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Prepared by / Return to:  
Box 11, Carter & Kropelnicki, PA

DECLARATION OF COVENANTS  
MOUNT CARMEL VILLAGE

This DECLARATION OF COVENANTS (the "Declaration") is made by Mount Carmel Village, LLC, hereafter referred to as "Declarant"

STATEMENT OF PURPOSE

Declarant is the owner of the real Property described as follows:

BEING all of Lots 1 through 48 shown on that certain plat of MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 96 at Page 180 in the Buncombe County Registry, together with the Common Area and Common Elements as described herein;

which Property is more particularly described in Section 1 of Article III hereof, and describes an exclusive residential community of single-family dwellings named Mount Carmel Village.

Declarant desires to ensure the attractiveness of the subdivision and to prevent any future impairment thereof; to prevent nuisances; to preserve, protect and enhance the values and the maintenance and upkeep of the lawns of all Lots, as hereinafter defined, the streets and parking areas, the storm drainage system, and all the Common Area, as hereinafter defined; and to this end, desires to subject the real Property described in Article III, Section 1, hereof to the Covenants, conditions, restrictions, easements, assessments, charges, liens, and other obligations hereinafter set forth, each and all of which are for the benefit of said Property and each Owner thereof.

The Declarant has deemed it desirable to provide for the maintenance and upkeep of the lawns as aforesaid, the streets and parking areas, the storm drainage system, and Common Area, and to delegate to Mount Carmel Village Homeowners Association, Inc. the right exercise said powers of owning, maintaining and administering the said areas and administering and enforcing the Covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Mount Carmel Village Homeowners Association, Inc. is incorporated under North Carolina law as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

Declarant, by this Declaration, does hereby declare that all the Property described in Article III, Section 1, hereof, shall be held, transferred, sold, conveyed, and occupied subject to the Covenants, conditions, restrictions, easements, assessments, charges, and liens set forth in this Declaration which shall run with the real Property and be binding on all parties owning any right, title, or interest in said real Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

#### ARTICLE I DEFINITIONS

Section 1.1. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Lot.

Section 1.2. "Architectural Control Committee" shall be as defined in Article X, Section 10.1.

Section 1.3. "Association" or "Homeowners' Association" shall mean and refer to Mount Carmel Village Homeowners Association, inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 1.4. "Board of Directors" means the body, regardless of name, designated in the Declaration to act on behalf of the Association. In this document, Board of Directors shall mean and refer to the Board of Directors of Mount Carmel Village Homeowners' Association.

Section 1.5. "Bylaws" shall mean that document adopted by Mount Carmel Village Homeowners Association, Inc., for the governance of its Members and regulation of its affairs.

Section 1.6. "Chapter" shall mean any subsection of North Carolina General Statutes.

Section 1.7. "Common Area and Common Elements" shall mean all real Property (including any improvements thereto) owned or leased by the Association for the common use and enjoyment of the Owners, which are described upon Exhibit "A" attached hereto.

Section 1.8. "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

Section 1.9. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as permitted by NCGS 47F, the Declaration or otherwise by law.

Section 1.10. "Covenants" shall mean the Articles in this Declaration of Covenants.

Section 1.11. "Declarant" shall mean and refer to Mount Carmel Village, LLC, and its successors or assigns.

Section 1.12. "Declaration" shall mean this Declaration of Covenants and any amendments to these Covenants.

Section 1.13. "Easement" shall mean a right of use over the property of another. A right in the owner of one parcel of land, by reason of such

ownership, to use the land of another for a special purpose not inconsistent with a general property in the owner.

Section 1.14. "Lot" shall mean and refer to any numbered Lot of land, designated for separate ownership or occupancy by a Lot Owner, with delineated boundary lines, appearing on any recorded Survey of the Property with the exception of the Common Area.

Section 1.15. "Lot Owner" means a Declarant or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

Section 1.16. "Member" shall mean and refer to every Person or entity who holds membership in the Association.

Section 1.17. "Owner" shall mean and refer to the record Owner, whether one or more Persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 1.18. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

Section 1.19. "Property" shall mean and refer to the Property described in Article III, Section 1, hereof, (the "Property").

Section 1.20. "Real Estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance.

Section 1.21. "Reasonable Attorneys' Fees" means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

Section 1.22. "Resident" shall mean any Person who resides in Mount Carmel Village Subdivision.

Section 1.23. "Right of Way" shall mean the right belonging to a party to pass over land belonging to another.

Section 1.24. "Survey" shall mean and refer to that certain Survey of the Property referenced in Section 1 of Article III hereof as well as to any Survey of additional properties brought within the scheme of this Declaration and the jurisdiction of the Association under the provisions of this Declaration.

## ARTICLE II GENERAL PROVISIONS

Section 2.1. Enforcement. The Declarant, the Association, or any Owner(s) owning any interest in a Lot shall have the right to enforce by any proceedings at law or equity all conditions, Covenants, restrictions, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by such party to enforce any such Covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Property to facilitate the enforcement of the laws, codes and

ordinances of any governmental authority.

Section 2.2. Effective Period. The Covenants, conditions, and restrictions of this Declaration shall run with the land and bind the Association and the Owners of Lots for the period commencing on the date hereof and ending on December 31, 2050, after which time such Covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years until amended or terminated as herein provided. The reserved easements shall run permanently with each Lot.

Section 2.3. Amendment. This Declaration may be altered, amended, modified or changed by the Declarant until December 31, 2006 but at any time this Declaration may be altered, amended, modified or changed by affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Any amendment must be recorded in the Buncombe County Public Registry and is effective only upon recordation. An amendment shall be indexed in the grantee index in the name of Mount Carmel Village and the Association and in the grantor index in the name of each Person executing the amendment. Mount Carmel Village Homeowner's Association may only be terminated by the procedures outlined in NCGS 47F-2-118.

Section 2.4. Enforcement of Expenses as a Lien Upon the Property. All costs incurred by the Association, or the Architectural Control Committee, in the enforcement of the terms and conditions hereof, including court costs, costs of correcting deficiencies by any Owner of a Lot or Lots, and Reasonable Attorney's Fees in the enforcement hereof, shall be a personal liability of the Owner or Owners of such Lots or Lots subject to the enforcement or correction hereunder, and furthermore such costs and fees shall be a lien upon the Lot of the Owner, and each Owner agrees to accept such personal liability and the lien enforcement rights of the Association and Architectural Control Committee by acceptance of a deed to any Lot or Lots in the subdivision.

Section 2.5. Challenges to Amendments. No action to challenge the validity of an amendment adopted pursuant to this section may be brought more than one year after the amendment is recorded.

Section 2.6. Recordation. Amendments to the Declaration required by this Chapter are to be recorded by Declarant or the Association.

ARTICLE III  
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION  
OF MOUNT CARMEL VILLAGE HOMEOWNERS ASSOCIATION, INC.

Section 3.1. Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Buncombe County, North Carolina, and is more particularly described as follows:

BEING all of Lots 1 through 48 shown on that certain plat of MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 96 at Page 180 in the Buncombe County Registry, together with the Common Areas and Common Elements as described herein.

Section 3.2. Additions to Property. The Declarant reserves the right but shall have no obligation to bring additional properties within the scheme of this Declaration and the jurisdiction of the Association which Declarant shall do by the filing of record in the Buncombe County Public Registry an amended Declaration and a Survey showing the additional properties subjected thereto with no necessity of approval by any of the Members or Owners. Otherwise, no additional properties may be brought within the scheme of this

Declaration and the jurisdiction of the Association without the consent of two thirds (2/3) of the Members eligible to vote.

Section 3.3. Adjacent Properties. Declarant reserves the perpetual easement for ingress, egress and regress and for the construction and maintenance of all utility services to and from any and all adjacent properties owned by Declarant, now and in the future, and the public road, for any and every use permitted by law, whether residential, commercial or otherwise, over all road rights of way within the Property and any additions to the Property. If such a use is made, the owner of the dominant tenement shall make reasonable contribution to the cost of maintenance of the roads used on an annual basis, but there shall be no charge for the use which is and shall be a matter of right.

#### ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 4.1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 4.2. Member. Every Person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by Covenants or record to assessments by the Association. Persons or entities who hold an interest merely as security for the performance of an obligation shall not be Members. Ownership of such Lot shall be the sole qualification for membership.

Section 4.3. Voting Rights. A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one Person owns an interest (other than a leasehold or a security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than (1) vote be cast with respect to any one (1) Lot.

#### ARTICLE V PROPERTY RIGHTS

Section 5.1. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on any Lot as their principal residence in Buncombe County, North Carolina, and to their families, tenants, contract purchasers, and guests, as provided in Section 2 of this Article V; provided, however, that Declarant shall not be obligated to provide or construct any such recreational facilities;

(b) The right of the Association to suspend the voting rights and rights to the use of any recreational facilities of any 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;

(c) The right of the Association, subject to the provisions of Article XIV, Section 2, hereof, to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or

transfer shall be effective, unless two-thirds (2/3) of the Members eligible to vote, approve it.

(d) The right of the Board of Directors to grant easements and rights-of-way to public authorities or others for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, storm drainage, telephone service and other utilities and drainage facilities, and for such other purposes and subject to such conditions as may be agreed to by such Board, upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Property or are for the convenient use and enjoyment of the Property;

(e) The right of the Association to impose rules and regulations for the use and enjoyment of the Common Area and any improvements thereon, which regulations may further restrict the use of the Common Area;

(f) The right of the Association, in accordance with its Articles of Incorporation and its Bylaws and the provisions of Article XIV hereof, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal Property as security for money borrowed or debts incurred.

Section 5.2. Delegation of Use. Any Owner may, in accordance with the Bylaws of the Association, delegate his right of enjoyment to the Common Area and facilities thereon to the members of his family, tenants or contract purchasers who reside on the Property or to his guests.

Section 5.3. Reserved Easements. The Declarant hereby reserves for itself, its successors and assigns, permanent easements in and the right at any time in the future to grant: (a) such easements and rights-of-way as are shown on the aforementioned Survey and all other easements and rights-of-way of record, (b) a permanent ten (10) foot right-of-way along the front and rear lines of each Lot or assembly of contiguous Lots, and (c) a permanent ten (10) foot right-of-way along the side lines of each Lot or assembly of contiguous Lots (except under zero lot lines). The uses and purposes for which these easements are reserved in this Section shall include, without limitation, the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, storm drainage, telephone service and other utilities and all walls, columns, lamps and entrance ways appurtenant to the subdivision. Within such areas no structures or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company or the Association is responsible.

Section 5.4. Building Setbacks. Such front, rear and side building setbacks shall be observed as are shown upon the plat or plats of the subdivision duly recorded in the office of the Register of Deeds for Buncombe County. No building shall be placed inside those setbacks.

Section 5.5. Tort and contract liability

(a) No Lot Owner except the Declarant is liable for Declarant's torts in connection with any part of Mount Carmel Village which Declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the Association shall be brought

against the Association and not against a Lot Owner.

(c) A Lot Owner is not precluded from bringing an action contemplated by this section because the Person is a Lot Owner or a Member of the Association. NCGS 47F 3-111.

#### ARTICLE VI POWERS OF OWNER'S ASSOCIATION

Subject to the provisions of the Articles of Incorporation or the Declaration and the Declarant's rights therein, the Association may: (NCGS 47F 3-102)

Section 6.1. Adopt and amend Bylaws and rules and regulations;

Section 6.2. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for Common Expenses from Lot Owners;

Section 6.3. Hire and discharge managing agents and other employees, agents, and independent contractors;

Section 6.4. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting Mount Carmel Village;

Section 6.5. Make contracts and incur liabilities;

Section 6.6. Regulate the use, maintenance, repair, replacement, and modification of Common Elements;

Section 6.7. Cause additional improvements to be made as a part of the Common Elements;

Section 6.8. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal Property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to NCGS 47F-3-112;

Section 6.9. Grant easements, leases, licenses, and concessions through or over the Common Elements;

Section 6.10. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Elements other than the limited Common Elements and for services provided to Lot Owners;

Section 6.11. Impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer;

Section 6.12. After notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association;

Section 6.13. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;

Section 6.14. Provide for the indemnification of and maintain liability insurance for its officers, Board of Directors, employees, and agents;

Section 6.15. Assign its right to future income, including the right to receive common expense assessments;

Section 6.16. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and

Section 6.17. Exercise any other powers necessary and proper for the governance and operation of the Association.

#### ARTICLE VII MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS

Section 7.1. Except as provided in the Bylaws, in Section 7.2 of this Article, or in other provisions of NCGS 47F, the Board of Directors may act in all instances on behalf of the Association. In the performance of their duties, officers and Members of the Board of Directors shall discharge their duties in good faith. Officers shall act according to the standards for officers of a nonprofit corporation set forth in NCGS 55A-8-42, and Directors shall act according to the standards for Directors of a nonprofit corporation set forth in NCGS 55A-8-30.

Section 7.2. The Board of Directors may not act unilaterally on behalf of the Association to amend the Declaration (GS 47F-2-117), to terminate Mount Carmel Village as a planned community (GS 47F-2-118), or to elect Members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of its Members (GS 47F-3-103(f)), but the Board of Directors may unilaterally fill vacancies in its membership for the unexpired portion of any term. Notwithstanding any other provisions of this Declaration or Bylaws to the contrary, the Lot Owners, by a majority vote of all Persons present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Board of Directors with or without cause.

Section 7.3. Within 30 days after adoption by the Board of Directors of any proposed annual budget for the Association, the Board of Directors shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the Lot Owners in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board of Directors.

Section 7.4. The Association shall indemnify and hold harmless each director, officer and agent of the Association (hereinafter "Officer") to the fullest extent from time to time permitted by law in the event the Officer is made, or threatened to be made, a party to any pending, threatened, or completed civil, criminal, administrative, investigative, or arbitrative action, suit, or proceeding and any appeal therein (and any inquiry or investigation that could lead to such action, suit, or proceeding) by reason of the fact that he is or was an Officer or serves or served, at the request of the Association, as an Officer. The Officer's rights hereunder shall, to the fullest extent from time to time permitted by law, cover all liabilities and expenses, including without limitation all attorney's fees and expenses, judgments, fines, excise taxes, and amounts paid in settlement, and all expenses incurred by the Officer in enforcing his rights hereunder. To the



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fullest extent from time to time permitted by law, the Association shall pay the Officer's expenses, including attorney's fees and expenses, incurred in defending any such action, suit, or proceeding in advance of the final disposition of such action, suit, or proceeding. The foregoing rights of the Officer hereunder shall inure to the benefit of the Officer, whether or not he is an Officer at the time such liabilities or expenses are imposed or incurred, and whether or not the claim asserted against him is based on matters that antedate his service, and in the event of his death shall extend to his legal representative. The rights of the Officer hereunder will be in addition to and not exclusive of any other rights to which he may be entitled under any statute, agreement, insurance policy, or otherwise.

