Association to grant an easement in, dedicate or transfer all or any part of the roads or common areas to any public agency, authority, or utility for such purposes, subject to such conditions as may be agreed to by the members.
- e. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.
- f. The right of the Association, in accordance with its Charter and Bylaws, to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage the common area, or any portion thereof, and the rights of such mortgage in said properties shall be subordinate to the rights of the homeowners hereunder.

## **ARTICLE IV**

### **HOMEOWNER'S ASSOCIATION**

### **ADMINISTRATION, MEMBERSHIP AND VOTING**

### **RIGHTS**

#### **1. Administration of Common Areas.**

The administration of the roads and common areas, including maintenance, repair, and upkeep of the private streets and provision for security of the property, including the acts required by the Declaration, the Bylaws, and Articles of Incorporation of the Association, shall be performed by the Association. The Association shall be required to maintain those roads as shown on recorded map at Map Book 8, Page 312, Wilkes County Registry, which serve as access to a lot or common area. Any road which is wholly within a lot, and which does not serve as access to another lot, shall not be maintained by the Association.

#### **2. Rules and Regulations.**

The Association may also adopt and enforce rules and regulations not inconsistent with these Restrictions, the Articles of Incorporation or Bylaws of the Association for the operation and administration of the Association and its property.

#### **3. Membership.**

Every person or entity who is a record owner of a fee or undivided fee interest in any lot in Leatherwood Mountains shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot, and shall be transferred automatically when the owner conveys, devises, gives or otherwise transfers his lot, even though such conveyance, devise or gift does not make mention of the membership rights of the Association. Such membership is not intended to apply to those persons or entities who hold an interest in any lot

merely as security for the performance of an obligation to pay money, e.g., mortgages or deeds of trust; however, if such secured party should realize upon his security and become the fee owner of a lot, he and his assigns of the lot will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the development and on members of the Association, including those provisions with respect to payment of annual charges. The Board of Directors may include reasonable rules relating to the proof of ownership of a lot in the Leatherwood Mountains Homeowners Association, Inc.

## **4. Voting Rights and Classes of Membership.**

### **a. Membership.**

Every person or entity who is a record owner of a fee simple interest in any lot or dwelling unit is subject by this Declaration to assessment by the Association and shall be a member of the Association; provided, however, that any such person or entity to hold such interest merely as a security for the performance of an obligation shall not be a member.

### **b. Voting Rights.**

The Association shall have two classes of voting membership:

(1) **Class A:** Class A members shall be all owners of lots and owners of any type or dwelling unit, other than the Declarant. Any Class A member shall be entitled to one vote for each dwelling unit or for each lot which he owns. When more than one person or entity holds an interest in any lot or dwelling unit, all such persons or entities shall be members. The vote for such lot or dwelling unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any lot, nor shall any vote be fractionalized.

(2) **Class B:** The Class B member shall be the Declarant, which shall be entitled to three (3) votes for each lot and three (3) votes for each dwelling unit owned by it.

## **5. Authority To Borrow Funds.**

The Association shall possess the right, as provided in the Bylaws, to borrow money for the purpose of improving the common areas and to mortgage any portions of the common areas necessary to secure loans for such improvements. Provided, however, that no such borrowing or mortgaging shall be done without a prior vote of approval by two-thirds (2/3) of each Class of members at a meeting duly called for such purpose, in accordance with the Bylaws.

## **6. Violation or Delinquency.**

During any period in which a member shall be in default in the payment of any annual, special or other assessment levied by the Association, his rights to vote and all other rights and incidents of membership in the Association may be suspended by the Board of Directors until such assessment is paid. A member's voting and use rights may also be suspended for violation of the Association's published rules and regulations; provided, that prior to any suspension for such violation, the Board of Directors (or a committee thereof) shall conduct a hearing regarding the alleged violation after giving the accused member at least ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. At the hearing, the accused member shall have the right to call and question his own witnesses as well as any opposing witnesses. A determination of violation as well as the terms of any suspension shall be made only by a majority vote of the Board.

