

AUGUST 1999

DECLARATIONS

D-1

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

THIRD RESTATEMENT
OF DECLARATION OF RESTRICTIVE COVENANTS
FOR CONNESTEE FALLS

WHEREAS, Connestees Falls Development Corporation, a North Carolina Corporation subjected certain real property in Transylvania County known as CONNESTEE FALLS (the Community) to certain restrictive covenants by means of an instrument entitled Declaration of Restrictive Covenants Connestees Falls recorded in Deed Book 189 at page 443 in the Transylvania County, North Carolina Register of Deeds; and,

WHEREAS, CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC. (the Association) is the successor to Connestees Falls Maintenance Corporation as shown in that instrument recorded in Deed Book 265 at page 157 and is the association comprised of members who are home owners and lot owners in the Community who are empowered and obligated as set forth in those instruments and documents governing the Community; and,

WHEREAS, certain properties have been added to the Community, and certain amendments have been made to the Declaration of Restrictive Covenants Connestees Falls by means of a number of instruments which have been recorded in the Transylvania County, North Carolina Register of Deeds, said instruments having been referenced in the Second Restatement of Declaration of Restrictive Covenants for Connestees Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds, the Recital of which is hereby incorporated by reference for the purpose of identifying those instruments which added properties and changed the restrictive covenants which govern the Community; and,

WHEREAS, the Second Restatement of Declaration of Restrictive Covenants for Connestees Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds may be amended by the affirmative vote of a majority of the votes entitled to be cast by members present or represented by proxy at a meeting called for that purpose recording an amendment to this Declaration duly executed by (a) the requisite number of such owners required to effect such amendment, or (b) by the Association, in which latter case such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Owners to effect such amendment, certified by the Secretary of the Association; and,

WHEREAS, such an affirmative vote was made by a majority of the votes entitled to be cast by members present or represented by proxy at a duly called meeting for that purpose on August 7, 1999;
NOW, THEREFORE, the Association does hereby revoke and replace all prior declarations of restrictive covenants, and amendments thereto, except to the extent incorporated herein, with this Third Restatement of Declaration of Restrictive Covenants for Connestees Falls.

THIRD RESTATEMENT OF DECLARATION OF RESTRICTIVE COVENANTS
FOR CONNESTEE FALLS

NOW, THEREFORE, the Association reaffirms, restates and declares that all of the Lots and Parcels in Connestees Falls are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitude upon each of said Lots and Parcels in favor of each and all other Lots and Parcels; to create reciprocal rights between

the respective Owners of all such Lots and Parcels; to create privity of contract and estate between the grantees of such Lots, their heirs, successors and assigns; and shall, as to the Owners of each such Lot or Parcel, his heirs, successors or assigns operate as covenants running with the land for the benefit of each and all other such Lots and Parcels in Connestee Falls and their respective Owners, present and future.

ARTICLE I
DEFINITIONS

The terms used in this Declaration are defined as follows:

- A. "Assessments" means those membership fees charged as Base, Special Use, and Improvements assessments.
- B. "Association" means the Connestee Falls Property Owners Association, Inc., a not-for-profit corporation organized under the laws of North Carolina.
- C. "Base Assessment" means the charge established by Article VII, Section A.
- D. "Board" means the Board of Directors of Connestee Falls Property Owners Association, Inc.
- E. "By-Laws" means the By-Laws of the Association.
- F. "Committee" means the Architecture and Environment Committee.
- G. "Common Area" means the real property so described and conveyed to the Association in that deed recorded in Deed Book 211 at page 542, together with those areas designated as common areas in those Supplemental Declarations referenced in the Second Restatement of Declaration of Restrictive Covenants for Connestee Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds; all real property which may be later annexed to Connestee Falls as Common Area; and, all real property acquired by the Association, so designated together with all improvements which may be at anytime constructed thereon, including, but not limited to, recreational and community facilities, lakes, parks, and streets.
- H. "Community" means the community of Connestee Falls, a gated residential development located in Transylvania County, North Carolina as the same may be shown on the maps and plats thereof recorded from time to time and which is governed by the Restated Charter of Connestee Falls Property Owners Association, Inc., the Declaration and the By-Laws.
- I. "Converted Lot" means any Lot or Parcel of real property which has previously been designated as a residential Lot, has been acquired by the Association, and which is converted from a specific lot to common area by designation of the Board. Converted Lots owned by the Association shall be available as common areas for the use and enjoyment of all Owners in Connestee Falls as park lands while owned by the Association. Notwithstanding the designation of a converted Lot as a common area, whether so designated on a Deed or through action of the Board, any converted Lot acquired by the Association shall be available for sale or development in the discretion of the Board, and any such Lots sold in the past or the future shall no longer be considered a common area after conveyance by the Association.
- J. "Declaration" means this Third Restatement of Declaration of Restrictive Covenants for Connestee Falls.