ARTICLE VIII  
MEETINGS, PROXIES, VOTING AND QUORUMS

Section 8.1. Meetings. Beginning no later than 2009, a meeting of the Association shall be held at least once each year for the election of Directors and ratification of the budget. Special meetings of the Association may be called by the President, a majority of the Board of Directors, or by Lot Owners having ten percent (10%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than 10, nor more than 60 days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a Director or officer. NCGS 47F-3-108

Section 8.2. Quorums. Unless the Bylaws provide otherwise, a quorum is present throughout any meeting of the Association if Persons entitled to cast ten percent (10%) of the votes which may be cast for election of the Board of Directors are present in person or by proxy at the beginning of the meeting. Unless the Bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the Board of Directors if Persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. NCGS 47F-3-109

Section 8.3. Voting. If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners is present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners, unless the Declaration or Bylaws expressly provide otherwise. Majority agreement is conclusively presumed if any one of the multiple Owners casts the votes allocated to that Lot without protest being made promptly to the Person presiding over the meeting by any of the other Owners of the Lot. NCGS 47F-3-108

Section 8.4. Proxies. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one Person, each Owner of the Lot may vote or register protest to the casting of votes by

the other Owners of the Lot through a duly executed proxy. A Lot Owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the Person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates 11 months after its date, unless it specifies a shorter term. No votes allocated to a Lot owned by the Association may be cast. NCGS 47F-3-110

ARTICLE IX  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 9.1. Creation of the Lien and Personal Obligation of Assessments. Declarant covenants and agrees, and each subsequent Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association as to each Lot, from and after the date that there is a residence ready for occupancy upon said Lot, and then regularly and without interruption for any reason thereafter: (1) regular assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected according to the Bylaws of Mount Carmel Village Homeowner's Association. Any such assessment or charge, together with interest, costs, and Reasonable Attorney's Fees shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment or charge 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 the Owner of such Property at the time when the assessment of charge fell due. Sale or transfer of any Lot shall not affect the assessment lien. The personal obligation for delinquent assessments or charges shall not pass to his successors in title, unless expressly assumed by them, other than as a lien on the Lot.

Section 9.2. Purpose of Assessments.

(a). The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Residents of the Property and in particular for the acquisition, improvement and maintenance of properties, utilities, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, the payment of charges incurred for water and sewer service provided by the utility provider, and the maintenance of the private streets, mail boxes, walls, columns, lamps and entrance ways appurtenant to or located within, or being a part of, the subdivision, the storm drainage system within the subdivision, together with lawn and landscaping maintenance of the Common Area which shall include mowing as required and annual seeding and fertilizing, and may include the planting and replacement of shrubbery, flowers, trees and the like as determined by the Association; also mowing of Owners' yards which shall be the Association's duty exclusively. More specifically, such assessments shall be used for purposes including, but not limited to, the following: the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with this Declaration and the Bylaws of the Association, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

(b) All monies collected by the Association shall be treated as the separate Property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other

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assets of the Association, and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot, by whatever means, and the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association.

Section 9.3. Annual Assessment. To and including December 31, 2005, the basic annual assessment shall be \$70.00 per month per Lot. After December 31, 2005, the exact amount of the basic annual assessment shall be determined from time to time as provided below.

(a) From and after December 31, 2005, the basic annual assessment may be changed by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by a percentage which may not exceed the greater of five percent (5%) per year or the percentage change reflected in the United States City average, Consumer Price Index-United States and selected areas for urban wage earners and clerical workers, all items most recent index and percent changes from selected dates (Published by the US Bureau of Labor Statistics, Washington, D.C.) or such index as may replace the Consumer Price Index, for the twelve (12) month period ending the immediately preceding July 1. Notification shall be made to Owners of any change in the assessment by December 1 of the year preceding the year the new assessment shall be effective.

(b) After December 31, 2005, the basic annual assessment may be changed by an affirmative vote of sixty-seven (67%) of the Members with voting rights attending, or represented by Proxy entitled to vote at a Meeting called for such a purpose. The basic annual assessment shall thereafter be adjusted pursuant to subparagraph (a) of this section.

(c) Provided however that as soon as a pool is completed, the basic annual assessment shall immediately increase by \$15.00 per month.

Section 9.4. Special Assessments for Capital Improvements. In addition to the basic 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 any new construction, reconstruction of described capital improvements or unexpected repair or replacement of described capital improvements upon the Common Area, including the necessary fixtures and personal Property related thereto; provided that any such assessments shall be adopted by at least twenty affirmative votes of the Members voting either in Person or by proxy at a meeting duly called for this purpose.

Section 9.5. Uniform Rate of Assessment. Except as permitted under NCGS 47F-3-155 (c), (d) and (e), both annual and special assessments relating to the Common Areas must be fixed at a uniform rate for all Lots, and may be collected on either a monthly, quarterly or annual basis, as the Board of Directors shall prescribe. Per NCGS 47F-3-155(c)(2), common expenses shall be deemed to benefit only those Lots upon which a residence is completed and ready for occupancy and only those Lots may be assessed.

Section 9.6. Date of Commencement and Proration of Annual Assessments Due Date. The annual assessments shall be fixed on a calendar year basis and shall be due and payable in advance beginning January 1, 2005. The annual assessment shall be paid annually or in monthly installments as prescribed by the Board of Directors, subject to a late fee if not received by the fifteenth

(15<sup>th</sup>) day after it is due. New Owners shall make payment of the annual assessment on a prorated basis with the prorated amount of the first monthly installment thereof due on the first day of the month following the date of closing and subject to the same late fee if not received by the fifteenth (15<sup>th</sup>) day after it is due. The late fee shall be in the amount of Twenty Five (\$25.00) Dollars, or a higher amount as established by the Board of Directors if permitted by law, or the highest amount permitted by law if less than Twenty Five (\$25.00) Dollars. The due date of any special assessment under Section 3 hereof shall be fixed in the resolution authorizing such assessment. The Board of Directors shall cause written notice of every special assessment to be sent to the Owners at least thirty (30) days prior to the due date thereof. If payment is not received by fifteen (15) days after the due date, a late fee shall be assessed against Owner or Owners who have not paid. The Board of Directors shall, upon demand at any time, cause to be furnished to any Person legitimately interested, a statement in writing signed by the President, the Treasurer or other appropriate officer of the Association, setting forth the amount of unpaid assessments with respect to any Lot or stating that all assessments with respect to such Lot have been paid.

Section 9.7. Notice and Quorum For Any Action Authorized Under Sections 9.3 and 9.4. Written notice of such meeting called for the purpose of taking any action authorized under Section 9.3 or 9.4 hereof shall be sent to all Members not less than ten (10) nor more than sixty (60) days in advance of the meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand delivered or sent prepaid by US mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner. The notice of such meeting shall state the time and place of the meeting. (GS 47F-3-108) Notwithstanding any provisions to the contrary, a quorum is present throughout such meetings of the Association if Persons entitled to cast fifty-one percent (51%) of the votes which may be cast for election are present either in Person or by proxy at the beginning of the meeting. NCGS 47F-3-109 (a) In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in Person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. NCGS 47F -109 (c)

Section 9.8. Effect Of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall pay such late charges as established in the Bylaws. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the Property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust. Late payment fees, court costs and Reasonable Attorney's Fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area nor will abandonment of his Lot by fire or other casualty result in abatement or diminution of the assessments provided for herein.

#### Section 9.9. Assessment Liens

(a) Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the Lot is located in the manner provided herein. The Association may foreclose the claim of lien in like manner as a mortgage on Real Estate under

power of sale under Article 2A of Chapter 45 of the General Statutes. Fees, charges, late charges, fines, interest, and other charges imposed pursuant to NCGS 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are enforceable as assessments under this section.

(b) The lien under this section is prior to all liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the office of the clerk of superior court, and (ii) liens for Real Estate taxes and other governmental assessments and charges against the Lot. This subsection does not affect the priority of mechanics' or material men's liens.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the office of the clerk of superior court.

(d) This section does not prohibit other actions to recover the sums for which subsection (a) of this section creates a lien or prohibit an Association taking a deed in lieu of foreclosure.

(e) A judgment, decree, or order in any action brought under this section shall include costs and Reasonable Attorneys' Fees for the prevailing party.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns, shall not be liable for the assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Lot Owners including such purchaser, its heirs, successors, and assigns.

(g) A claim of lien shall set forth the name and address of the Association, the name of the record Owner of the Lot at the time the claim of lien is filed, a description of the Lot, and the amount of the lien claimed.

