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Drawn by & Return to:
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Declarant: Denny E. Merrifield &
Robert L. Hamon

Regarding: Lots 1 through 5
Lake Toxaway Falls Subdivision

STATE OF NORTH CAROLINA)
)
COUNTY OF TRANSYLVANIA)

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants ("this Declaration") is dated this 6th day of July, 1998, by Denny E. Merrifield, and Robert L. Hamon (collectively referred to as "Declarant"), who are citizens and residents of Mecklenburg County, North Carolina .

WHEREAS, Lake Toxaway Co. ("Developer") developed LAKE TOXAWAY ESTATES ("Toxaway Estates") as a subdivision in Transylvania County, North Carolina, as shown on a plat of said subdivision recorded in Plat Book 3, Page 86, of the Transylvania Public Registry adjacent to the existing TOXAWAY FALLS SUBDIVISION ("Toxaway Falls") in the vicinity of to Lake Toxaway, in Hogback Township, Transylvania County, North Carolina, as shown on the plat of said subdivision by Colburn Engineers, dated November 3, 1955, which is recorded in the Transylvania Public Registry in Plat Book 2, at Pages 92 and 92-A; and

WHEREAS, all of the lots in Toxaway Estates are bound to substantial restrictive covenants regarding architectural controls, assessing for street maintenance, etc., but there are not substantial restrictive covenants upon Toxaway Falls, which was developed at a much earlier time; and

WHEREAS Declarant owns Lots 1 through 5 of Toxaway Falls ("the Restricted Lots"), and has entered into an agreement with Lake Toxaway Co., which allows Lots 1, 2, and a portion of Lot 3 of Toxaway Falls to be combined into a single lot, and the remainder of Lot 3 and all of Lots 4 and 5 to be combined into a single lot, and these lots shall be given access to Lake Toxaway by means of an Access Lot in Toxaway Estates. The Restrcted Lots, in Toxaway Falls,

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with Toxaway Estates, and have the owners of the Restricted Lots contribute to road maintenance, etc.

Therefore, the following restrictive covenants are adopted and shall run with the land upon the Restricted Lots, as follows:

ARTICLE I LAND USE AND STRUCTURE TYPE

Each lot shall be used for residential purposes only. No trade or business of any kind may be conducted on any lot. Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant. However, all provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of owners and which provide for sanctions against owners shall also apply to all occupants of any residential lot which is subject to this Declaration. Furthermore, while residences may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of this Declaration and all applicable amendments thereto. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, Declarant and/or its designated agent, in addition to any other remedies available to it/them, may evict the tenant on behalf of the owner of said lot and specifically assess all costs associated therewith against such owner and the owner's property.

No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed three (3) stories in height and a private garage, and, with the approval of the Architectural Control Committee, a guest house.

ARTICLE 2 ARCHITECTURAL CONTROL

In order to ensure that all driveways located on lots are attractively designed and are properly constructed and that all houses and other structures are of appropriate size and harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, Declarant retains for itself and any architectural control committee which Declarant may appoint, full architectural control in order to achieve these objectives. Accordingly, no driveway, building, dock, fence, wall, garage or structure of any kind or any alterations or additions thereto shall be erected or placed on any lot until the complete plans for such improvements, including the specifically proposed design and location thereof on the lot, appearance, quality and manner of construction and/or installation of exterior trim, roots, foundations, windows, eaves of buildings and other proposed improvements

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information have been properly submitted to Declarant or to such committee. Denial of approval of plans, location, specifications and other matters requiring the approval of such committee may be based by such committee upon any reasonable ground, including purely aesthetic considerations.

No single-family dwelling situated on any lot shall contain less than 1,000 square feet of fully enclosed floor area on the main floor nor shall any such dwelling contain less than 1,500 square feet of fully enclosed living area.

A sketch plan showing the front and rear elevations may be submitted for preliminary approval before house plans are submitted. A plot plan showing the position on a lot of the driveway, house and any other proposed improvements for which approval is being requested must be presented to and approved in writing by the architectural control committee before any clearing is done or trees removed from the lot.