K. "Improved Lot" means any Lot upon which is located, found, placed, or constructed any improvement. As used herein, "Improvement" means all buildings, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, antennae and any other structure of any type or kind.

L. "Improvements Assessment" means the charge established by Article VII, Section A.

M. "Lot" means any numbered Lot designated on the plat, any Lot actually subdivided, platted, or otherwise identified as a Lot in a multiple-family residential area, any apartment or living unit in a multiple family dwelling, or such portion of a multiple family residential area as the Board shall designate.

N. "Multiple Family Dwelling" means a residential dwelling, such as a duplex, apartment house or condominium complex containing two or more individual apartments or living units and constructed on a Lot or Parcel whose use is designated in the Supplemental Declaration as multi-family residential.

O. "Owner" means:

1. Any Person, including any legal entity, who holds fee simple title to any Lot;

2. Any person or legal entity who has contracted to purchase fee simple title to a Lot pursuant to a written agreement, in which case seller under said agreement shall cease to be the Owner while said agreement is in effect.

P. "Plat" means the maps or plats of Connestee Falls as they are from time to time recorded.

Q. "Parcel" means any named, lettered tract shown on the plat.

R. "Restated Charter" means the Restated Charter of Connestee Falls Property Owners Association, Inc. dated August 8, 1988 and any subsequent restatements.

S. "Single Family Attached Dwelling" means a dwelling whereby two single family residences share a common wall so that there will be two single family dwellings per building and which may be constructed on a Lot or Parcel located within the area of Connestee Falls known as Qualla Village as described in that Agreement recorded in Deed Book 404, Page 72 of the Transylvania County, North Carolina registry of deeds.

T. "Single Family Dwelling" means a residential dwelling for one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) adult persons not so related together with his or their domestic servants maintaining a common household in such dwelling, which dwelling is constructed on a Lot designated in the Supplemental Declaration as a single family residential Lot.

U. "Supplemental Declaration" means:

1. The recorded Supplemental Declarations, and Agreements with individual Owners of Parcels of land to change the designation of these certain Parcels of land from a Multiple Family Residential designation to a Single Family Residential designation, referenced in the Recital to this Declaration, or,

2. In the event of real property being annexed to the Community, the recorded Supplemental Declaration which incorporates the provisions of this Declaration therein by reference.

ARTICLE II
LAND USE

Lots and Parcels in the Community shall be designated in the Supplemental Declaration as to their permissible uses and shall thereupon become subject to the restrictions or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provisions are contained herein (e.g., commercial, governmental, school, etc.), the same may be set forth in such Supplemental Declaration.

A. Single Family Residential. Only single family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any Lot designated as single family residential. The following restrictions shall apply specifically to said Lots:

1. Changes in Minimum Square Requirements for Single Family Dwellings Not to Affect Existing Dwellings. Prior to this Declaration minimum square footage requirements for single family residential dwellings in different Units varied depending upon the requirements contained in the various recorded instruments which added different Units to the community. The new square footage requirements contained in this Declaration do not apply to nor affect dwellings currently standing or in the construction process nor are they intended to lower the requirements under any recorded Supplemental Declarations. Similarly, these new square footage requirements will not prevent owners of existing dwellings which are less than these requirements from reconstructing the dwelling if damaged or destroyed, or from expanding the homes, even if the reconstructed or expanded home will be less than the minimum square footage requirements contained herein.

2. Minimum Area. Each dwelling hereafter constructed shall have fully enclosed and heated habitable floor area (exclusive of roofed or unroofed porches, terraces, garages, carports, or other outbuildings) with not less than the number of square feet based on using outside wall dimensions as follows:

Location

All lots in all units unless otherwise herein specified: Single-story Building – 1500, Multi-story building: Main Floor – 1000, Total 1500

Units 40, 41, 42: Single-story building – 1750, Multi-story Building: Main Floor – 1000, Total 1750

Unit 13 & Unit 43: Single-story building – 2000, Multi-story Building: Main Floor – 1200, Total 2000

Except with express approval of the Committee, in determining the square footage within a dwelling, no consideration shall be given to any area which is wholly or substantially below ground level.