Section 9.10. Exempt Property. The assessments, charges and liens created under this Article IX shall not apply to the Common Area, nor shall they apply to any Lot which Declarant may hereafter designate for common use as part of the Common Area, and all land which shall be dedicated to and accepted by a local public authority, and all land granted to or used by a utility company.

## ARTICLE X ARCHITECTURAL CONTROL

Section 10.1. Architectural Control Committee. Until such time as Declarant shall have completed the development of all phases of Mount Carmel Village, the Declarant, and after that time, the Board of Directors, in its entirety, shall constitute a committee for architectural control (the "Architectural Control Committee"), which shall have the right of architectural control as described in this Article X.

Section 10.2. Purpose. The Committee shall regulate the external design, appearance, use, location and maintenance of the Property and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. Colors, materials and design features will not be approved which will tend to make an individual house call attention to itself in the overall

design of the subdivision.

Section 10.3. Extent of Control. No building, fence, wall, sidewalk, obstruction, driveway or other structure shall be commenced, erected or maintained upon the Property nor shall any exterior addition, change, repair or alteration therein (including change of color) be made without the prior written consent of the Committee. The matters over which the Committee shall have control shall include but not be limited to, the size and plan of the principal residential structure on the Lot, the location and orientation of the principal residential structure on the Lot, the size, plan and orientation of any attached garage, the location and manner of construction of any driveway, sidewalk, patio, mailbox or other exterior improvements, and the composition and color of all material used on the exterior of any structure. No party shall grade, excavate upon or otherwise alter the topography of any Lot without obtaining the prior written consent of the Committee. The Committee reserves the right to control absolutely and solely to decide the precise site location and orientation of any house or dwelling or other structure upon all Lots; provided, however, that such locations shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site and orientation. No sheds, utility sheds or outbuildings shall be permitted.

Section 10.4. Owner Responsibilities. Each Owner shall be responsible (and also responsible for the actions or inactions of the builder or contractor retained by Owner) for any damages to street, utility and drainage improvements, including but not limited to, catch basin covers, curbing, water mains, sewer lines, drainage pipes and head walls, trees along rights of way, paving street markers, gas mains, power and telephone lines resulting from work done by himself, his subcontractors, or his suppliers. Owner shall further comply with all applicable statutes, ordinances, rules, regulations and other laws relating to erosion and siltation control and will be required to take preventive measures necessary to control runoff from said Lots to adjacent Lots or street improvements. Owner shall confine any and all construction and construction materials and debris solely to the parameters of Owner's Lot. Clearing debris, including without limitation stumps, trees, branches and construction materials are to be removed as often as necessary in order to keep the residential structure and Lot in accessible and salable condition. No such debris shall be dumped on any adjacent Lot or any other area within the subdivision, and the Owner shall maintain the Lot and residential structure in a neat and attractive manner at all times. Owner shall not, at any time, store or maintain (even on a temporary basis) upon the streets and rights of way within the subdivision, any debris or building materials without the approval of the Committee. The Committee reserves the right to require each Owner of a Lot upon which construction activity is then occurring, in conjunction with the Owners of other such Lots within the subdivision, to contribute, from time to time, an equal share of the costs of cleaning mud and debris from the streets within the subdivision caused by the construction activities occurring on such Lots.

Section 10.5. Procedure. Any Person, firm or entity requiring approval of any proposed improvements, alterations or changes shall submit to the Committee plans and specifications showing in such detail and manner as the Committee shall require the nature, kind, shape, height, materials and location thereof. The Committee, in its sole and absolute discretion, may require in particular instances that such plans and specifications be accompanied by a plat prepared by a North Carolina Registered Land Surveyor showing the location of the proposed improvements on the Lot. The Committee shall evaluate such plans, specifications and plat in light of the purpose of this Article as set forth in Section 2 above, and all decisions by the Committee shall be based on its determination as to whether any particular improvement is suitable and harmonious with the development of the

subdivision. The Committee's approval or disapproval of any proposed improvement shall be in writing. In the event that the Committee fails to approve or disapprove any such proposed improvement within forty-five (45) days after complete plans and specifications have been submitted to it, such plans and specifications shall be deemed approved. Subsequent to the approval of any plans and specifications, the Owner shall have the responsibility for making such improvements in accordance with the plans and specifications as approved. Deviation by the Owner from the plans and specifications as approved, without the prior consent of the Committee, shall be deemed a violation hereof, and the Committee shall have the right to enforce the terms and conditions hereof. Approval by the Committee of any proposed improvements shall not constitute or be construed as approval of the structural stability, design, or quality of any improvement or the compliance of any such improvement with applicable laws, ordinances and codes. Refusal or approval of plans, specifications, builder, location or orientation may be based upon any grounds, including purely aesthetic considerations, which in the opinion of and the sole and uncontrolled discretion of the Committee, except as provided in Section 10.7, shall be deemed sufficient.

Subject to the restrictions imposed by the municipal building code regulating authorities, a homeowner may select a builder of his choice or act as his own contractor for the proposed improvement or alteration to the existing structure. Any improvement that requires a builder with a North Carolina State General Contractor's License, must prior to performing any work on the Property, be approved by the Committee as to financial stability, building experience, and ability to build structures of the class and type of those which are built on the Property.

Section 10.6. Exemptions. At the time of recordation of this document, all existing exemptions shall be considered approved exemptions. Future exemptions must be approved by the Architectural Control Committee or by a vote of the majority of the Owners at a scheduled meeting of the Members.

Section 10.7. Appeals. Any Lot Owner wishing to appeal a ruling of the Architectural Control Committee, may ask the membership of Mount Carmel Village Homeowners' Association to overrule the refusal at the next meeting of the Association. Only the membership present or represented by a valid proxy may vote on the request to overrule the Architectural Control Committee. The vote of the majority of the members eligible to vote at that meeting shall be considered final.

#### ARTICLE XI UPKEEP OF MOUNT CARMEL VILLAGE; RESPONSIBILITY AND DAMAGES AND MAINTENANCE PARTY WALLS

##### Section 11.1. Common Areas and Lawns.

(a) The Association shall provide ordinary lawn care and maintenance for the Common Areas and each Lot. In order to enable the Association to accomplish any maintenance obligations of the Association as set forth in Article XI, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article XI.

(b) The Association shall provide maintenance, repair or replacement as needed on all Common Areas and on any fire hydrants, exterior fire prevention or protection apparatus, storm drainage system components, retaining walls, brick walls and any other maintenance equipment owned by the Association.

(c) In the event that the need for maintenance, repair or replacement of

any component or Common Area to be maintained by the Association is caused through the willful or negligent act of an Owner, his family or guests, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Lot is subject notwithstanding any provisions to the contrary contained herein.

(d) If damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Lot Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Lot Owner.

#### Section 11.2. Maintenance of Lots, Utilities.

(a) Except as provided otherwise herein, each Owner shall be responsible for all building maintenance, including the maintenance, repair or replacement of all improvements on his Lot including the structure and its exterior, the decks, the garage doors, the sidewalks and driveways; also the interior of the structure and all components and systems therein; also the mailbox and key. Each Owner shall also be responsible for any and all vegetation located on his Lot, including without limitation, irrigation and maintenance and removal if necessary and replacement of all trees and shrubs, provided that mowing of Owners' yards shall be the Association's duty exclusively. Each Owner is responsible for the maintenance of glass surfaces; window and door screens; patios; wooden decks or any part thereof including railings, supports and steps; fences; basements and crawl space areas; and exterior alterations approved by the Architectural Control Committee pursuant to the provisions of Article X hereof. Notwithstanding, the external appearance of each home including maintenance, repair or replacement shall continue to be subject to the regulation and control of the Architectural Control Committee as provided in this Declaration. However, the Association shall provide the ordinary maintenance, repair and replacement of the roof, gutters and down spouts; also the repainting of siding, trim and exterior doors; also any lawn irrigation system components installed by the Association.