## **7. Specific Enforcement.**

The Association also reserves the right to direct its agents and employees to enter upon the lot of any Association member for the purpose of repairing, maintaining or restoring the lot or exteriors of any buildings or improvements thereon, including the removal of unsightly weeds, underbrush, or other items. Provided, however, that the Association may exercise such right only when the lot to be entered has not been maintained in a manner satisfactory to the Declarant or the Architectural Review Committee established in Article VI, and after approval of such action by two-thirds (2/3) vote of the Association's Board of Directors. No entry may be made under this subsection without first providing the owner of the lot to be entered at least ten (10) days prior written notice requesting him to properly repair or maintain his lot; any entry by the Association for the foregoing purpose shall be only between the hours of 7:00 a.m. and 6:00 p.m. on any day except Sunday. Such entry as herein provided shall not constitute a trespass, and the Association shall bear no liability for performing any acts reasonable necessary or appropriate in connection with the execution of these provisions. All costs of such exterior maintenance shall be added to and become part of the annual assessment applicable to such lot or tract, and shall constitute a permanent lien upon such lot until paid. In addition, the lot owner shall be personally liable to the Association for such costs, all as provided in Article V.

# **ARTICLE V COVENANTS FOR MAINTENANCE ASSESSMENTS**

## **1. Creation of Lien and Personal Obligation for Assessments.**

The owner of each lot in Leatherwood Mountains, by acceptance of a deed therefor, and Declarant, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges: and (b) special assessments for capital improvements. Such covenant will be deemed to arise whether or not it is expressly stated in the deed or other conveyance to the owner. The annual and special assessments, together with interest, costs and reasonable attorney's fees, as well as any charges imposed under Section 8 of Article IV above, shall be a charge on the land and shall constitute a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was owner of such property at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall not pass to his successors in title (other than as the continuing lien on the land) unless expressly assumed by such successor.

## **2. Purpose of Assessments.**

All assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine are for the benefit of its members. Such purposes may include, but are not limited to: maintenance, landscaping and beautification of the roads and common areas; construction, repair and replacement of improvements upon the roads and common areas; the cost of labor, equipment, materials, management and supervision thereof; provided security to the Development by mechanical gates and/or guards and patrols or other means; the pavement of taxes assessed against the roads and common areas; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the provision of other services intended to promote the health, safety and welfare of the members; and such other needs as may arise.

## **3. Determination of Assessment Amount.**

Prior to December 31 of each year the Board of Directors shall prepare a budget for the next calendar year and based upon such budget, the Board shall fix the assessment amount for each class of property owned upon the following basis:

- a. Each lot upon which is situated a completed, habitable dwelling shall be assessed (1) share; and
- b. All other lots shall each be assessed one-half (1/2) of one share.

#### **4. Payment of Assessments.**

All annual and special assessments provided for herein shall commence as to all lots on the first day of the month following the transfer of title to owner. The annual assessment shall be adjusted according to the number of months remaining in the calendar year. Thereafter, payment of assessments shall be made annually to the Association or its designee, on or before the due date established by the Board; provided, however, that the Board of Directors shall fix the amount of the annual assessment at least thirty (30) days before the due date and written notice of the charge so fixed shall be sent to each member.

#### **5. Special Assessments.**

In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of acquisition of and any construction, reconstruction, repair or replacement of a capital improvement upon common areas, including the necessary fixtures and personal property related thereto. Prior to the imposition of any such special assessment, two-thirds (2/3) of each Class of members voting at a meeting called to consider such assessment and at which a quorum was present, must vote their assent to its imposition.

#### **6. Notice and Quorum.**

Except for a vote to amend the covenants and restrictions contained herein, which vote shall be conducted pursuant to Section 1 of Article VIII below; the notice and quorum required for any actions of the Association authorized by Article IV and V of this Declaration or as otherwise in the Articles of Incorporation, the Bylaws or by law provided, shall be as follows:

- a. Written notice of any meeting called for the purpose of taking any action authorized under Articles IV and V of these Restrictions shall be sent to all members not less than ten (10) days not more than sixty (60) days in advance of the meeting.
- b. Members may attend and may vote in person or by proxy executed in writing by a member. No proxy shall be valid after eleven (11) months from the date of its execution, or after conveyance by the member of his lot.
- c. At any meeting called for the purpose of taking some action by the Association membership the presence in person or by proxy of members entitled to cast 20% of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and any number of members attending such subsequent meeting, so long as such number represents at least 10% of all the outstanding votes shall constitute a quorum. No such subsequent meeting shall be held more than six (6) months following the scheduled date of the preceding meeting.

