

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
BROOKSIDE

This Amendment 4 and Restatement of Declaration of Covenants, Conditions and Restrictions is made this     day of             , by Brookside Homeowners Association Inc., a North Carolina Non-Profit Corporation, hereinafter referred to as the "Association"

STATEMENT OF PURPOSE

This Amendment 4 and Restatement incorporates Amendments 1, 2 & 3 previously adopted and the Assignment of Declarant Rights dated 5 May 2011, with the appropriate changes to the text to reflect this Assignment of Rights.

The Association is the owner of those certain properties in the County of Henderson, State of North Carolina, which are more particularly described at Deed Book 1257, Page 22, and at Deed Book 1249, Page 122, Henderson County Registry (less and excepting that property described at Deed Book 1259, Page 761 Henderson County Registry), which are incorporated herein by reference Thereinafter referred-to as the "Property"). An exclusive residential community of townhomes named Brookside has been created on this Property.

The Association desires to insure the attractiveness of the community and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the community and to provide for the maintenance and upkeep of the exterior of all homes and the Common Area, as hereinafter defined. To this end the Association desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

The Association has deemed it desirable for the efficient preservation, protection and enhancement of the values and amenities of the community, to insure the residents' enjoyment of *the specific* rights, privileges and easements in the Common Area, *as hereinafter* defined, and to provide for the maintenance and upkeep of the exterior of all homes and the Common Area, to create an organization to which will be delegated and assigned the powers of owning,

maintaining and administering the Common Area, maintaining the exterior of the homes, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created. To that end Brookside Homeowners Association, Inc. has been incorporated under North Carolina law as a nonprofit corporation, for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, the Association, by this Declaration of Covenants, Conditions, and Restrictions, does declare that all of the Property, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, 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

A. "Assessments" shall mean the amounts assessed against the owners from time to time by the Association to enable it to operate Brookside in accordance with the Declaration and to pay for the maintenance thereof.

B. "Association" shall mean and refer to Brookside Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and/or assigns.

C. "Common Area" shall mean: (i) all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners; and, (ii) all of those portions of the Development which are owned in undivided interests by the individual Owners of the separate Units in common with each other. The Common Area shall be all of the Property, with the exception thereof of those portions of same upon which houses are built.

D. "Declaration" shall mean any instruments, however denominated, that create the planned community located in Henderson County, North Carolina, known as "Brookside", and any amendments to those instruments.

E. "Development" and/or "Property" shall refer to Brookside, as now or hereafter recorded in the Henderson County, North Carolina, Public Registry.

F. "Family Dwelling" or "Family Dwelling Unit" or "Unit" shall mean a structure arranged or designed to be occupied by one (1) family and family servants, but which may be attached to another dwelling. "Family" as used in this sense shall mean a group composed of one, two or three adults and their children or other dependents. A Family Dwelling Unit shall be deemed to exist only after a written Certificate of Occupancy permit has been issued by the appropriate governmental body in Henderson County, North Carolina.

G. "Open Space" shall mean any natural, landscaped or agricultural area within Brookside that is designated to remain permanently open. No Open Space areas are dedicated until shown on a recorded plat.

H "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any townhome which is a part of the Property, including contract sellers , but excluding those having such interest merely as security for the performance of an obligation. If a townhome is owned by more than one person or entity , those Owners will collectively have one vote at a meeting of the Association.

I. "Townhomes" shall mean and refer to the single family dwelling unit(s) constructed on portions of the Property.

## ARTICLE II

### PROPERTY RIGHTS

A. Conveyance of Townhomes. Each owner shall be conveyed a fee simple title only to the actual ground upon which the townhome is situated, together with one-half of the width of the party wall, if any, separating two or more townhomes.

B. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Areas that shall be appurtenant to and shall pass with the title to every townhome unit, subject to the following: The Association shall have the right to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his townhome remains unpaid.

C. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his/her right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

D. Number of Units and Undivided Interests. The maximum number of townhomes shall be 32 dwelling units. Appurtenant to each townhome purchased shall be a one- thirty-second (1/32nd) interest in the Common Area.

ARTICLE III  
PARTY WALLS

A. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the Property and placed on the dividing line between the townhomes shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

B. Sharing or Repair and Maintenance. Repairs to the party wall conveyed as part of each townhome shall be equally paid for by the two townhome owners who share said party wall, unless the repairs required resulted from the negligence of one of the townhome owners, in which case said respective townhome owner shall pay for the entire repairs resulting from said negligence.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If the other Owner(s) thereafter make use of the wall they shall contribute to the cost of restoration in proportion to such use. Such contribution shall be without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence, willful acts or omissions.

D. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

E. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators together shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators.

ARTICLE IV  
COMMON AREAS

A. Intent. The Common Areas are intended to serve Brookside, its owners and its residents, and shall include the land not directly under the townhomes themselves, the parking areas, alleys, driveways, sidewalks, trails, park areas, greenways, landscaping, open spaces, any roadway shown on a plat as a non-publicly maintained roadway (but providing general access), drainage facilities, utility installations, all lights, light poles, curbs, medians, maintenance areas, landscaping materials installed by the Association, and all recreational and/or meeting facilities established hereafter by the Association for use of owners. All dedicated common spaces shall be used for the purposes permitted by the City of Hendersonville Zoning Ordinance.

B. Ownership. The Common Areas within Brookside shall be owned in common by the Owners. The actual ownership of *any Common Areas* will be subsequently designated on plats, deeds and/or other documents recorded in the Henderson County Register of Deeds Office.

C. Management. Except as may be otherwise set forth herein, the Common Areas shall be operated, managed, repaired, maintained and controlled by the Association.

D. Owners' Common Area Rights. The owners shall have the non-exclusive right to the use of the Common Areas in accordance with the provisions hereof and subject at all times to the control thereof by the Association and to such Rules and Regulations as are established with respect thereto. The Common Areas shall remain undivided, and no owner may bring an action for partition with respect thereto.

E. Change to Common Areas. Once a portion of Common Area has been dedicated on a recorded plat, no change to the use of said Common Area shall be made without a unanimous vote of all owners of the Association and the receipt of any required governmental approvals.

#### ARTICLE V USE RESTRICTIONS AND LIMITATIONS

A. Residential. Each of the townhomes now constructed or to be constructed on the Property shall be, and the same hereby are, restricted exclusively to single-family residential use and shall be occupied only by a single family, its nurses, aides, servants or caretakers and guests. The provisions of this paragraph do not apply to property being used by the Association as incidental to the operations and organization of the Association, or to property owned or controlled by the Association.

B. Business Activities. No business activities shall be conducted on any portion of the property, provided further, private offices may be maintained in a Family Dwelling so long as such use is incidental to the primary residential use of the unit and is approved by the Board of Directors.

C. Alterations and Attachments by Owners. No Owner shall make structural alterations or modifications to his Unit or to any of the Common Areas without the written approval of the Board of Directors. The Board of Directors shall not approve of any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or overall appearance of the Unit or the Property.

D. Motor Vehicles. No motor vehicles (other than private passenger vehicles in good repair containing two axles and at least four wheels), boats, boat trailer, mobile home, trailer or any similar items shall be stored or parked in or upon the Common Areas or any roadway within Brookside, unless placed upon a portion of the Common Areas which may be designated from time to time by the Board of Directors for the storage of such items.

E. Signs. No signs or other advertising devices shall be displayed which are visible from the exterior of any Unit or on the Common Areas, including "For Sale" signs, without written permission from the Board. The the Board of Directors may approve a standard sign designating unit numbers and ownership and occupancy. In addition, the Board of Directors may post such signs as it deems appropriate in the Common Areas.

F. Prohibitions in Use of Common Areas. Except where indicated in the Declaration or on specific approval of the Board or in the Rules and Regulations as adopted by the Board, the Common Areas shall not be used for temporary or permanent storage of supplies, personal property, trash or refuse of any kind, except in trash receptacles placed in designated areas, nor shall they be used in any way for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activity shall be carried on nor condition maintained by any Owner either in his Unit or upon the Common Areas, if such activity will despoil, or tend to despoil, the appearance of the Property. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all owners of the Property and is necessary for the protection of the Owners and is enforceable by the Board or any one or more Owners.

G. Animals. No animal shall be kept on the Property except normal household pets ordinarily kept in homes. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions or other nuisance. No savage or dangerous animal shall be kept or permitted on the Property. No more than two household pets may be housed within a Unit without written permission of the Board. No pets may be permitted to run loose upon the Common Areas and any Owner who causes or permits any animal to be brought or kept on the Property shall indemnify and hold the Association harmless for and from any loss, damage or liability which it sustains as a result of the presence of such animal on the Property, regardless of whether the Association or the Board has given it permission therefor. Whenever such pet is allowed outside the Unit, then the pet must be on a leash and any animal droppings which occur during such time as the pet is outside the living unit must be immediately collected by the owner. No pet may exceed a size greater than 50 pounds.

H. Access to Units. The Association and its agents shall have such access to each Unit from time to time during reasonable working hours, upon oral or written notice to its owner, as may be necessary for the maintenance, repair or replacement of any of the Common Areas. The Association or its agent shall also have such access to each Unit at all times without notice as may be necessary to make emergency repairs to prevent damage to Common Areas or to another Unit.