3. Setbacks. Each dwelling shall be at least:

- a. 25 feet from the front Lot line; on corner Lots, the property lines along both streets shall be considered front property lines;
- b. 25 feet from the rear Lot line;
- c. 7 1/2 feet from the side Lot lines;
- d. At or above the elevation of the top of the dam on the lake abutting a lakefront Lot;

e. The limitations contained herein shall be applicable to accessory outbuildings but they shall not be applicable to the construction of a pier or dock at or adjacent to the shoreline of lakefront Lots which the Committee has approved;

f. In the event that the Committee shall determine that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the Committee may recommend to the Board of Directors that a variance be given to the Owner of said Lot from the provisions of these setback restrictions.

4. Change of Designation of Use of Lot from Single Family Residential. An affirmative vote of a majority of the Members present in person or in proxy at an annual or special meeting called for such purpose is required before any parcel of land currently designated as Single Family Residential can be changed by the Board to any other designation such as Multiple Family Residential or Single Family Attached Residential.

B. Multiple Family Residential. Only multiple family dwellings and such outbuildings as are usually accessory thereto shall be permitted on any Lot or Parcel designated as multiple family residential. The following restrictions shall apply specifically to such Lots or Parcels:

1. Zoning. Multiple family residential use shall be approved by the appropriate governmental authorities.

2. Minimum Areas. There shall be not more than one dwelling unit for each 3,000 square feet of land area in such Lot or Parcel and the amount of fully enclosed and heated floor area devoted to living purposes in each such unit shall not be less than 900 square feet.

3. Carport or Garage. A carport, garage or parking space shall be constructed for each dwelling unit constructed.

4. Type of Construction. Subject to the approval of the Committee, multiple family dwellings may be of single or multiple story construction, and may be detached or joined by common walls.

5. Setbacks and Lakefront Elevations. Setbacks and lakefront elevations for multiple family dwellings shall be the same as for single family dwelling as set forth in subparagraph II.A.3 above.

C. Single Family Attached Residential. The property within the area of the Community known as Qualla Village as described in the June 6, 1996 Agreement recorded in Deed Book 404, Page 72 of the Transylvania County, North Carolina registry of deeds may be used for the construction of either detached single family dwellings or single family attached dwellings subject to the following restrictions:

1. Minimum Area. Each dwelling constructed shall have fully enclosed and heated floor area (exclusive of roofed or unroofed porches, terraces, garages, carports, or other outbuildings) of not less than the number of square feet established in this Declaration for Single Family Residential Dwellings for the Unit in which the dwelling is situated.

2. Setbacks. Each single family attached building, (i.e. two living units) shall be at least:

a. Each building shall be constructed at least 25 feet from the edge of the street right of way,

b. Each single family residential building shall be constructed at least 15 feet from any other residential building.

c. In the event that the Committee shall determine that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the Committee shall grant a variance to the Owner of said Lot from the provisions of the setback restrictions.

3. Parking. A carport, garage or parking space shall be constructed for each single family attached dwelling unit constructed.

4. Type of Construction. Subject to the approval of the Committee, two single family dwellings may be attached by a common wall.

5. These restrictions for single family attached dwellings modify any conflicting provisions of the Supplemental Declarations for Units 1, 2, and 5, but only as to the Lots within Qualla Village.

D. Common Areas.

1. Use. The use and enjoyment of Common Areas and improvements thereon shall be subject to the powers of the Association as set forth in its Restated Charter and By-Laws and to Rules and Regulations governing the use of such property and improvements as may from time to time be adopted by the Association.

2. Maintenance. Maintenance of common property and repairs to any improvements thereon shall be the obligation and responsibility of the Association.

3. Subsequent Dedication. The Association may, upon the affirmative vote of two-thirds of its members entitled to vote, offer any common areas for dedication to public use. Such offer shall be subject to acceptance by the appropriate governmental authority pursuant to its then applicable standards.

4. Improvements. All improvements must be approved by the Committee as hereinafter provided.

ARTICLE III
RESIDENTIAL RESTRICTIONS

The following shall be applicable to all Lots and Parcels within the Community designated as residential in character, whether single family or multiple family, and each Owner, as to his Lot or Parcel, covenants to observe and perform the same:

A. Accessory Outbuildings. Without the approval of the Committee no accessory outbuildings shall be erected on any Lot or Parcel prior to the erection thereon of a dwelling. In no event shall any such accessory outbuildings, partially completed or temporary structure ever be used for human occupancy or habitation.