#### **7. Exempt Property.**

All lots owned by the Declarant and any lot which the Declarant may hereafter designate for common use as part of the common areas and convey to the Association, as well as all lots dedicated to and accepted by a local public authority, shall be exempt from the assessments and charges created herein. In addition, the lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of purchasing the lot or for permanent financing and/or constructing a residence or other improvement thereon recorded in accordance with the applicable state laws from the date of recordation, shall be superior to any and all liens provided for herein. The sale or transfer of any lot by foreclosure of any first mortgage or any proceeding in lieu thereof, shall not extinguish the lien of such assessments as to payments due prior to such sale or transfer, provided such transfer shall not have been made for the purpose of defeating the lien.

## **8. Continuance of Lien.**

a. The assessments and charges created herein shall constitute a continuing lien upon all lots in the Subdivision and no owner may waive or in any way reduce his liability for the assessment by non-use of the common areas or abandonment of his lot.

b. In the event that any charge or assessment created in this Declaration remains unpaid by an Association member for thirty (30) days after the due date announced by the Board of Directors, the Association, through its agents and employees, may record with the Wilkes County Clerk of Court a notice of the lien created by this Declaration.

## **9. Effect of Nonpayment of Assessments: Remedies of the Association.**

In the event that any assessment or charge created herein remains unpaid for thirty (30) days after the due date announced by the Board of Directors, such unpaid assessment shall bear interest from the date of delinquency, said interest rate to be set by the Board of Directors from time to time, but in no event shall it exceed the maximum interest rate allowed by law. The Association, its agent or representative, may bring an action at law against the owner personally obligated to pay the same and/or foreclose the lien against the lot subject to the unpaid assessment in either case, interest, costs and reasonable attorney's fees shall be added to the amount of such assessment to the extent allowed by law. Any foreclosure conducted pursuant to this section shall comply fully with the North Carolina procedure for judicial foreclosure.

## **10. Certificate of Payment.**

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. For the purposes of obtaining a certificate, interested parties should contact the Association at its address.

# **ARTICLE VI**

## **ARCHITECTURAL REVIEW**

1. The Declarant shall have the responsibility of enforcing the requirements set forth in this Article until such time as it passes such responsibility to the Architectural Review Committee (the "Committee") which thereafter, shall assume and be responsible for enforcement. Reference in this Article to the Declarant shall mean the Committee after such time as the responsibility is passed to the Committee. The following provisions regarding architectural review shall apply to each and every lot now or hereafter subject to this Declaration.

2. No construction, reconstruction, remodeling, alteration, or addition to any building, improvement, or structure of any kind, upon any lot in the Development, shall be commenced without the prior written approval of the Declarant of the proposed site location, plans and specifications.

3. There shall be submitted to the Declarant two (2) complete sets of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any lot unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the lot of the building, wall, fence or other structure proposed to be constructed, altered, placed or maintained, together with specifications for the proposed construction material, color schemes for roofs and exteriors thereof and proposed grading and landscaping.

4. The Declarant shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. In the event the Declarant fails to approve or disapprove such plans and specifications within thirty (30) days, approval will not be required and the requirements of this Section will be deemed to have been fulfilled. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon, shall be returned to the persons submitting them and the other copy thereof shall be retained by the Declarant for its permanent files. The Declarant 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 \$50.00.

5. At such time as the Declarant elects to transfer to the Association the architectural review responsibilities, the Association's Board of Directors shall appoint a standing committee of the Board, to be called the Architectural Review Committee, which shall initially consist of three (3) members to be appointed from among the Association's members. Upon its appointment, the Committee shall assume from the Declarant all authority to review and approve plans, specifications, and details as otherwise provided herein. The initial committee shall serve for a term of two (2) years, after which the committeemen shall be appointed by the Association's Board of Directors, pursuant to its Bylaws, and shall serve for a term of one (1) year; provided further that the number of committeemen may be increased from three (3) to five (5) by a resolution of the Association's Board of Directors.

6. After its appointment, the Architectural Review Committee shall establish written architectural and aesthetic criteria to be used in reviewing all plans, specifications, and details submitted for approval, and copies of such criteria may be obtained upon request from the Committee. Such written criteria shall be subject to revision or amendment by the Committee at all times; provided, however, that no amendment to or change in such criteria shall become effective until committed to writing and approved by the Committee in the same manner as the previously controlling criteria; and that no amendment or change in such criteria shall have retroactive application.

7. The purpose of the Architectural Review provisions set forth herein is to protect the value of all real property subject to this Declaration and to promote the interest, welfare, and rights of all development property owners. Decisions of the Declarant or Architectural Review Committee approving or disapproving of plans and specifications shall be based on criteria it establishes for the Development, consistently applied, but such decisions shall be final and not subject to review or appeal.

