

STATE OF NORTH CAROLINA

COUNTY OF MACON

**DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND
PROTECTIVE COVENANTS FOR CAT CREEK DEVELOPMENT**

THIS DECLARATION OF TERMS, CONDITIONS, RESTRICTIONS AND PROTECTIVE COVENANTS FOR CAT CREEK DEVELOPMENT is made and entered into this the 25th day of June, 2001 by and between **CAT CREEK PROPERTIES, LLC**, a North Carolina Limited Liability Company (herein "Declarant") and all Future Owners of Lots in **CAT CREEK DEVELOPMENT** (herein "Subdivision") as hereinafter described.

WITNESSETH:

THAT WHEREAS, Declarant is the developer and owner of certain real property in Macon County, North Carolina described in Exhibit "A" attached hereto (the "Property"), and being 119 platted lots contained in a two section development known as "Cat Creek Development", said sections being more specifically known as "The Preserve at Cat Creek", " and "The Gardens at Cat Creek" and all of said sections being more particularly described and shown on that plat recorded in Plat ~~Cabinet Card Slide 3360, Pages~~ and ~~3361~~ of the Macon County, NC Register's Office (herein "Plat") (the property shown on said Plat being and comprising the "Subdivision"); and

WHEREAS, the Declarant desires for the protection and benefit of all persons who may hereafter become owners of lots located within the Subdivision that the Property be developed with limitations, restrictions and uses. These covenants are to run with the land and be binding upon all parties purchasing Lots within the Property and all persons claiming by, through or under Declarant until January 31, 2020 at which time said covenants shall be automatically extended for successive periods of (10) years unless by vote of a majority of persons then owning lots within the Subdivision (and which are subject to the terms, conditions and provisions of this Declaration) it is agreed to change these covenants in whole or in part.

AGREEMENT:

NOW THEREFORE, Declarant does hereby make the following declaration as to limitations, restrictions and uses to which the above-described Property and all additional parcels of real property hereinafter made subject to the terms, conditions and provisions of this Declaration (herein "Subdivision") shall be and are hereby subjected:

**ARTICLE I
Definitions**

1. "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.

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Asheville, NC 28802

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PROPERTY DESCRIPTION

BEING all of Cat Creek Development as shown on those plats of "THE GARDENS AT CAT CREEK" and "THE PRESERVE AT CAT CREEK" by Thomas H. Cabe, Professional Land Surveyor, recorded in Plat ~~Cabinet CARD~~, Slide 3360 ^{And} Page 3361 and , Macon County Registry, reference to which is hereby made for a more particular description.

2. "Association" shall mean and refer to Cat Creek Development Property Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.

3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

4. "Bylaws" shall mean and refer to the Bylaws of the Association which are ~~attached to this Declaration as an Exhibit.~~ recorded simultaneously herewith.

5. "Common Elements" shall mean and refer to i) private roads designated on the Plat or any other subdivision Plat recorded by Declarant, as well as any other private road constructed by the Declarant serving the Subdivision or any property adjoining the Subdivision; ii) the entrance area as shown on the Plat; iii) any other property designated as such by the Declarant; and iv) any real estate owned by the Association, other than a Lot.

6. "Declarant" shall mean Cat Creek Properties, LLC a North Carolina limited liability company, its successors and/or assigns; including any person which succeeds to any Special Declarant Rights as set forth herein and in the Act.

7. "Directors" shall mean and refer to the members of the Board of Directors of the Association.

8. "Limited Common Elements" shall mean and refer to those portions of the Subdivision designated as being either for i) the exclusive use by one or more but fewer than all of the Lot Owners, or ii) designated by Declarant in its sole and absolute discretion, as benefitting, either directly or indirectly, one or more but fewer than all of the Lot Owners.

8. "Lot" shall mean and refer to any parcel of land within the Subdivision as shown on the Plat designated for separate ownership or occupancy by a Lot Owner.

10. "Lot Owner" shall mean and refer to any person or entity owning fee simple title to any Lot; but does not include a person having an interest in a Lot solely as security for an obligation.

11. "Member" shall mean and refer to each owner or owners of a Lot who shall also then be a member of the Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the member and shall be entitled to only one vote.

12. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

13. "Restrictions" and "Declaration" shall mean and refer to this Declaration of Terms, Conditions, Restrictions and Protective Covenants for Cat Creek Development, as the same may be released, amended or changed; either in whole or part, as provided for herein.

14. "Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.

15. "Subdivision" shall mean and refer only to that certain real property shown on the Plat, including all subdivided, platted and numbered lots and common elements shown thereon. The

Declarant shall not be deemed to have subjected any other property which the Declarant may now or hereafter own or acquire to this Declaration until such time as a recorded instrument specifically subjecting such property is recorded in the Macon County, Register of Deeds office. The Declarant specifically reserves the right to subject any other contiguous real property which the Declarant may now own or which Declarant may hereafter acquire to the terms and provisions of this Declaration (upon which such additional real property shall become a part of the Subdivision), and the restrictions set forth herein.

ARTICLE II

Submission of Property to the Act and Creation of a Planned Community

1. Submission of the Property and Creation of the Subdivision: Pursuant and subject to the terms and provisions of the Act, Declarant hereby creates a planned community subdivision initially comprised of the Property shown on the Plat. Declarant hereby submits all of such Property to the Act and the terms of this Agreement.
2. Name: The name of the subdivision created hereunder is Cat Creek Development.
3. Designation of Lots and Common Elements: The Declarant does hereby designate the Property (which is also shown on the Plat either as separate numbered lots of real property or common areas) as separate Lots or Common Elements.
4. Reservation of Special Declarant Rights: The Declarant hereby reserves unto itself and its successors in interest as Special Declarant Rights, the following:
 - (a) Those Special Declarant Rights as set forth in the Act;
 - (b) The right, during the Declarant's Control Period, to modify, amend, change, vary or release all or any part of these Restrictions; and
 - (c) The right to redesignate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Declarant.
4. The right to subject any other contiguous real property which the Declarant may now own or which Declarant may hereafter acquire to the terms and provisions of this Declaration, and the restrictions set forth herein (upon which such additional real property shall become a part of the Subdivision).

ARTICLE III

Terms, Conditions, Restrictions, Protective Covenants and Other Matters

1. Uses. All Lots shall be used solely for single family residential purposes (only one (1) single family residential dwelling per lot is allowed) and no business or commercial activity will be permitted on or upon a Lot and no commercial structure or activity of any type shall be placed on any Lot or allowed within the Subdivision. This restriction shall not be construed so as to disallow private home offices. Home offices for private use are allowed so long as the use of such office is

pre-approved by the Association and does not generate pedestrian or vehicular traffic in conjunction with such office use.

2. Architectural Control. Prior to commencement of construction of any improvements, all plans, including elevations, specifications and landscape plans, shall be submitted as an application to the Declarant, its agent or its successors or assigns, for approval as to quality of materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. The Declarant reserves the right, in its sole and absolute discretion to either approve or not approve of any plans and specifications for any reason whatsoever. The Declarant shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an original amount of One Hundred and no/100's Dollars (\$100.00). The Declarant reserves the right to modify, waive or increase such application fee. Construction shall thereafter be completed in strict conformity with such approved plans and specifications and the Declarant shall be entitled to stop any construction which is in violation of this Declaration or the restrictions contained herein. Improvements shall be constructed only by a builder which has been approved by the Declarant. The Declarant reserves the right to approve the builder and to from time to time compile a list of approved builders. A builder shall be approved or not approved in the Declarant's sole and absolute discretion. Either during or after the Control Period, the Declarant reserves the right to establish an Architectural Review Committee to succeed to the rights reserved herein to Declarant. Such Committee shall be part of the Association and shall be appointed by the Board of Directors.

3. Design and Development Guidelines. The Declarant may, from time to time, publish and promulgate architectural, design and landscape guidelines. Such architectural, design and landscape guidelines shall be explanatory and illustrative of the general intent of the development of the Lots and are intended to guide Lot Owners and their home designers and builders and to assist the Declarant in reviewing plans and specifications for Improvements. Such architectural, design and landscape guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications to the Declarant and the fees to be imposed by the Declarant, as more specifically described in Section 2 hereof. In any event, such architectural, design and landscape guidelines shall not be binding upon the Declarant, may be revised and amended at any time by the Declarant, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials submitted to the Declarant for approval. The architectural, design and landscape guidelines described above shall herein collectively be referred to as the "Design and Development Guidelines." The Declarant may publish and promulgate different Guidelines for different phases of the Subdivision.