B. Completion of Construction. Construction of any improvements, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for ninety (90) days or which have been partially or totally destroyed and not rebuilt within twelve (12) months shall be deemed a violation of the Declaration and of these residential restrictions. If the Committee, in its sole discretion, determines that failure to complete any such improvement is a violation, then the Board, at its sole discretion, may complete, repair, or remove the improvement. Any and all cost incurred by the Association connected with the completion, repair, or removal of such improvement shall be charged to and paid by the owner. All cost shall, furthermore, be considered as an assessment against the Lot and shall be collected in accordance with the provisions of Article VII of the Declaration. The

Committee, at its sole discretion, may grant an extension of time under extenuating circumstances.

C. Prohibition Against Used Structures. No used or modular buildings or structures, or used or modular structural components, which are intended for use as a dwelling, shall be placed on any Lot.

D. Maintenance. All Lots and Parcels, whether occupied or unoccupied, and any improvements placed thereon, shall at all time be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become a part of the annual assessment to which such Lot is subject. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.

E. Disposal of Sanitary Waste. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank or other sewage system approved by the Committee and the appropriate governmental authority.

F. Fences. All property lines shall be kept free and open and no fences, hedges or walls shall be permitted thereon without Committee approval.

G. Golf Course Lots. Owners of Lots adjacent to golf course fairways shall permit the entrance upon their Lots for retrieval of golf balls.

H. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any Lot.

I. Signs. No person shall erect or maintain upon any Lot or Improvement any sign or advertisement. Home identification and builders' signs may be excepted by the Committee.

J. Animals. No animals shall be kept or maintained on any lot except the usual household pets which shall be kept reasonably confined so as not to become a nuisance.

K. Garbage and Refuse Disposal. No owner shall burn trash, garbage or other like household refuse without a permit from the Committee, nor shall any owner accumulate on his Lot junked vehicles, or litter, refuse or garbage, except in receptacles provided for such purposes.

L. Concealment of Fuel Storage Tanks and Trash Receptacles. Fuel storage tanks on any Lot shall be either buried below the surface of the ground or screened to the satisfaction of the Committee. Every receptacle for ashes, rubbish or garbage shall be installed underground or be so placed and kept as not to be visible from any street, lake or Common Area within the Community except at the times when refuse collections are made.

M. Restrictions on Temporary Structures. No travel trailer, mobile home, manufactured home, or tent shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot.

N. Removal of Trees. No tree over three inches in diameter may be cut down on any Lot without the prior written consent of the Committee.

O. Limited Access. There shall be no access to any Lot on the perimeter of the Community except from designated streets or roads within the Community.

P. Docks and Piers. No dock, pier or other similar structure shall extend more than 20 feet into any lake, nor shall any such structure be constructed without express written permission by the Committee, which permission shall constitute a revocable license.

Q. Ditches and Swales. Each owner shall keep drainage ditches and swales located on his Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon his Lot as may be reasonably required for proper drainage.

R. Resubdivision of Lots. No Lot Parcel shall be further subdivided except those designated multiple family residential or those designated single family attached residential and only to the extent required or permitted on any Lot. This provision shall not prohibit the replatting of two or more adjacent lots owned together providing that the number of homesites may not be increased by such replatting.

S. Drilling and Mining. No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.

T. Water Services and Sewage Disposal Services. For water services, Owners of all Lots in the Community shall pay availability fees, connection fees, and fees for water used to Transylvania Utilities Inc., a privately-owned public utility corporation not affiliated with the Association, in accordance with a schedule of fees approved by the North Carolina Utilities Commission. Owners of Lots in the Community served by a sewage disposal system owned by Transylvania Utilities Inc. shall pay fees for the availability of sewage disposal service, connection fees, and sewage disposal in accordance with a schedule of fees approved by the North Carolina Utilities commission. A home not on a Lot provided sewage disposal service by Transylvania Utilities Inc. must utilize a septic disposal system for all household waste. This system shall be installed and maintained on that Lot under permits and pursuant to the public health laws and regulations of the State of North Carolina and of Transylvania County.

ARTICLE IV LAKES AND LAKEFRONT LOTS

A. Ownership of Lakefront Lots. The boundary of any Lot shown on the Plat as being contiguous to a lake shall be the shoreline thereof as said shoreline would be if the water level in said lake were one vertical foot above the normal lake elevation.