(b) Should an Owner fail to discharge his maintenance repair or replacement responsibilities in a reasonable and prudent manner to standards harmonious with that of other Lots in the subdivision, then the Association may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address. If the Owner has not complied or demonstrated good faith efforts to do so within fifteen (15) business days thereafter, the Association shall have the right to cause such maintenance, repair or replacement (including without limitation, the pruning, removal and/or replacement of any neglected dead or diseased shrubbery or trees) to be performed and to charge the cost thereof as a part of and in addition to the regular assessment attributable to the Lot and provided for in this Declaration, notwithstanding any provision to the contrary contained herein. Should an Owner fail to pay any charge billed in accordance with this subparagraph (b) within fifteen (15) days of such billing, then the Association shall have the right to claim a lien against the Lot and to foreclose such lien, all as provided for in Article IX of this Declaration. No such entry as provided herein shall be deemed a trespass.

(c) Each Lot Owner shall provide, pay for and maintain at his expense all utility systems and services serving his Lot, including water, sewer, electricity and gas.

#### Section 11.3. Party Walls.

(a) Each wall which is built as a part of the original construction of the residences upon the Property and placed on the dividing line between the



Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party wall and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of party walls shall be shared equally by the Owners of Lots adjoining such party wall.

(c) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it and if the other Owners thereafter make use of the wall, such Owners shall contribute equally to the cost of restoration thereof, without prejudice, however, to the right of such Owners to call for a larger contribution from the other under any rule of law regarding the liability for negligence or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act caused the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) No Owner of any Lot may construct, reconstruct, extend or modify a party wall in any manner without the prior approval of the Architectural Control Committee but no approval shall be required of any other Owner adjoining the party wall.

(f) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

(g) If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Section, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Owner to make such certification immediately upon request and without charge. Where the adjoining property does claim a right of contribution, the certification shall contain a recital of the amount claimed and the basis on which the claim is made.

ARTICLE XII  
RESTRICTIONS

Section 12.1. Family. All Lots shown on said Survey shall be used for residential purposes only. No structures shall be placed upon any of said Lots except one detached single family dwelling.

Section 12.2. Leases. Any lease of a home or portion thereof shall be in writing and shall provide that the lease of the home shall be subject in all respects to the Declaration, and that any failure by the tenant to comply with all the terms of the Declaration constitute a default under the lease. No home may be leased for a period shorter than six (6) months nor may the home be occupied by more than one family unit. The Owner is ultimately responsible for all violations of the Covenants and Bylaws of Mount Carmel Village Homeowners' Association by the tenant. No home or portion thereof shall be used as an inn or boarding house.

Section 12.3. Reconstruction of Residence. No residence shall be reconstructed upon any Lot except as follows:

(a) A two story town house type residence which shall be substantially similar to the residence originally constructed upon the Lot and approved by the Architectural Control Committee.

(b) A minimum of sixty percent (60%) of all exterior walls must be of stone veneer construction except that Hardiplank siding or other materials comparable in value to stone veneer may be acceptable with the consent of the Architectural Control Committee.

(c) There must be installed in any residence a unit of such type that it will supply conditioned air to each room individually.

(d) At the completion date of the reconstruction of a residence on any Lot, the front and side yards and the rear yard adjoining the residence must be cleared of rubbish and construction materials and shrubbery must be planted along the front of the residence. In the event that the completion date of the residence is such that it is not practical to do such planting, such work may be delayed until the first planting season after the completion date. After a residence is occupied, the yards must be well maintained to each adjoining Property line and street line at all times.

(e) No three bedroom residence shall contain less than two bathrooms and no two bedroom resident shall contain less than one and one-half bathrooms.

(f) Reconstruction of new residences only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building on a Lot and remodeling or converting same into a dwelling unit in this subdivision.

(g) No replacement building shall be located on any Lot nearer to the Lot lines than that of the structure originally constructed upon the Lot.

(h) A replacement building may be erected on the existing foundation.

Section 12.4. Approval. Before reconstruction is started on any residence in this subdivision, plans and specifications must be approved by the Architectural Control Committee as to design, number of rooms, plan, materials and harmony of exterior design with existing structures, location with respect to topography and finished grade elevation. Where the term "equivalent" is used herein, the Architectural Control Committee shall have the right to determine what materials are equivalent to those specified. Said approval shall be in writing and shall appear on the final plans and specifications.

Section 12.5. Nuisances. No obnoxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, nor shall swine, cattle, goats, horses, mules or sheep be kept on any Lot. The parking of boats, trailers, campers, RVs, motorcycles, unlicensed motorized vehicles, vehicles without valid inspection stickers, inoperable or wrecked vehicles, tractor trailer trucks and trailer rigs or commercial vehicles of any type is prohibited. All vehicles must be parked on the driveway or in the garage on the Owner's Lot and the parking of vehicles of any kind on the roads or shoulders or in the yards or Common Areas is prohibited. Under no circumstances may mechanical or repair work be performed on any vehicle on any Lot, except within a closed garage.

Section 12.6. Swimming Pools. No above ground swimming pools shall be built, placed or allowed to remain on any Lot.

Section 12.7. Signs. No sign of any kind shall be displayed to the public view on any Lot except: residential security signs and/or resident identification sign which shall not exceed three (3) square feet in size. Signs advertising the Property for sale shall not exceed 5 square feet. It is

provided however that Declarant shall be exempt from this section until such time as Declarant shall have completed the development of all phases of Mount Carmel Village.

Section 12.8. Garbage and Refuse Disposal. No portion or part of any Lot shall be used or maintained as a dumping ground for rubbish or other refuse. Trash, garbage or other waste shall not be kept except temporarily in sanitary containers. All such sanitary containers shall be kept in a closed garage or shall be otherwise screened from public view. Such screening shall be subject to the architectural control provisions of Article X. No garbage may be placed on the curb more than twenty four (24) hours prior to collection.

Section 12.9. Fences. No fence, wall, hedge, animal pen, or mass planting shall be maintained or permitted on any Lot until approved by the Architectural Control Committee.

Section 12.10. Slopes. The grade, slope and drainage on each Lot shall not be materially altered after conveyance.

Section 12.11. Clothes Lines. If any clothes line is placed on any Lot, it shall be either a retractable or an umbrella type clothes line and it shall be so screened that it is not visible from any adjacent Lot or street.

Section 12.12. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except no more than two (2) dogs, cats or other household pets per Lot, provided that they are not kept, bred or maintained for any commercial purpose, that adequate facilities are provided for such pets, the pets do not create a nuisance and kept on a leash or in a pen and otherwise in compliance with the applicable animal control and leash ordinances, and provided that no animal exceeds fifty pounds. No animals shall be allowed to roam. Pens must be approved by the Architectural Control Committee. No dangerous animals of any kind are permitted on any Lot or within Mount Carmel Village at any time. For these purposes, "dangerous animals" will be deemed to include animals which are full breed or a mix with any of the following: Rottweillers, Pit Bulls, Doberman Pinschers, poisonous reptiles, any wild animals. Each Owner shall be responsible to clean up all animal refuse on or off that Owner's Lot promptly upon its appearance.

Section 12.13. Easements. Easements for installation and maintenance of utilities and drainage facilities, which shall specifically include, without limitation, any water system, are reserved as set forth in Section 5.3. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Mount Carmel Village Homeowners' Association shall have the right to clear trees and any other items from the easement and to change the slope of the ground within the easement so as to facilitate drainage over the easement.

Section 12.14. Satellite Reception. There shall not be located on any Lot, nor on the outside of any structure on any Lot, any satellite dish larger than 18 inches in diameter. Other equipment utilized to receive a television transmission or signal, cable television signal or any other type of transmission or signal shall also be prohibited. Any equipment so located, must not be conspicuous to the neighborhood.

Section 12.15. Applicability. Nothing herein contained shall be construed as imposing any Covenants and restrictions on any Property of an

Owner in this subdivision other than the Property to which these Covenants specifically apply.