4. Prohibited Structures. No trailer, mobile home, basement, tent, shack, garage or other outbuilding on these residential Lots shall be, at any time, used as a residence, either temporarily or permanently, nor shall any residence be moved onto a building lot within the Subdivision. Specifically, no mobile homes, trailers, manufactured homes, modular homes or structures of similar construction shall be placed on or allowed to remain on any Lot. There shall be no prefabricated buildings placed upon any Lot or other property within the Subdivision, except prefabricated components such as window and door units, roof trusses, or other such components which shall be permitted and approved by Declarant.

5. Dwelling Size. The livable heated floor area provided in each family unit, if one story, shall not be less than 1,500 square feet. The livable heated floor area provided in each family unit, if two stories, shall not be less than 2,000 square feet. In houses of two stories there shall be a minimum of 1,400 square feet on the first floor. Basements, unfinished attic space, storage space,

garages, porches, decks or any area not enclosed by the main structure shall not be counted as part of the required floor space.

6. Accessory Buildings. Only one (1) accessory building may be constructed on a Lot as an accessory and appurtenant structure to the main residential dwelling. Such accessory building is subject to architectural control as set forth in Paragraph 2. Such accessory building must be accessory to residential uses and shall not be rented or occupied. In no event may an accessory building be constructed upon a Lot until the construction of the main dwelling has commenced and until a separate building permit has been issued. The accessory building shall have the same style and color roof shingle, and the same color, style and material for exterior siding, as the main dwelling on the Lot. The dimensional requirements for all accessory buildings shall be as follows:

Private Garages. A garage, whether attached or detached from the main dwelling, must be located on the Lot in compliance with the minimum yard setbacks set forth herein. Each residence shall be required to have at least a two-car garage attached to the main dwelling, but may also, with Declarant approval, have one additional garage detached from the main dwelling. Detached garage accessory buildings shall not exceed fifteen (15) feet in height. All garages must have either one or two overhead closing doors.

7. Setback Requirements. No building shall be located on any Lot nearer than i) twenty (25) feet from the centerline of either the front or side street road right of way which adjoins a Lot; ii) fifteen (15) feet from the side Lot line; or iii) twenty-five (25) feet from the rear Lot line. Any Lot located on a cul-de-sac shall be measured fifty (50) feet from the center point of the cul-de-sac.

8. Cutting of Trees. No living tree greater than eight inches ("8") in diameter shall be cut or trimmed without the express written permission of the Declarant. This covenant shall not apply to the cutting of trees or limbs where such cutting is necessary for the safe installation and maintenance of any dwelling, driveway, or parking areas constructed upon any Lot in conformity with landscape plans approved by Declarant.

9. Commencement and Completion of Construction. Construction of the residential dwelling shall commence within twenty-four (24) months from the date the Lot is conveyed to a Lot Owner by Declarant. Once begun, construction and clean-up of debris shall be completed within one (1) year from commencement of construction. A dwelling shall not be occupied until completed. A dwelling shall be deemed completed upon final inspection and approval by the applicable government inspector. The Declarant reserves the express right to modify or amend the periods for commencement and completion of construction as Declarant in its sole and absolute discretion may determine.

10. Nuisances and other Prohibitions.

- a) No noxious or offensive activity shall be allowed upon or carried on any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No disabled, abandoned or unlicensed vehicles shall be permitted on any Lot, nor shall any vehicle be stored thereon, nor shall any repairs be permitted upon any vehicle parked upon any Lot.
- b) All fuel tanks or other similar storage receptacles, motor homes, boats or other recreational vehicles, machines, equipment or any and all other articles or conditions deemed unsightly by the Declarant shall be screened, in a manner approved by Declarant, from view from any and all roadways and adjoining lots. In no event shall any pickup truck with a capacity to carry in

excess of (1) one ton be kept on any Lot. No trucks other than pickup trucks of less than one (1) tonnage shall be kept on any Lot.