B. Limitations of Water Rights. No Owner of a Lot contiguous to a lake or stream shall have the rights with respect to such lake or stream, the land thereunder, the water therein, or its or their elevation, use of conditions, nor shall such Owner have any riparian rights incident or appurtenant thereto. No persons shall acquire title to any land in the Community by accretion, reliction, submergence or changing water levels.

C. Right to Remove Accretions. The Association shall have the right at any time to dredge or otherwise remove any accretion or deposit from the lakefront Lot in order that the shoreline of the lake to which Lot is contiguous may be moved inland toward or to the boundary of said Lot.

D. Responsibility for Damages. The Association shall not be liable for damages caused by erosion, washing or other action of the water of any lake or stream.

E. Right to Change Level of Lake. The Association shall have the right to raise and lower the water level of the lake in the Community; provided however, that such right shall not permit raising the water level over one vertical foot above the normal lake elevation of the lake.

ARTICLE V
THE ARCHITECTURE AND ENVIRONMENT COMMITTEE

A. General Powers. All improvements constructed or placed on any Lot must first have the written approval of the Committee. Such approval shall be granted only after written application has been made to the Committee in the manner and form prescribed by it. The application, to be accompanied by two sets of plans and specifications, shall show the location of all improvements, if any, existing upon said Lot, the location of the improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the Committee may require, including soil, engineering and geologic reports and recommendations.

B. Committee Membership. The Committee shall be composed of members appointed by the Board. Committee members shall be subject to removal by the Board and any vacancies from time to time existing shall be filled by appointment of the Board. Actions by the Committee shall need a majority approval of the members in attendance at meetings where actions are taken. A quorum of three members shall be required.

C. Grounds for Disapproval. The Committee may disapprove any application:

1. If such application does not comply with this Declaration;
2. Because of the reasonable dissatisfaction of the Committee with grading plans, location of the proposed improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, height of foundation, shape, height or style of the proposed improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or
3. If in the judgment of a majority of the Committee reasonably exercised, the proposed improvement will be inharmonious with the Community, or with the improvements erected on other Lots.

D. Rules and Regulations. The Board of Directors shall, from time to time, adopt written rules and regulations of general application governing the Committee's procedures which shall include, among other things, provisions for the form and content of applications; required number of copies of plans and specifications; provisions for notice of approval or disapproval, including a reasonable time period for approval by reason of failure to disapprove; etc.

E. Variances. The Committee may grant reasonable variances or adjustments from the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.

F. Certification of Compliance. At any time prior to completion of construction of an improvement, the Committee may require a certification, upon such form as it shall furnish, from the contractor, Owner, or a licensed surveyor that such improvement does not violate any setback, ordinance or statute, nor encroach upon any easement or right-of-way of record.

G. Administrative Fees. As a means of defraying its expenses, the Committee may institute and require a filing fee to accompany the submission of plans and specifications, to be not more than one-fourth of 1% of the estimated cost of the proposed improvement, subject to a minimum fee of \$25.00. No additional fee shall be required for resubmissions.

H. Liability. Notwithstanding the approval by the Committee of plans and specifications or its inspection of the work in progress, neither it, the Association, nor any person acting on behalf of them shall be responsible in any way for any defects in any plans or specifications or other material submitted

to the Committee, nor for any defects in any work done pursuant thereto. Each person submitting such plans or specifications shall be, and shall agree to be, solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto. The Association shall not be liable for damages caused by erosion, washing, or other action of water.

I. Appeals. Any applicant shall have the right to appeal to the Board from any decision of the Committee within 30 days after entry of such decision.

J. Restriction on Construction of Model Homes. Model or exhibit homes shall be built only with the prior written permission of the Committee.

ARTICLE VI
THE CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC.

A. General. The Association is a North Carolina not-for-profit corporation organized to further and promote the common interests of property Owners in the Community. The Association shall have such powers in the furtherance of its purposes as are set forth in its Restated Charter and By-Laws.

B. Membership. The Association shall have Members, and Associate Members, as defined in the By-Laws.

ARTICLE VII
ASSESSMENTS AND FEES

A. General. The Board shall have the power to levy Base Assessments against all Lots, and Improvements Assessments against all Improved Lots on an annual basis. Provided, however, the total amount assessed against an Improved Lot shall not exceed 225% of the amount charged as the Base Assessment in the same fiscal year. The Board also has the power to levy fees and charges including, but not limited to, a fee for the impact of the construction of new homes upon the Community, for the use of the Community's amenities such as the golf course, tennis courts, swimming pool, and clubhouse facilities, for individual services provided to Members and their guests and for the registration of tenants. Such charges and fees are the personal obligation of the Owner, Member or guest who incurs such charge or fee.