Section 12.16. Procedures for fines and suspension of Mount Carmel Village privileges or services. A hearing shall be held before an adjudicatory panel appointed by the Board of Directors to determine if any Lot Owner should be fined pursuant to the powers granted to the Association in NCGS 47F-3-102(11) and (12). If the Board of Directors fails to appoint an adjudicatory panel to hear such matters, hearings under this section shall be held before the Board of Directors. The Lot Owner charged shall be given notice of the charge, an opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred fifty dollars (\$150.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under NCGS 47F-3-116.

Section 12.16.1. Fines. The Homeowners Association shall have the right to enforce all restrictions, conditions and Covenants contained in this Declaration by imposing fines upon Owners for violations thereof. Prior to the imposition of such fines, the Owner shall be given notice of the alleged violation and provided the opportunity for a hearing to determine the nature of the violation, if any. Such hearing shall be before the Board of Directors or a committee appointed by the Board to handle such enforcement proceedings. After such a hearing, the Board or its committee shall make a determination of violations of this Declaration and shall have the authority to impose a continuing fine of up to \$25.00 per day per violation. Such fines, together with interest, costs, and all attorney's fees incurred to enforce the fine shall be a charge on the Lot and shall be a continuing lien upon the Property against which each such fine is made. Each such fine shall also be the personal obligation of the Person who is the Owner of such Property at the time the fine was levied. Further, the Homeowners Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, Covenants, reservations, liens and changes now or hereinafter imposed by the provisions of this Declaration. The Owner of such Property shall be responsible for interest, costs and all attorney's fees associated with any enforcement action taken by the Association or its Board of Directors. Failure by the Homeowners 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.

Section 12.16.2. Association records 47F-3-118.

(a) The Association shall keep financial records sufficiently detailed to enable the Association to comply with this Chapter. All financial and other records shall be made reasonably available for examination by any Lot Owner and the Lot Owner's authorized agents. A checkbook in which all Association financial transactions are made and/or recorded shall be sufficient.

(b) The Association, upon written request, shall furnish to a Lot Owner or the Lot Owner's authorized agents a statement setting forth the amount of unpaid assessments and other charges against a Lot. The statement shall be furnished within 10 business days after receipt of the request and is binding on the Association.

### ARTICLE XIII INSURANCE

Section 13.1. Authority to Purchase Insurance. Insurance policies upon the Common Area (except title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association as trustee for the Owners, for the benefit of the Owners and their respective mortgagees as their

interests may appear and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Lots. If the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to claims against Owners, the Association, and their respective servants, agents, and guests.

Section 13.2. Statutory Requirements for Insurance 47F-3-113.

(a) The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Common Area:

(1) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured Property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from Property policies;

(2) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and Property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements;

(3) If the Board of Directors so elects, fidelity coverage protecting against dishonest acts by Association officers, Directors and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied; and

(4) If the Board of Directors so elects, Officers and Directors liability insurance covering the Officers and Directors of the Association may be obtained in such amount as the Board of the Directors shall determine.

(b) If the insurance described in subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners. The Association in any event may carry any other insurance it deems appropriate to protect the Association or the Lot Owners.

(c) Insurance policies carried pursuant to subsection (a) of this section shall provide that:

(1) Each Lot Owner is an insured Person under the policy to the extent of the Lot Owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or Member of the Lot Owner's household;

(3) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot covering the same risk covered by the policy, the Association's policy provides primary insurance.

(5) Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all the Owners.

(d) Any loss covered by the Property policy under subdivision (a) (1) of this section shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lien holders as their interests may appear. Subject to the provisions of subsection (g) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged Property, and Lot Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, or the status of Mount Carmel Village as a planned community is terminated.

(e) An insurance policy issued to the Association does not prevent a Lot Owner from obtaining insurance for the Lot Owner's own benefit.

(f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Lot Owner, mortgagee, or beneficiary under a deed of trust. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non renewal has been mailed to the Association, each Lot Owner, and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(g) Any portion of Mount Carmel Village for which insurance is required under subdivision (a) (1) of this section which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the status of Mount Carmel Village as a planned community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) approval of Owners assigned to the limited Common Elements not to be rebuilt. Any such reconstruction or repair shall be substantially in accordance with the original plans and specifications. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of Mount Carmel Village is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of Mount Carmel Village, (ii) the insurance proceeds attributable to limited Common Elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited Common Elements were allocated, or to lien holders, as their interests may appear, and (iii) the remainder of the proceeds shall be distributed to all the Lot Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liabilities of all the Lots. Notwithstanding the provisions of this subsection, NCGS 47F-2-118 (termination of Mount Carmel Village as a planned community) governs the distribution of insurance proceeds if the status of Mount Carmel Village as a planned community is terminated.

Section 13.3. Homeowner's Insurance. Each Lot Owner shall purchase and continuously maintain at his expense insurance with respect to the improvements upon his Lot insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property

at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from Property policies; and liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot and the improvements thereon.

#### ARTICLE XIV RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

##### Section 14.1. Entities Constituting Institutional Lenders.

"Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences.

Section 14.2. Approval of Institutional Lenders. The Association shall not, without first giving written notice to the Institutional Lenders of Lots located within the Property:

(a) by act or omission seek to abandon, alienate, dedicate, partition, subdivide, hypothecate, encumber, sell, release, transfer, or otherwise encumber any Real Estate or improvements thereon which are owned, directly or indirectly by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause.

(b) change the method of determining the obligation, assessments, dues, or other charges which may be levied against a Lot Owner.

(c) by act or omission change, waiver, or abandon any plan of regulation, or enforcement thereof, pertaining to the architectural design or the exterior appearance of residences located on Lots, the maintenance of party walls or common fences and driveways, if any, or the upkeep of lawns and plants in the subdivision.

(d) fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100 %) of the insurable value.

(e) use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

Section 14.3. Books and Records. Any Institutional Lender on any Lot shall have the right:

(a) to examine the books and records of the Association during any reasonable business hours.

(b) to be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner of any Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

(c) to be given notice of any condemnation loss or casualty loss which affects a material portion of the Common Area.

Section 14.4. Payment of Taxes and Insurance Premiums. The Institutional Lenders on Lots may, jointly or singly, pay taxes or other charges which are

in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on any insurance policies or fidelity bonds or secure new insurance coverage or fidelity bonds upon the lapse of such a policy or bond for Property owned by the Association and the Persons, firms, or corporation making such payments shall be owed immediate reimbursement therefor from the Association.

#### ARTICLE XV MASTER ASSOCIATION

The Association is authorized to serve as a Master Association under NCGS 47F-2-120 and NCGS 47C-2-120. Full delegation of authority is hereby made to the Association to exercise its powers for the benefit of one or more planned communities and one or more condominiums.

#### ARTICLE XVI CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS

Section 15.1. Invalidation of any term, phrase, sentence, provision, condition or restriction of this Declaration by judgment or court order shall in no way affect any of the other provisions not expressly held to be void and such remaining provisions shall remain in force and effect.

Section 15.2. The rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, rules, or regulations adopted pursuant to NCGS 47F-3-102(1)d.

Section 15.3. In the event of a NCGS 47F between the provisions of the Declaration and the Bylaws, the Declaration prevails except to the extent the Declaration is inconsistent with NCGS 47F.

Section 15.4. Title to a Lot and Common Elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the Declaration to comply with NCGS 47F. Whether a substantial failure to comply with NCGS 47F impairs marketability shall be determined by the law of this State relating to marketability.

Section 15.5. The principles of law and equity as well as other North Carolina statutes (including the provisions of the North Carolina Nonprofit Corporation Act) supplement the provisions of this Declaration, except to the extent inconsistent with NCGS 47F. When these principles or statutes are inconsistent or NCGS 47F with NCGS 47F, the provisions of NCGS 47F shall control, except such subsections of NCGS 47F that these Covenants have elected not to include.