- c) No hunting or discharge of firearms of any kind shall be allowed within the Subdivision. No motorcycles, minibikes or motorized two-wheel vehicles shall be allowed, other than licensed vehicles which are used exclusively for transportation purposes, and then only if properly managed, with it being further stipulated that such motorcycles, minibikes or motorized two-wheel vehicles which are licensed and used exclusively for transportation purposes shall be allowed to operate within the Subdivision only upon the regularly platted roads thereof. All vehicles kept and operated within the Subdivision shall have properly working mufflers.
- d) No fence, hedge or wall shall be erected on any Lot which shall be unsightly in the opinion of the Declarant or which shall in any way interfere with the vision of road and driveways so as to endanger the safety of pedestrians or drivers of vehicles.
- e) No window type heating or air conditioning units shall be installed without the approval of Declarant or which shall be visible from the street.
- f) No clothing lines for drying or hanging of clothes shall be erected or used on any Lot.
- g) No swimming pool may be erected without the prior approval of Declarant; or in any event, in front of a residence or closer than twenty (20) feet of any side or rear Lot line. Any swimming pool placed upon any Lot shall be properly fenced in or enclosed in such a manner as approved by Declarant so as not to be unsightly or constitute a hazard.
- h) No street parking shall be permitted within the Subdivision.
- i) No vegetable gardens shall be allowed in the Subdivision without the prior written approval of the Declarant.
- j) All lots shall be properly maintained with grass and vegetation kept properly trimmed. Children's toys and lawn furniture shall not be left in an unsightly condition or position on the Lot.
- k) No unsightly window coverings visible from the exterior shall be allowed.

11. Garbage and Refuse Disposal. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such shall not be kept outside except in sanitary containers kept from view. Such sanitary containers shall be placed at the curb only on the day garbage is to be collected.

12. Storing and Parking. No trade materials or inventories may be stored upon the premises and no trucks, boats, trailers, buses, self-motorized camping vehicles, tractors or similar vehicles may be stored or regularly parked on a Lot except in a garage or well-screened enclosure approved by Declarant.

13. Driveways. All driveways shall be constructed of concrete or asphalt. All driveways requiring culverts at the intersection to street as determined by the Declarant or any government agency, shall be installed to the specifications of the North Carolina Department of Transportation or the County of Macon and to the grade of the drainage ditch.

14. Signs. No sign of any kind shall be displayed to the public view on any Lot; except one sign of not more than four (4) square feet advertising the property for sale during construction or any sales period. The top of any such sign may not be more than four (4) feet above ground level. All such signs must be installed perpendicular to and within twenty (20) feet of the street right of way serving the Lot, but not within five (5) feet of such right of way. Such signs are permitted only until the Lot is sold. Signs utilized by the Declarant or Declarant's agent shall be of such size and placement as determined by Declarant in Declarant's sole and absolute discretion.

15. Livestock, Poultry and Other Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that animals commonly known as household pets may be kept on a Lot provided that they are not kept, bred, or maintained for any purposes other than as household pets. Kennel operations shall not be permitted. A kennel is defined as housing for more than two (2) animals. Pets must be kept in an approved house, lot, or leashed at all times. Dogs or other animals are not permitted to run unleashed through the Subdivision.

16. Satellite Dish and Antennas. No satellite dish or antenna shall be located in the front or side yard of any Lot. Such dish or antenna may be placed only in the rear yard of the Lot in compliance with setback requirements. A satellite dish shall not exceed 18" in diameter. An antenna shall not exceed the roof line of the dwelling. Placement of such satellite dish antenna shall be governed by the setback requirements set forth herein and as specifically approved by Declarant. In any event, no erection of any satellite dish, antenna or tower shall be allowed without the prior written approval of Declarant.

17. Limitation of Access. Except as to Declarant, the private roadways shall not be used so as to provide access to any property except the Lots within the Subdivision. No part of a Lot shall be used for any access to any property which lies outside of the Subdivision. No other easements, rights of ways or rights of access shall be deeded, granted, or in any way given by any Lot Owner to any other person through or over any Lot so as to permit any portion of a Lot or Subdivision property to be used for access to or from any adjoining property. This paragraph shall not be construed so as to prevent the Declarant from having the special right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Declarant. The Declarant specifically reserves the right to establish such easements or rights of way as Declarant deems necessary or desirable for access to adjoining property whether now or hereafter owned by Declarant; and such rights of way within the Subdivision shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefitted by road rights of way within the Subdivision.