B. Collection and Lien. The amount of the Assessment levied by the Association is a personal obligation of the Owner of the Lot and shall be paid to the Association on or before the date or dates fixed by resolution of the Board. If not so paid, the amount of such Assessment, plus any other charges thereon, including interest at the maximum limit provided by law per annum from date of delinquency and costs of collection, including reasonable attorney fees actually incurred, if any, shall constitute and become a lien on the Lot so assessed when the Board causes to be recorded in the office of the appropriate County Recorder of Deeds, a notice of Assessment which shall state the amount of such Assessment and such other charges and a description of the Lot which has been assessed. Such notice shall be signed by the Secretary of the Association on behalf of the Association. Upon payment of said Assessment and charges, or other satisfaction thereof, the Board shall within a reasonable time, cause to be recorded a further notice stating the satisfaction and the release of said lien.

C. Priority of Lien. Conveyance of any Lot shall not affect any lien for Assessments provided herein. Such lien shall be prior to all other liens recorded subsequent to said notice of assessment.

D. Enforcement. The lien provided for herein may be foreclosed by suit by the Association in like manner as a mortgage and, in such event, the Association may be a bidder at the foreclosure sale. The Association may also pursue any other remedy against any Owner owing money to it which is available to

it by law or equity for the collection of debt and can collect as a personal obligation of the Owner any and all amounts for assessments, and any additional amounts for cost of collection, and reasonable attorney fees actually incurred. The Board may declare that any Lot foreclosed upon be a converted Lot and thus become Common Area.

E. Proof of Payment. Upon request, the Association shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then due.

F. Suspension. The Association shall not be required to transfer membership on its books or to allow the exercise of any rights or privileges of membership on account thereof to any Owner or to any persons claiming under them unless or until all Assessments, fees, and charges to which they are subject have been paid.

G. Annual Assessment. The Annual Assessment shall be used for the maintenance, improvement, care, operation, upkeep, preservation, and protection of the common areas, common properties, and other real, personal, or intangible properties owned by the Association and, furthermore, may be used to advance, protect and secure, through any means authorized by the Board, the interest of the Association, including, but not limited to, insurance, repair, replacement, renovation, improvement, of all common area, common property and other real, personal, or tangible property owned by the Association and all legal expenses, accounting expenses, staff expenses, fees for management and supervision of the Association's affairs, office expenses, and overhead, security, utility charges in connection with the property not separately metered or charged to individual members, and the establishment and maintenance of reasonable reserve funds.

H. Liquor license. The Association holds a State of North Carolina license to buy, store, and sell alcoholic beverages; fees, procedures, and regulations relating thereto shall be determined by the Board.

ARTICLE VIII EASEMENTS

A. Reservations. The following easements over each Lot or Parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to:

1. Utilities. A five-foot-wide strip running along the inside of all Lot lines except those Lot lines coincident with street right-of-way lines in which case such strip shall be 10 feet wide, for the installation, maintenance and operation of utilities, including radio and TV transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation.

2. Shoreline Maintenance. A 15-foot-wide strip running along the inside of all Lot lines coincident with the shoreline of any lake or watercourse in the Community for the purpose of shoreline maintenance.

3. Slope and Drainage. A 20-foot-wide easement running along the inside of all Lot lines coincident with street right-of-way lines for the purpose of cutting, filling, drainage and maintenance of slopes and drainage courses.

4. Flooding Easement. A flowage and flooding easement running along the inside of all Lot lines coincident with the shoreline of any lake equal to the lakefront building setback line for such Lot as herein set forth.

5. Private Streets. An easement on, over, and under all streets in the Community for the purpose of installing, maintaining and operating utilities thereon or thereunder; for purposes of drainage control; for access to any Lot or Parcel; and for purposes of maintenance of said streets.
6. Other Easements. Any other easements shown on the Plat.
- B. Maintenance of Easement Areas. Maintenance of all easement areas of any Lot shall be the responsibility of the Lot Owner with the exception of those areas for which a public authority or utility company is responsible. Improvements made in easement areas, in the form of plantings or otherwise, shall be allowed if they do not damage or interfere with the use of said easements herein set forth, including the necessity of frequent access by maintenance and utility vehicles relative to the shoreline Lots.
- C. Liability for Use of Easements. No Owner shall have any claim or cause of action against the Association or its licensees arising out of the exercise or nonexercise of any easement reserved hereunder or shown on the Plat except in cases of willful or wanton misconduct.