The exterior of all houses and other structures must be completed within one (1) year after construction has commenced. Improvements not so completed or upon which construction has ceased for 90 consecutive days or which has been partially or totally destroyed and not rebuilt within one (1) year, shall be deemed nuisances. All construction rubbish, trash and garbage must be regularly removed not less than once a week from any lot on which construction has commenced. Any such rubbish, trash or garbage left on a lot for more than one week shall also be deemed to be a nuisance. The architectural control committee may remove any such nuisances or repair or complete the same, if applicable, at the expense of the owner, the cost of which shall be levied as an assessment against the owner's.

ARTICLE 3 ARCHITECTURAL CONTROL COMMITTEE

Declarant hereby appoints the Architectural Control Committee of Toxaway Estates to be the architectural control committee for the Restricted Lots, and to carry out the directives contained herein, and to serve in accordance with the restrictive covenants of Toxaway Estates. A majority of said committee may also designate a representative to act for it. The committee's approval or disapproval as required by Articles 2 and 4 of these covenants shall be in writing. Any approval or disapproval given or deemed to have been given pursuant to the provisions of the Declaration by said committee when acting with the scope of the authority herein granted to such committee shall likewise be deemed pursuant to the provisions of this Declaration to have been given by Declarant. In the event that Declarant or, if applicable, the committee or its designated representative, fails to approve or disapprove any matter properly submitted for approval hereunder within thirty (30) days after proper plans and specifications and any other required information have been submitted, or in any event, if no suit to enjoin any construction

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ARTICLE 4
BUILDING LOCATION

Subject to the limitation set out in Article 2 of this Declaration that the location of buildings and other proposed improvements on each lot must be approved by Declarant or by an architectural control committee which Declarant may appoint, each lot is subject to the further restriction that no building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on any plat which Declarant may prepare and record of lots in the immediate vicinity thereof. In the event that no minimum building setback line is shown on a plat, all building shall be at least: (a) 40 feet from the front lot line; (b) 30 feet from the rear lot line; and 30 feet from side lot lines.

ARTICLE 5
SUBDIVISION OF LOTS

No lot shall be subdivided or its boundary lines changed except with the prior written approval of Declarant. Declarant, however, hereby expressly reserves the right to repeat any lot prior to conveyance of such lot by Declarant. Any such division, boundary line change, or replotting shall not be in violation of the applicable subdivision and zoning regulations.

ARTICLE 6
ASSESSMENTS

Each of the Restricted Lots is served by roads which are currently owned and maintained by Developer to the extent of road assessments collected by Developer and which connect owner of each lot (and for purposes of this Article the recombined Restricted Lots shall be deemed as two (2) lots), with the exception of the Declarant, shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to the Developer, an annual assessment or charge for the purposes stated within these Articles to be fixed, established and collected on a lot basis as hereinafter provided. Said annual assessment or charge shall be due on a date to be established by the Developer and pursuant to reasonable advance notice given in writing to all lot owners, provided that the Developer may make provision for payment thereof in installments. Each assessment or charge shall, when due, become a lien against the lot against which such assessment or charge is made. Upon demand, the Developer shall furnish to any owner or mortgagee a certificate showing the assessments or charges or installments thereof, due as of any given date. Each lot subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge (or installment thereof) when due.

Such assessment or charge shall be an amount to be fixed from year to year by the

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location of said lots. The Developer may, from time to time, levy additional assessments as it deems necessary to meet the needs of the Restricted Lots.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals this 6th day of July, 1998.

Denny E. Merrifield (SEAL)
Denny E. Merrifield

Robert L. Hamon (SEAL)
Robert L. Hamon

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

I, the undersigned Notary Public, do hereby certify that Denny E. Merrifield and Robert L. Hamon personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this 6th day of July, 1998.

Margaret H. Oliver
Notary Public

My commission expires:
12-22-2002