18. Property Abutting Right of Way. Lot owners shall keep the grass cut and shrubs trimmed along the area of the Lot adjacent to the roads. In the event a Lot Owner fails to keep this area maintained as required, the Association may have the required work done. The expenses incurred for such work by the Association shall be added to the annual assessment of such offending Lot Owner, as provided for herein.

19. Fences, mailboxes and other outdoor appurtenances. No fence shall be closer to the road than the front building setback line required herein. There shall be no fence, mailbox or other outdoor appurtenance erected except such fence, mailbox or other outdoor appurtenance which is

approved by Declarant in accordance with the Architectural Control as set forth in Section 2 of Article III. In no event shall any fence, mailbox or other outdoor appurtenance be erected without the prior written approval of Declarant as to location, height and materials. The Declarant reserves the right to set such requirements or to modify the above requirements as to location, height and materials as Declarant deems appropriate.

20. Rear Yard Lights. No yard lights shall be placed upon a Lot without the prior written consent of the Declarant.

21. Subdivision of Lot. No Lot shall be re-subdivided so as to create an additional building Lot.

ARTICLE IV Easements, Rights of Ways, Utilities

1. Utilities. The Declarant reserves the right to subject the Property to a contract with Duke Power Company for the installation of underground electric cables which may require an initial payment and/or a continuing monthly payment to Duke Power Company by either some or all of the Lot Owners. This right shall also apply to the suppliers of other utility services including telephone and, if available, cable television hook-ups. All utility services from a lot line to the residence shall be installed underground.

2. Road Rights of Way. The Subdivision is serviced by those certain road rights of way shown on the Plat; which rights of way lead from either Cat Creek Road or Ferguson Road to the various Lots within the Subdivision as shown on said Plat. Developer does hereby dedicate said rights of way as shown on the Plat as private roadways. As such, and pursuant to NCGS 136-102.6, all future lot owners acknowledge that the rights of way as shown on the Plat are private road rights of way dedicated for Development use and will not be developed to North Carolina Department of Transportation specifications. As such, all future lot owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of such road rights of way as described herein. Each Lot Owner shall be subject to only his pro rata share of annual maintenance which shall be determined by taking the total cost of annual maintenance and dividing said figure by the number of lots located within the Subdivision. Notwithstanding the determination set forth in the immediately preceding sentence, during the period of Developer Control, and until that time until all of the roadways and Common Elements have been conveyed to the Association by Developer, the total annual assessment to each Lot owner for all purposes shall be \$300.00 per year (excluding any cost of the community water system as set forth hereinbelow). The covenant of maintenance shall be a covenant running with the Subdivision, and each Lot therein, forever and may be enforceable as a lien against a defaulting Lot owner as if said lien were a Statutory Lien enforceable in accordance with Article 2, of Chapter 44-A of the North Carolina General Statutes. The Developer specifically reserves the right to extend such rights of way beyond the boundary of the Development as shown on the Plat for the benefit of the Developer's adjoining remaining property; whether now or hereafter acquired. All lots or parcels of property which shall use such right of way because of such an extension shall be obligated to contribute a pro rata share towards the maintenance of said right of way as set forth above. The Developer shall not be obligated to contribute towards the maintenance or upkeep of such rights of way or Common Elements (and shall not be obligated to pay the per Lot assessment set forth above on undeveloped Lots) during the Declarant Control period only.

3. Limitation of Access. Except as to Developer, the private roadways within the Common Elements shall not be used so as to provide access to any property except the Lots within Subdivision. Developer shall not be prevented from having the special right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Developer. The Developer specifically reserves the right to establish such easements or rights of way as Developer deems necessary or desirable for access to adjoining property whether now or hereafter owned by Developer; and such rights of way within the Development shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefitted by road rights of way within the Subdivision.