Section 15.6. In the event of any dispute arising under the provisions of this Declaration, it may be settled by the Board with the consent of the Owners involved, otherwise it shall be referred to binding arbitration in Asheville, North Carolina, in accordance with the rules of the American Arbitration Association, by a panel of arbitrators, one of whom shall be selected by each party to the dispute and another who shall be selected by the arbitrators selected by parties to the dispute. A determination made in accordance with such rules shall be delivered in writing to the parties hereto and shall be final and binding and conclusive upon them. Each party shall pay its or his own legal, accounting and other fees in connection with such an arbitration and the costs of the arbitration shall be split equally between the parties to the dispute.

Section 15.7. The easements and covenants in the Agreement Between Mount Carmel Village, LLC, and Harrell and Associates, LLC, recorded in Deed Book 3754, Page 645, Buncombe County Registry, are incorporated herein for the



purposes agreed to in paragraph 10 of that Agreement.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective the date above.

Mount Carmel Village, LLC

BY: [Signature]  
Richard G. Bussey, Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that RICHARD G. BUSSEY personally came before me this day and acknowledged that he is a member-manager of Mount Carmel Village, LLC, a North Carolina member-managed limited liability company, and as such has authority to execute this instrument on behalf of said company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him as its member.

WITNESS my hand and official stamp or seal, this 9<sup>th</sup> day of May, 2005.

My commission expires:  
2/29/2009

[Signature]  
Notary Public

STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

EACH OF THE FOREGOING CERTIFICATES, namely of Ruth E. Trammel notary or Notaries public of the State and County designated is hereby certified to be correct. are certified to be correct. File for registration on this the 10<sup>th</sup> day of May, 2005 at 9:15:34 A.M.

[Signature]  
OTTO W. DeBRUHL  
Register of Deeds, Buncombe County

[Signature]  
By: Deputy/Registrar of Deeds

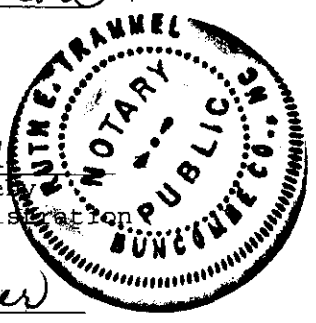


EXHIBIT "A"  
COMMON AREA AND COMMON ELEMENTS

1. Fallen Spruce Drive from its intersection with New Leicester Highway to its terminus at the common line of Tract 6 and Tract 7 as shown on the plat of "Mt. Carmel Commercial Center, Phase Two," in Plat Book 92 at Page 193, Buncombe County Registry.
2. Rotunda Circle as shown upon the plat of "Mt. Carmel Village, Phase I," in Plat Book 96 at Page 180, and more particularly upon the plat of "Mt. Carmel Commercial Center, Phase Two," in Plat Book 92 at Page 193, Buncombe County Registry.
3. The road passing between Lots 1 through 24 on the east and Lots 25 through 48 on the west and intersecting with Rotunda Circle in two places as shown on the plat of "Mt. Carmel Village, Phase I," in Plat Book 96 at Page 180.

Declarant reserves the right to provide more particular survey detail of the Common Area and Common Elements in future plats and amendments to be recorded in the Buncombe County Registry.

RESERVATION: No property other than Lots 1 through 48 and the Common Area and Common Elements as specifically described herein are subject to this Declaration. All other property shown upon the plat of "Mt. Carmel Village, Phase I," in Plat Book 96 at Page 180, including without limitation all the area outside the boundaries of Lots 1 through 48, are and shall remain the property of Declarant with none of the limitations or obligations imposed by this Declaration, save only for the easements for Rotunda Circle and Fallen Spruce Drive.



Doc ID: 016660830003 Type: CRP  
Recorded: 10/28/2005 at 01:42:25 PM  
Fee Amt: \$20.00 Page 1 of 3  
Workflow# 1967637  
Buncombe County, NC  
Otto W. DeBruhl Register of Deeds

BK 4128 PG 1120-1122

Prepared by / Return to:  
Box 11, Carter & Kropelnicki, PA

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AMENDMENT TO  
DECLARATION OF COVENANTS  
MOUNT CARMEL VILLAGE

This Amendment is made by Mount Carmel Village, LLC, hereafter referred to as "Declarant."

Whereas Declarant executed and recorded the DECLARATION OF COVENANTS (the "Declaration") in Deed Book 4010, Page 459; that Declarant desires to amend the Declaration in certain particulars; that Declarant has the right to execute this Amendment;

THEREFORE in consideration of the foregoing premises, the Declaration is amended as follows:

1. Section 3.1 Property is hereby amended to read as follows:

Section 3.1. Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Buncombe County, North Carolina, and is more particularly described as follows:

BEING all of Lots 101 through 107, Lots 201 through 205, Lots 301 through 305, Lots 401 through 407, Lots 501 through 507, Lots 601 through 605, Lots 701 through 705, and Lots 801 through 807, shown on that certain plat of REVISION OF MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 98 at Page 118 in the Buncombe County Registry, together with the Common Areas and Common Elements as described herein.

These are the identical Lots in all respects as Lots 1 through 48 as shown on that certain plat of MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 96 at Page 180 in the Buncombe County Registry, according to the conversion chart below:

2

Plat Book 98	Plat Book 96
Page 118 "New	Page 180 "Old
Lot Numbering	Lot Numbering
System"	System"
101	1
102	2
103	3
104	4
105	5
106	6
107	7
201	8
202	9
203	10
204	11
205	12
301	13
302	14
303	15
304	16
305	17
401	18
402	19
403	20
404	21
405	22
406	23
407	24
501	25
502	26
503	27
504	28
505	29
506	30
507	31
601	32
602	33
603	34
604	35
605	36
701	37
702	38
703	39
704	40
705	41
801	42
802	43
803	44
804	45
805	46
806	47
807	48

No corners have been changed between the two Plats. Each and every Lot corner is identically located from one plat to the other.

References to either the Old Lot Numbering System or the New Lot Numbering System shall be valid and effective, but the New Lot Numbering System henceforth is preferred and will be used exclusively by

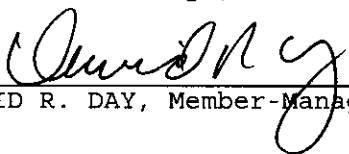
Declarant.

That certain plat of REVISION OF MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 98 at Page 117 in the Buncombe County Registry, is incomplete in certain minor details therefore it is not to be used for these purposes.

2. The Declaration is confirmed as amended herein.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective the date above.

Mount Carmel Village, LLC

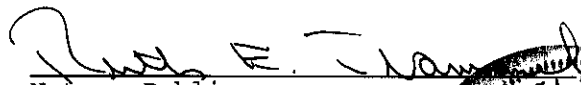
BY:   
DAVID R. DAY, Member-Manager

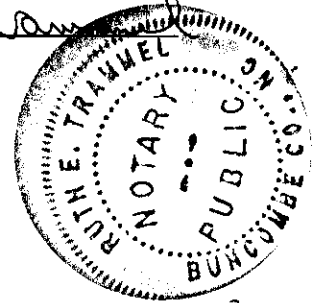
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that DAVID R. DAY personally came before me this day and acknowledged that he is a member-manager of Mount Carmel Village, LLC, a North Carolina member-managed limited liability company, and as such has authority to execute this instrument on behalf of said company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him as its member.

WITNESS my hand and official stamp or seal, this 21 day of October, 2005.

My commission expires:  
8/29/2009

  
Notary Public



STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

EACH OF THE FOREGOING CERTIFICATES, namely of \_\_\_\_\_ a notary or Notaries public of the State and County designated is hereby certified to be correct. are certified to be correct. File for registration on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_ .M.