ARTICLE IX ANNEXATION

- A. Property To Be Annexed. The Association may, from time to time, with the approval of a majority of eligible members voting in person or by proxy, annex to the Community any other real property owned by the Association which is contiguous or adjacent to or in the immediate vicinity of the Community.
- B. Manner of Annexation. The Association shall effect such annexation by recording a Plat of the real property to be annexed and by recording a Supplemental Declaration which shall:
1. Describe the real property being annexed and designate the permissible uses thereof;
 2. Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of Common Areas; and
 3. Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration. Upon the recording of such Plat and Supplemental Declaration, the annexed area shall become a part of the Community, as fully, as if such area were part of the Community on the date of recording of this Declaration.

ARTICLE X REMEDIES

- A. Enforcement. Each person to whose benefit this Declaration inures, including the Association, may proceed at law or in equity to prevent the occurrence, continuation or violation of any provisions of this Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney fees.
- B. Suspension of Privileges. The Board may suspend all voting rights, if any, and all rights to use the Association's Common Areas, of any Owner for any period during which any Association assessment against such Owner remains unpaid, or during the period of any continuing violation of the provisions of this Declaration by such Owner after the existence thereof has been declared by the Board. The right of ingress and egress of an Owner to his/her Lot shall not be affected by any suspension of privileges.

C. Penalties. The Board, through the Judicial Committee, may impose penalties for violations of the provisions of the Declaration, By-Laws and published Rules and Regulations. Those penalties may include, but are not limited to, suspension of rights to use the Association's Common Areas, and reasonable fines. The Judicial Committee shall act pursuant to the procedure set out in the published Rules and Regulations which shall accord the member fair notice and a hearing before the Judicial Committee. The member shall have the right to present evidence to the Judicial Committee and to be represented by counsel. Hearings shall be open to the public. Notice shall be given by written communication identifying the violation charged and given to the member sufficiently in advance of the hearing to allow preparation of a defense. After hearing testimony and receiving evidence, the Judicial Committee shall make its decision based on the Declaration, By-Laws and published Rules and Regulations, and shall issue a written decision. Any penalty imposed shall constitute an assessment and lien on the property and shall be a personal obligation of the Owner. Owners subject to penalty under this section shall have the right to appeal to the Board. In addition to the remedies herein set out, the Judicial Committee shall have the power to order the removal or abatement of any structure, thing, or condition which is in violation of the Declaration, By-Laws or Rules and Regulations. The Association shall have the power to enter upon any property and remove therefrom the offending structure or condition, upon appropriate notice to the Owner of the property. All costs incurred in the removal or abatement of a violation shall be assessed against the violating Owner and may be collected as an assessment. "Costs" includes reasonable attorneys fees and interest, if applicable, at the maximum rate allowed by law.

D. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

ARTICLE XI GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any Lot or Parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, right, powers, privileges and immunities of the Association. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with the Association and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

ARTICLE XII SUSPENSION OF RESTRICTIONS

The provisions with respect to improvements, use and occupancy set forth herein shall be suspended as to any Lot, Parcel or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such Lot, Parcel or area for said purposes. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such Owner shall have no rights as a member of the Association, nor shall it be liable for any Association assessments.

ARTICLE XIII
SEVERABILITY

Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

ARTICLE XIV
CAPTIONS

Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

ARTICLE XV
PROHIBITION OF TIME-SHARES

A. General Intent and Purpose. The purpose of this Article is to prohibit the use of any Lot, Common Area, Improvement, Parcel, single-family dwelling, multiple-family dwelling, or any other property or land within the Connestee Falls Community, for Time-Share Programs, taking into account the impact of the development of such a program on the existing development within the Connestee Falls Community that is not subject to any Time-Share Programs at Connestee Falls. In addition, the further intent of this Article is to preserve the character of Connestee Falls as a residential community of low intensity use with minimum disturbance from move-in and move-out of Owners or occupants and use by Owners.

B. Definitions. For the purposes of this Article, the following words shall have the meanings ascribed herein:

1. "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, single-family dwelling, living unit, or any other private or commercial structure designed for occupancy by one or more individuals.