## **ARTICLE VII**

# **RESTRICTIONS AND REQUIREMENTS**

### **1. Residential Use.**

No lot shall be occupied or used except for single-family residential purposes, or as common areas if owned by the Association. No structure shall be erected, placed or permitted to remain on any lot other than one detached, single-family residence dwelling and such outbuildings as are usually accessory to a single-family residence

dwelling including a private garage or barn facility. This shall not restrict the Association or the Declarant from constructing on any lot, security, maintenance, or other facilities for the benefit of the Development. No obnoxious or offensive activity shall be carried on upon the properties which may be or may become a nuisance or annoyance to the neighborhood.

## **2. Size and Placement of Residences and Structures.**

a. No dwelling having more than three (3) above ground stories or having less than 1200 square feet (with some consideration being given to covered non-heated areas) shall be constructed upon any lot in the development, and the Declarant and its successor Architectural Review Committee, as provided in Article VI, retain the right to withhold approval of plans for any split level, two or three story residence where such a structure is unsuited to the proposed lot's terrain, where the erection of such a structure would block or materially interfere with the primary view or vista or solar access of another lot, or would not be in keeping with the general development of surrounding area.

b. The Declarant and its successor Architectural Review Committee shall have the authority to promulgate regulations pertaining to the height and size requirements of all other types of structures, including but not limited to outbuildings, fences, walls and copings.

c. No above-grade structure (except fences or walls) may be constructed or placed on any lot within:

(1) Forty-five (45) feet from the front line of the lot, which is the center line of road in front of such lot.

(2) Fifteen (15) feet from each lot side line, unless the side line is the center line of a road, in which case forty-five (45) feet is the setback requirement.

(3) Twenty-five (25) feet from the rear line of each lot.

(4) A corner lot shall be deemed to have a front line on each street on which the lot abuts, and such lot need only have one rear yard as defined by (3) above.

d. Declarant or its successor Architectural Review Committee in its discretion shall have the right to waive said setback line requirements.

## **3. Other Requirements.**

a. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank sewage system constructed by the lot owner and approved by the appropriate governmental authority and the Declarant, unless public sewage becomes available in the Subdivision.

b. Once construction of improvements is started on any lot, the improvements must be substantially completed in accordance with plans and specifications, as approved, within one (1) year from commencement.

c. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications and a certificate of occupancy has been issued by the Declarant or the Architectural Review Committee.

d. All structures constructed or placed on any lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such lot, without approval of the Declarant or its successor Architectural Review Committee.

e. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Declarant or Architectural Review Committee. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible from any street, except for common receptacles provided by or with the approval of the Declarant or Architectural Review Committee.

f. Any dwelling or outbuilding on any lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than three (3) months.

g. It shall be the duty of each owner to maintain his or her lot, together with the exterior of all improvements located therein, in a neat and attractive condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks, and other exterior improvements. In the event an owner shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Architectural Review Committee, the Association retains the right to enter upon such premises for the purpose of effecting needed maintenance and repairs as provided in Article IV, Section 7 herein.

#### **4. Prohibitions.**

a. No mobile homes shall be permitted on any lot.

b. No privies or outside toilets shall be constructed or maintained on any lot.

c. No temporary house, trailer, garage, storage shed or other outbuilding shall be placed or erected on any lot, provided, however, that the Declarant or Architectural Review Committee may grant permission for any such temporary structures for storage of materials during construction. No such temporary structures as may be approved shall be used at any time as a dwelling place.

d. No permanent outdoor lights or permanent light sensitive lights shall be permitted on any lot, if said light or the light from said light is visible from any other lot.

e. No sign (including but not limited to "For Sale" or similar signs) billboard, or other advertising structure of any kind may be erected or maintained upon any lot except after applying to and receiving written permission from the Declarant or Architectural Review Committee.

f. No stripped, partially wrecked, or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any street or lot.

g. All outdoor clothes poles, clothes lines and similar equipment shall be so placed or screened by shrubbery as not to be visible from any street.

h. No structure erected upon any lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained by the Declarant or Architectural Review Committee.

i. No noxious, offensive or illegal activities shall be carried on any lot nor shall anything be done on any lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

j. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.

k. No on street vehicular parking shall be permitted except as permitted by and under regulation issued by Declarant or the Architectural Review Committee.

l. No tree over six inches in diameter shall be removed from any lot without the prior written consent of the Declarant, except trees required to be removed for construction of the approved residence or appurtenant structures.

m. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any lot in the Development. In the event that the owner of any lot permits trash to collect on the same and on request fails to remove the trash within thirty (30) days, agents of Declarant or Architectural Review Committee may enter upon the said lot to remove the trash, without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot, provided, however, that such expense will not exceed \$100.00. This provision shall not be construed as an obligation on the part of the Declarant or Architectural Review Committee to provide trash removal service. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted.

n. There shall be no access through perimeter lots to the Interior of the Development.

o. No lot shall be subdivided, or its boundary lines changed except with the written consent of the Declarant or Architectural Review Committee; however, the Declarant hereby expressly reserved to itself, its successors or assigns, the right to replat any lots shown on the plat of any of said development or part thereof owned by it in order to create a modified lot or lots, or other parcels, without permission or joinder of any lot owner whose lot lines are not affected by such replatting. The restrictions and covenants herein apply to any lots resulting therefrom as if the resulting lot or lots had been originally platted in such manner. All further subdivision or replatting shall be subject to the provisions of the Subdivision Regulations of Wilkes County, North Carolina.

## **5. Easements.**

a. All of the properties, including lots and common area, shall be subject to such easements for driveways, walkways, trails, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established by the Declarant or by his successors in title and the Association shall have the power and authority to grant and establish upon, over, under and across the common area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the properties.

b. It is contemplated that as Leatherwood Mountains is developed the Declarant will create pedestrian access easements which will provide for members convenient means of ingress and egress to and from the common areas. Such easements shall be for pedestrian traffic only and no vehicles shall be permitted to use such easement, except for bicycles or horses.

c. The Declarant reserves for itself, its successors and assigns, for purposes incident to its development of the real property subject to these Restrictions, the following easements and/or right-of-way:

(1) An easement over each lot within the road right-of-way and a fifteen (15) foot strip along the rear and side lines for the purpose of installing, operating and maintaining utility lines and mains and surface water drainage ditches or lines;

(2) The right to trim, cut and remove any trees and brush and to locate guy wires and braces within the road rights-of-way, and front, rear and side line setback areas for the installation, operation,

and maintenance, together with the right to install, operate and maintain gas, water and sewer mains and other services for the convenience of the property owners; and

(3) The right to withdraw water from any river, stream, creek or other above ground water source for the benefit of a property owner whom the Declarant has determined is unable to obtain a sufficient quantity of potable water at reasonable expense within his lot. The method and location of such water withdrawal devices shall be subject to Declarant's approval.

d. The Declarant reserves for itself, its successors or assigns an exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined above.

e. Declarant reserves unto itself, its successors and assigns, and for the benefit of all lot owners in the development, the street and road rights-of-way shown on the plats now or hereafter recorded of the development for purposes of ingress and egress, for maintenance of utility lines and mains and for drainage, and no lot owner may interfere with such rights-of-way or such uses therein.

f. On each lot, the rights-of-way and easement areas reserved by the Declarant shall be maintained continuously by the Association but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of the road, or utilities, which may change the direction or flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or interfere with established slope ratios or create erosion or sliding problems, provided, however, that the existing location of a drainage channel may be relocated, provided such relocation does not cause an encroachment on any other lot in the development. Improvements within such areas shall also be maintained by the respective lot owner at the lot owner's expense, provided that the plans for relocation are submitted to the Declarant or Architectural Review Committee and approved in writing.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

#### **1. Enforcement.**

The Association shall have the right to enforce, by any 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 by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### **2. Term.**

These Restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them until January 1, 2017. By accepting a deed to a lot subject to these Restrictions, the lot owners agree that after January 1, 2017, these restrictions shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the members holding more than fifty percent (50%) of the voting rights in the Association has been recorded, agreeing to change the covenants in whole or in part; provided, however, that at any time after January 1, 1990, these Restrictions may be amended by the vote of two-thirds (2/3) of each Class of members of the Association to make variations in the Restrictions but not to make changes that would annul any material rights of owners provided herein.

### **3. Mutuality of Benefit and Obligation.**

The Restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every lot in the development and are intended to create mutual, equitable servitudes upon each lot in favor of each and all of the other lots therein; to create a privity of contract and estate between the grantees of said lots, their heirs, successors and assigns, and to the Association, and shall, as to the owner of each lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other lots in the development and their respective owners. Declarant, so long as it shall own a lot or any common area in its own name, any lot owner or the Association shall have the right to enforce these Restrictions.