OTTO W. DeBRUHL  
Register of Deeds, Buncombe County

By: Deputy/Register of Deeds



Doc ID: 016660830003 Type: CRP  
Recorded: 10/28/2005 at 01:42:25 PM  
Fee Amt: \$20.00 Page 1 of 3  
Workflow# 1967637  
Buncombe County, NC  
Otto W. DeBruhl Register of Deeds

BK 4128 PG 1120-1122

Prepared by / Return to:  
Box 11, Carter & Kropelnicki, PA

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AMENDMENT TO  
DECLARATION OF COVENANTS  
MOUNT CARMEL VILLAGE

This Amendment is made by Mount Carmel Village, LLC, hereafter referred to as "Declarant."

Whereas Declarant executed and recorded the DECLARATION OF COVENANTS (the "Declaration") in Deed Book 4010, Page 459; that Declarant desires to amend the Declaration in certain particulars; that Declarant has the right to execute this Amendment;

THEREFORE in consideration of the foregoing premises, the Declaration is amended as follows:

1. Section 3.1 Property is hereby amended to read as follows:

Section 3.1. Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Buncombe County, North Carolina, and is more particularly described as follows:

BEING all of Lots 101 through 107, Lots 201 through 205, Lots 301 through 305, Lots 401 through 407, Lots 501 through 507, Lots 601 through 605, Lots 701 through 705, and Lots 801 through 807, shown on that certain plat of REVISION OF MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 98 at Page 118 in the Buncombe County Registry, together with the Common Areas and Common Elements as described herein.

These are the identical Lots in all respects as Lots 1 through 48 as shown on that certain plat of MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 96 at Page 180 in the Buncombe County Registry, according to the conversion chart below:

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Plat Book 98	Plat Book 96
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502	26
503	27
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No corners have been changed between the two Plats. Each and every Lot corner is identically located from one plat to the other.

References to either the Old Lot Numbering System or the New Lot Numbering System shall be valid and effective, but the New Lot Numbering System henceforth is preferred and will be used exclusively by

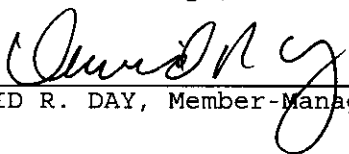
Declarant.

That certain plat of REVISION OF MT. CARMEL VILLAGE, PHASE I, recorded in Plat Book 98 at Page 117 in the Buncombe County Registry, is incomplete in certain minor details therefore it is not to be used for these purposes.

2. The Declaration is confirmed as amended herein.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective the date above.

Mount Carmel Village, LLC

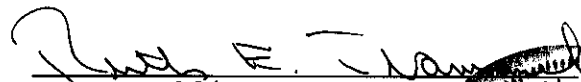
BY:   
DAVID R. DAY, Member-Manager

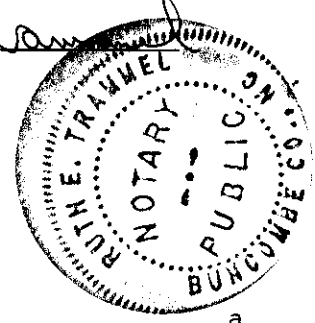
STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that DAVID R. DAY personally came before me this day and acknowledged that he is a member-manager of Mount Carmel Village, LLC, a North Carolina member-managed limited liability company, and as such has authority to execute this instrument on behalf of said company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by him as its member.

WITNESS my hand and official stamp or seal, this 21 day of October, 2005.

My commission expires:  
8/29/2009

  
Notary Public



STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

EACH OF THE FOREGOING CERTIFICATES, namely of \_\_\_\_\_ a notary or Notaries public of the State and County designated is hereby certified to be correct. are certified to be correct. File for registration on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_ .M.

\_\_\_\_\_  
OTTO W. DeBRUHL  
Register of Deeds, Buncombe County

\_\_\_\_\_  
By: Deputy/Register of Deeds





Doc ID: 016042530003 Type: CRP  
 Recorded: 05/20/2005 at 03:41:49 PM  
 Fee Amt: \$20.00 Page 1 of 3  
 Workflow# 1894165  
 Buncombe County, NC  
 Otto W. DeBruhl Register of Deeds  
 BK 4022 PG 744-746

*Prepared by/Return to:*  
*Scott Carter Box #11*

AMENDMENT TO  
 DECLARATION OF COVENANTS  
 MOUNT CARMEL VILLAGE

This Amendment is made by Mount Carmel Village, LLC, hereafter referred to as "Declarant."

Whereas Declarant executed and recorded the DECLARATION OF COVENANTS (the "Declaration") in Deed Book 4010, Page 459; that Declarant desires to amend the Declaration in certain particulars; that no Lots have been sold or transferred; and that Declarant remains the sole Owner of all Lots;

THEREFORE in consideration of the foregoing premises, the Declaration is amended as follows:

1. Section 9.3. Annual Assessment is amended to read as follows:

Section 9.3. Annual Assessment. To and including December 31, 2005, the basic annual assessment shall be \$70.00 per month per Lot. After December 31, 2005, the exact amount of the basic annual assessment shall be determined from time to time as provided below.

(a) From and after December 31, 2005 and until half of the Lots in all phases are sold or transferred, the basic annual assessment may be changed by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by an amount which may not exceed \$15.00 per year.

(b) From and after December 31, 2005 and after half of the Lots in all phases are sold or transferred, the basic annual assessment may be changed by an affirmative vote of sixty-seven (67%) of the Members with voting rights attending, or represented by Proxy entitled to vote at a Meeting called for such a purpose.

(c) Provided however that as soon as a pool is completed, the basic annual assessment shall immediately increase by \$15.00 per month.

2. Section 12.16.1. Fines is amended to read as follows:

Section 12.16.1. Fines. The Homeowners Association shall have the right to enforce all restrictions, conditions and Covenants contained in this Declaration by imposing fines upon Owners for violations thereof. Prior to the imposition of such fines, the Owner shall be given notice of the alleged violation and provided the opportunity for a hearing to determine the nature of the violation, if any. Such hearing shall be before the Board of Directors or a committee appointed by the Board to handle such enforcement proceedings. After such a hearing, the Board or its committee shall make a determination of violations of this Declaration and shall have the authority to impose a continuing fine of up to \$25.00 per day per violation, beginning with and relating back to the first notice date. Such fines, together with interest, costs, and all attorney's fees incurred to enforce the fine shall be a charge on the Lot and shall be a continuing lien upon the Property against which each such fine is made. Each such fine shall also be the personal obligation of the Person who is the Owner of such Property at the time the fine was levied. Further, the Homeowners Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, Covenants, reservations, liens and changes now or hereinafter imposed by the provisions of this Declaration. The Owner of such Property shall be responsible for interest, costs and all attorney's fees associated with any enforcement action taken by the Association or its Board of Directors. Failure by the Homeowners 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.

3. Section 13.3. Homeowner's Insurance is amended to read as follows:

Section 13.3. Homeowner's Insurance. Each Lot Owner shall purchase and continuously maintain at his expense insurance with respect to the improvements upon his Lot insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from Property policies; and liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot and the improvements thereon.

IN WITNESS WHEREOF, the undersigned has executed this instrument effective the date above.

Mount Carmel Village, LLC

BY: 

Richard G. Bussey, Member-Manager

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that RICHARD G. BUSSEY personally came before me this day and acknowledged that he is a member-manager of Mount Carmel Village, LLC, a North Carolina member-managed limited liability company, and as such has authority to execute this instrument on behalf of said company, and that by authority duly given and as

the act of the company, the foregoing instrument was signed in its name by him as its member.

WITNESS my hand and official stamp or seal, this 20 day of May, 2005.

My commission expires: 8/29/2009

Ruth E. Trammel  
Notary Public



STATE OF NORTH CAROLINA, COUNTY OF BUNCOMBE

EACH OF THE FOREGOING CERTIFICATES, namely of Ruth E. Trammel notary or Notaries public of the State and County designated is hereby certified to be correct. are certified to be correct. File for registration on this the 20 day of May, 2005 at        .M.

Otto W. DeBruhl  
OTTO W. DeBRUHL  
Register of Deeds, Buncombe County

Landra M. Davis  
By: Deputy/Register of Deeds