2. "Offer to Sell", "Offered for Sale", "Offer", or "Offering" means any offer to sell, solicitation, inducement, taking of reservations, advertisement, whether by radio, television, newspaper, magazine or by mail, or any other method of solicitation of Purchasers whereby a person is given an opportunity to acquire a Time-Share Interval or participate in a Time-Share Program.

3. "Person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof.

4. "Purchaser" means any person who is buying, who has bought, or who acquires an interest in a Time-Share Interval or Time-Share Program.

5. "Time-Share Estate" means an ownership or leasehold estate subject to a Time-Share Program, including tenants-in-common, interval ownership, time-span ownership, or any other type of ownership or leasehold Time-Share Program.

6. "Time-Share Interval" means a Time-Share Estate or Time-Share Use.

7. "Time-Share Program" means any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy-in-common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Time-Share Interval is created and whereby the use, occupancy or

possession of an Accommodation, Lot, Improvement, Multiple-Family Dwelling, Single-Family Dwelling, Parcel, Common Area or any other land or property within the Community, has been or becomes subject to a Time-Share Interval whereby such use, occupancy or possession circulates among purchasers of the Time-Share Interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

8. "Time-Share Use" means any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a "Time-Share Estate", including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

C. Prohibition of Time-Share Program. Time-Share Programs are expressly prohibited in any respect within the Community of Connestee Falls.

D. Miscellaneous. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a Single-Family Dwelling nor Multiple-Family Dwelling, but instead shall be considered solely in accordance with the terms of this Article.

E. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a "residential use" under the terms of this Declaration, but instead shall be solely considered in accordance with the terms of this Article.

F. No participant, Owner, user, occupant, tenant or other person involved in a Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be considered an "Owner", as defined in this Declaration, but instead shall solely be considered in accordance with the terms of this Article.

G. Despite anything to the contrary, notwithstanding under the terms of the Declaration, no person shall have any right whatsoever to annex to the Community any real property used or to be used as Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use.

H. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word in this Article, or any part hereof is for any reason held by any court of competent jurisdiction to be unconstitutional, invalid, ineffective or otherwise unenforceable, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Association and its membership, by adoption hereof does hereby declare that it has enacted each section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this Article irrespective of the enactment of any other and irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or words be declared unconstitutional, invalid, ineffective or otherwise unenforceable.

ARTICLE XVI TERM

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Community until January 1, 2005, after which time the same shall be extended for successive periods of 10 years each, unless voted to the contrary by 90% of the votes entitled to be cast by Members present or represented by proxy at a meeting called for the purpose.

ARTICLE XVII
AMENDMENT

This Declaration may be amended by the affirmative vote of a majority of the votes entitled to be cast by Members present or represented by proxy at a meeting called for that purpose recording an amendment to this Declaration duly executed by (a) the requisite number of such Owners required to effect such amendment, or (b) by the Association, in which latter case such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Owners to effect such amendment, certified by the Secretary of the Association.

IN WITNESS THEREOF the undersigned Board of Directors of the Connestee Falls Property Owners Association, hereby adopts and approves the aforesaid amended Declaration of the Connestee Falls Property Owners Association which were duly adopted and approved by the members of the Association by a majority of votes entitled to be cast at a meeting duly called for the purpose of amending the Declaration of Connestee Falls Property Owners Association, Inc.

CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC. (SEAL)
By its Board of Directors:

Richard C. Larson, President
STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named Richard C. Larson, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

Frederick L. Durand, Vice-President
STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named Frederick L. Durand, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

Joel C. Munch, Secretary
STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named Joel C. Munch, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

John F. Walter, Treasurer
STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named John F. Walter, to me known and known to me to be the person described in and who executed the foregoing instrument

and he acknowledged that he executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

Ruth C. Bailey - Director

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named Ruth C. Bailey, to me known and known to me to be the person described in and who executed the foregoing instrument and she acknowledged that she executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

David E. Bloom - Director

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named David E. Bloom, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

Jerome M. Stumbras - Director

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

On this 7th day of August, 1999, personally appeared before me, the said named Jerome M. Stumbras, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same, as a member of the Board of Directors of Connestee Falls Property Owners Association, Inc., and being duly sworn by me, made oath that the statements in the foregoing instruments are true.

Notary Public

My Commission Expires _____

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA

The foregoing certificate _____ of _____
Notar(y)(ies) Public is/are certified to be correct. This instrument was presented for registration and recorded in this office in Book _____, Page _____.

AUGUST 1999

DECLARATIONS

D-19

This _____ day of _____, _____, at _____ o'clock _____ M.

Register of Deeds

By: _____