### **4. Motor Vehicle Speed Limits.**

a. Speed limits for streets and the rules governing the use of common areas within the development shall be as promulgated from time to time by the Association, his successors and assigns. Appropriate postings of these speed limits are to be made. The Association shall have the power to assess fines for the violation of the motor vehicle speed limits in accordance with a schedule of fines promulgated by the Association. Every such fine shall be paid promptly upon its being assessed; if it is not, the Association may add the amount of the fine to the annual charge made by the Association pursuant to Article V of these Restrictions.

b. No motorized vehicle, including motorcycles, motorbikes, etc., except a duly licensed vehicle, shall be operated on any street and no such vehicle shall be operated except by a duly licensed operator.

### **5. Severability.**

Every part of these Restrictions are hereby declared to be independent of, and severable from the rest of the Restrictions and of and from every other one of the Restrictions and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Restrictions.

### **6. Captions.**

The captions preceding the various paragraphs and subparagraphs of the Restrictions are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

### **7. Right of Declarant or Association to Amend to Achieve Tax-Exempt Status.**

The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, in order to qualify the Association or the properties or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wilkes County Registry.

## **ARTICLE IX**

## **RIGHT OF REPURCHASE**

Declarant reserves unto itself, its successors and assigns, the right of first refusal to purchase the lots in Leatherwood Mountains Development. Prior to the sale of any lot in the Development, the owner thereof shall notify Declarant in writing setting forth the price and terms of sale, and the name and address of the purchaser. Such notification shall be made by certified mail, return receipt requested, and shall constitute an offer to sell said property to Declarant for the price and on the terms set forth therein. Declarant shall have twenty (20) days after receipt of said notice to accept the offer. Notice of acceptance shall be made by certified mail, return receipt requested, and shall be deemed made when deposited in the United States mails. If Declarant fails to accept the offer within said time period, the owner shall be free to sell the property to the identified purchaser at the price and under the terms set forth in the notice to Declarant. If the sale does not close within six (6) months after expiration of the twenty (20) day offer to Declarant, the procedure set forth herein must be reinstated. This first refusal right shall not apply to any conveyance resulting from the foreclosure of a deed of trust, security agreement or other lien; by operation of law or by devise upon the death of any owner; or to a bona fide gift: provided that, the grantee of said property shall hold said property subject to the right of first refusal herein set out. This right shall continue and exist as long as Declarant shall, at the request of any owner, acknowledge in writing to any person having an interest, that it has waived, or has been deemed to have waived, the right and option herein reserved, if that be the case.

# **ELK RIDGE DECLARATION OF COVENANTS AND RESTRICTIONS**

All of the terms and conditions of the aforesaid Declaration of Covenants, Conditions and Restrictions shall remain in full force and effect with the exception of Item 1. - Residential Use and Item 2. - Size and Placement of Residences and Structures, Part a., of ARTICLE VII.

## **ARTICLE VII RESTRICTIONS AND REQUIREMENTS**

### **1. Residential Use**

No lot shall be occupied or used except for single-family residential purposes, or as common areas if owned by the Association. No structure shall be erected, placed or permitted to remain on any lot other than two detached, single-family residence dwellings and such outbuildings as are usually accessory to a single-family residence dwelling including a private garage or barn facility. One of the two single-family dwellings may be used only as a part-time residence and may never be used as a permanent or full-time residence with a maximum allowed usage of 160 days per year. One of the two single-family dwellings may be used as a full-time residence. There can be only one part-time residence and only one full-time residence on each lot. This shall not restrict the Association or the Declarant from constructing on any lot, security, maintenance, or other facilities for the benefit of the Development. No obnoxious or offensive activity shall be carried on upon the properties which may be or may become a nuisance or annoyance to the neighborhood.

### **2. Size and Placement of Residences and Structures.**

a. No dwelling that is to be used as or is suitable for a full-time residence having more than three (3) above ground stories or having less than 1200 square feet (with some consideration being given to covered non-heated areas) shall be constructed upon any lot in the development except on the secondary site of each lot in this development a part-time residence may be constructed of less than 1200 square feet when appropriately reviewed and approved. The Declarant and its successor Architectural Review Committee, as provided in Article VI, retain the right to withhold approval of plans for any split level, two or three story residence where such a structure is unsuited to the proposed lot's terrain, where the erection of such a structure would block or materially interfere with the primary view or vista or solar access of another lot, or would not be in keeping with the general development of surrounding area.