4. Private Water. It is anticipated that all Lots shall be serviced by a single community water system. No individual water well or sewage disposal system shall be permitted within the Subdivision unless said well or system is approved by Developer through the Architectural Control procedure set forth in Section 1 of Article III herein, and unless (in the case of a septic or sewage system) the septic or sewage disposal system is designed in accordance with the requirements, standards and recommendations of the Macon County Health Department. Approval of such system as installed shall be obtained from Developer and such governmental authority, or their successors. There is located within the Subdivision community wells to be used for the community water system, as shown on the Plat. Except as conveyed pursuant to this Section, all of the components of such community water system (including wells, pumps, storage tanks, and other system components, and all of that land encompassing a 100 foot radius from the center of each such well as shown on the Plat) shall be within the absolute discretion and control of the Developer. This well may be accessed and used as a water source by Lot Owners within the Development for improvements upon the several Lot Owners Lots, but subject to the following conditions:

(a) At the time of request by a Lot Owner to make connection to the community water system for the purpose of providing a water source to an improvement on such Lot Owners Lot, there must be adequate capacity available in such community water system to continue to provide an adequate supply of water to all previously connected improvements within the Subdivision, plus an adequate additional capacity to supply the additional improvement requesting to be benefitted, and

(b) All connections and lines extending outside of a requesting Lot Owners Lot shall be done within the confines of established Subdivision road easements, or well easements and rights of way, and shall not trespass on any other Lot Owners Lot (except as done within such easements), with the placement of all lines and the design and construction of such lines subject to prior written approval of the Association, and

(c) All expenses of connection to the community water system by a requesting Lot Owner shall be paid by such Lot Owner, and such Lot Owner, by requesting to connect to the community water system, agrees to pay, discharge, defend, and hold Declarant and Association and their officers and directors harmless from and against any and all demands, claims, cause of action, proceedings, obligations, settlements, liabilities, damages, injunctions, penalties, liens, losses, charges and expenses of every kind whatsoever incurred by Declarant or Association arising out of the work performed by such Lot Owner in association with such connection to the community water system.

All requests for connections to the community water system shall be made to the Developer during the Declarant Control Period, and then to the Association thereafter. All determinations set forth in this Article IV, Section 4, including but not limited to whether there is an adequate capacity for the community water system to service an additional improvement on a Lot Owners Lot at the time a request is made, and approval of the placement, design and construction plans for connection lines by a Lot Owner, shall be in the sole determination and discretion of the

Developer (or the Association, when applicable). In the alternative of having the community water system conveyed to the Association, it is understood that during the Declarant Control Period, Developer may, in Developer's sole and absolute discretion, convey the community water system to a private community water system company (which may, but not need be, an entity created by Developer or the principals of Developer) whose duty it shall be to service and maintain the community water system and all of its wells, pumps, storage tanks, and other system components, with all costs of such service and maintenance (included within such billing shall be allowed a reasonable profit) being billed to the Association (which shall pass the cost on to all Lot Owners using such community water system, as a limited common element expense), and additionally to make all determinations regarding use as reserved to the Declarant or Association as set forth above. In such event, the private community water system company shall be authorized and entitled to continue to maintain and service the community water service until such time as such private community water system company determines, in its sole discretion discontinues such maintenance and service, at which time such private community water system shall have the right and obligation to convey the private water system to the Association, which shall thereafter be responsible for maintenance and service of the community water system.

5. Entrance and Landscape Easements. Declarant reserves an easement for the purpose of landscaping and maintaining entryways and erecting and maintaining entrance monuments and signs and automatic entry gates for the Subdivision over, across and upon those three (3) portions of the Subdivision shown and designated as "Entrance and Landscape Easements" on the Plat. Declarant and/or the Association shall have the right (but not the obligation) to landscape and maintain the areas of the Subdivision so designated as Entrance and Landscape Easements, to erect and maintain entryway monuments or signs thereon bearing the name of the respective sections of the Subdivision and to erect and maintain lighting for such areas, plantings, landscaping and other improvements typically used for entryways.

6. Utility Reservation. Unless otherwise noted on any recorded plat, easements of ten (10) feet in width are reserved on either side of the centerline of all front, side and rear lot lines for installation, maintenance and repair of any utility services and drainage facilities. Easements are also reserved within the road rights of way for installation, maintenance and repair of any utility services.