I. Subdividing. No unit may be divided or subdivided into smaller units, nor any portion thereof sold or otherwise transferred.

J. Nuisances. No nuisances shall be allowed upon the Property and no person shall engage in any use, practice or activity upon such property which is obnoxious, offensive or a source of annoyance to Owners or which reasonably interferes with the peaceful and proper use of the property by any Owner. All parts of the property shall be kept in a clean and sanitary condition. No rubbish, refuse or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any Owner (or his family, tenants, guests or agents) who shall dump or place any trash or debris upon any portion of the Property shall be liable to the Association for the actual cost of removal thereof and the same shall be added to and become a part of the assessment next coming due to which the Owner is subject. No Owner shall permit any use of his

unit or make any use of the Common Areas which will increase the rate of insurance upon the Property.

K. Antenna. There shall be no exterior antenna for television, radio, citizen band or ham radio, nor any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals (except satellite dishes for home television and internet access, not to exceed an envelope of 36" x 48"), except with the express written permission of the Board of Directors. Satellite dishes shall be placed in order to not be seen on the front or side of any unit. A satellite dish may be placed on the front or side of a unit only if such is necessary to obtain a proper satellite signal. Receiving antenna may, however, be placed within attic areas. Transmitting antenna is expressly prohibited, whether interior or exterior.

L. Lawful Use. No immoral, improper or unlawful use shall be made of any unit or the Property or any part thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof shall be observed. At all times an Owner shall maintain sufficient heat in his unit to prevent the freezing of any water pipes.

M. Restriction on Transfer of Common Areas. The Association shall not seek to abandon, partition, subdivide; encumber, sell or transfer any portion of the Common Areas without the approval of owners and mortgagees of units totaling 100 percent or the percentage interest in the Common Areas. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this paragraph. This paragraph shall not apply to property owned in fee simple by the Association. Upon any such authorized transfer, the property or property interest shall be conveyed by the Association.

N. Rules and Regulations. The Board may from time to time promulgate reasonable rules and regulations respecting the restrictive covenants set out in this Article, but such rules and regulations shall be consistent with these restrictions and not in derogation of or intended as an amendment thereof

O. Leasing of Units. With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his unit for transient or hotel purposes. No Owner may lease less than the entire unit or for periods of less than one year. Notwithstanding this, temporary occupancy of units shall be permitted by purchasers or sellers of units to facilitate the transfer of a unit from a seller to a purchaser (by way of example, by agreement between a seller and a purchaser, a seller may continue to occupy after sale of a unit or a purchaser may occupy prior to closing on the purchase of a unit). Any lease agreement shall be in writing and shall provide that the terms of the lease shall be subject in

all respects to the provisions of the Declaration and that any failure by the lessee to comply with the terms of such documents shall be in default under the lease.

P. Conveyance of Interest in Unit. Each Owner shall immediately report to the Board of Directors any conveyance by an Owner of any interest in the property, including any mortgage placed upon the property. The Owner shall report to the Board of Directors the name and address of the mortgagee or the transferee of the property. The Board of Directors shall maintain a current list of all Owners and mortgagees for the purpose of facilitating notification to Owners and mortgagees.

#### ARTICLE VI HOMEOWNERS ASSOCIATION

A. Formation. The Brookside Homeowners Association, Inc. ("Association") has been incorporated as a non-profit corporation in accordance with the laws of the State of North Carolina.

B. Management. The Association shall be managed and operated as set forth in this Declaration and the Bylaws, which are incorporated herein as Exhibit A.

C. Association Membership. Each owner, by acceptance of a deed to a townhome, covenants and agrees to pay the assessments levied by the Association from time to time. Every Owner of a home that 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 home that is subject to assessment.

D. Membership Rights, Duties and Privileges. All rights, duties and privileges of Membership shall be as provided in this Declaration and the Bylaws.

E. Board of Directors. The Association shall be governed by a Board of Directors in accordance with the Bylaws.

#### ARTICLE VII ASSESSMENTS

A. Agreement to Pay Assessments. Each Owner of any townhome 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. ,

B. Purpose of Assessments. The assessments or charges levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and in particular for the maintenance, repair and reconstruction of the exterior of townhomes and the common roadways, driveways and parking areas and walkways serving the homes, and for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including, but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, landscaping and grounds maintenance of Common Area, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys and/or accountants to represent the Association, when necessary, and such other needs as may arise.