ARTICLE V

Cat Creek Development Property Owners' Association

The Declarant does hereby establish a non-profit corporation which shall be known as the Cat Creek Development Property Owners' Association (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Subdivision and any common elements or any other matter or area determined by the Association to be a common element or other area of common interest. The Bylaws of Association are attached as Exhibit A and incorporated herein by this reference. The Board of Directors as established in the By Laws of the Association shall constitute the Executive Board as defined in N.C.G.S. 47F-3-103, and shall be subject to the provisions of such statute, except as set forth in this Declaration of the terms of the By Laws of the Association.

ARTICLE VII
General Matters

1. Adjoining Properties and Governmental Actions. All purchasers of Lots do hereby acknowledge that Declarant has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot, such Purchasers do hereby covenant and agree to hold Declarant harmless from any and all claims, damages and costs in any way relating to or arising out of any use of any property adjoining the Lot or Subdivision. The purchaser of any Lot acknowledges that they have investigated on their own accord how such uses may affect their Lot and the Subdivision and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot. The purchaser of any Lot acknowledges that they have investigated on their own accord how such taking may affect the Subdivision and are satisfied that such a taking does not materially or substantially affect the value, use or enjoyment of any Lot.

2. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fees as a part of such action.

3. Declarant Control. The "Control Period", "Declarant Control Period" or "Developer Control Period" shall mean that period of time from the date of the recording of these restrictions through the earlier of 1) January 1, 2020, or 2) that date upon which Developer, or its successors or assigns, conveys the last Lot owned by the Developer (other than to a related entity) as shown on the plat or any subsequently recorded plat adding property as an additional phase of the Subdivision. Notwithstanding the above, Developer may, in Developer's sole discretion, terminate the Developer Control Period on that date upon which Developer conveys all of the Common Elements of the Subdivision to the Association; however, nothing contained herein shall be construed to require Developer to terminate the Developer Control Period on such date.

4. Amendment and Modification. The Declarant does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. During the Control Period, the Declarant hereby reserves the absolute right to modify and/or to amend this Declaration in whole or in part in Declarant's sole and absolute discretion as the Declarant deems proper or appropriate. After the Control Period, an amendment to this Declaration shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the members, sixty-seven per cent (67%) of the members vote in favor of such amendment and once made, shall become effective when

recorded in the Macon County, NC Register's Office. Whenever herein the Declarant has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Declarant. Nothing herein shall require or shall be construed so as to require the Declarant or its related persons or entities to subject all or any part of adjoining property to this Declaration.

5. Invalidation. Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, then such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

6. Conflicting Terms. In the event of a conflict or ambiguity between this Declaration and the Act, then this Declaration shall be deemed to govern. The Act is incorporated herein by reference to the extent not inconsistent with the specific terms of this Declaration or in the absence of a specific term or provision in this Declaration.

IN WITNESS WHEREOF, the Declarant, has caused this instrument to be signed in its company name by its duly authorized Manager, as of the day and year first above written.

Declarant:

CAT CREEK PROPERTIES, LLC, a North Carolina limited liability company

By: *Virgil Lovell* (SEAL)
Virgil Lovell, Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of said County and State, do hereby certify that VIRGIL LOVELL, Manager of CAT CREEK PROPERTIES, LLC, a North Carolina Limited Liability Company, for and on behalf of said CAT CREEK PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

Witness my hand and official seal, this 25th day of June, 2001.

Douglas O. Thigpen
Notary Public

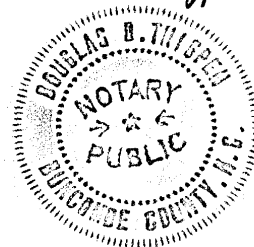
My Commission Expires: 3-5-2002

STATE OF NORTH CAROLINA
COUNTY OF MACON

Each of the foregoing certificate, or certificates, namely of

Douglas O. Thigpen
a Notary or Notaries Public of the County and state designated is certified to be correct and filed for registration on the 26th day of June 2001 in book V-24 at page 417 - 429 at 2:25 o'clock P M.

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BY *Janet Roberson* JANET ROBERSON, REGISTER OF DEEDS
DEPUTY / ~~ASSISTANT~~

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