C. Annual Assessments. The annual assessment period shall be from January 1 to December 31. The Board of Directors of the Association shall fix the amount against each townhome at least 30 days in advance of each assessment period. Not less than 15 days in advance of each assessment period the Secretary of the Association shall cause notice to be hand-delivered or sent pre-paid US Mail to the mailing address of each townhome or to any other mailing address designated by the townhome owner, or sent by electronic means, including by electronic mail over the internet, to an electronic address designated by the townhome owner. The due dates of the assessments shall be established by the Board of Directors of the Association. The Association shall, upon demand and for a reasonable charge, furnish a certificate, signed by an officer of the Association setting forth whether the assessments on a specified townhome have been paid. A properly executed certificate of the Association as to the status of assessments on a townhome is binding on the Association as of the date of its issuance.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Board of Directors of 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 construction, reconstruction, repair or replacement of a capital improvement upon the Common Area.

E. Creation of Lien. The Assessments shall include any interest accruing thereon resulting from late payment, and any costs and reasonable attorney's fees incurred in the collection thereof. All of the foregoing shall be a lien against each Owner until payment thereof from and after the recording of any Claim of Lien filed by the Association with the Clerk of the Superior Court of Henderson County. If the Assessments are not paid to the Association within thirty days of the due date thereof, the Association may file a Claim of Lien with said Clerk.

F. Personal Obligation. Each such assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be and is the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

G. Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the initial rate of twelve percent (12%) per annum or the maximum amount allowed by North Carolina law, whichever is less. Said rate may be changed from time to time by the Board of Directors of the Association. In addition to such interest charge, the delinquent owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Association to defray the costs of late payment. The Association may, after 45 days, bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Interest, late payment fees, costs and reasonable attorney's fees of 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 or abandonment of his townhome.

H. Subordination of the Lien to Mortgages. No such assessment lien shall be superior to the lien of the any holder's deed of trust or mortgage on a townhome, so long as the deed of trust (mortgage) was filed prior to the recording of the Claim of Lien in the Office of said Clerk. The sale or transfer of any townhome pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. The Board of Directors of the Association may, in its sole discretion, determine that such unpaid assessments shall be an annual or special assessment, as applicable, to be paid by all Owners on a pro-rata basis. No sale or transfer shall relieve such townhome from liability for any assessments thereafter becoming due of from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

## ARTICLE VIII

### MAINTENANCE

A. Common Areas. The Association shall maintain Common Areas as outlined in Article IV above.

B. Exterior Maintenance. The Association shall provide exterior maintenance upon each townhome, which is subject to assessment hereunder, as follows: paint, repair, replace and care of roofs, gutters, down spouts, exterior building surfaces, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, and each Owner shall be required to maintain his own glass. In order to enable the Association to accomplish the foregoing, there is reserved to the Association the right to unobstructed access over and upon each townhome at all reasonable times to perform maintenance as provided in this Article. In the event, however, that the need for maintenance, repair, or replacement is caused through the willful or negligent act of the Owner, his family, tenant, guests, or invitees, the cost of such maintenance, repairs or replacements incurred by the Association shall be added to and become a part of the assessment to which the townhome is subject.

C. Interior Maintenance. Each Owner shall maintain, repair and replace, at his expenses, all interior portions of improvements in his townhome which shall need repair. Further, each Owner shall repair, maintain, and replace, at his expenses, when necessary, the heating and air conditioning systems servicing his dwelling, whether located in his townhome or in the Common Areas adjacent to same.

D. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators together shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators.

## ARTICLE IX

### EASEMENTS

A. Reservation and Granting of Easements. The Association reserves, and may grant easements for the installations and maintenance of driveways, walkways, parking areas, water lines, telephone and electric power lines, cable television lines, sanitary sewer and storm drainage facilities and for other utility installations over the Property. Each Owner, by his acceptance of a deed to a townhome, hereby grants to the Association an irrevocable power of attorney to execute such easement and rights of way.

B. Restrictions Within Easements. Within any such easement, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water or sewage through drainage channels in the easements.

C. Maintenance of Sewer and Water Lines. Association shall have the continuing right and easement to maintain all sewer and water lines located in the townhome site, including the right to go into townhome units and disturb the structure and floors thereof in order to maintain those lines located within or under said units.

D. Easement for Protruding Attachments. All attachments to the exterior walls of a townhome which are a part thereof but which protrude beyond the delineated boundaries of the home, and which were constructed in conformity with the plans and specifications, shall be deemed to be included within said delineated boundaries of said townhome, and there is hereby reserved an easement to permit the construction of and continued existence of any such protruding attachment.

## ARTICLE X

### INSURANCE

A. Liability Insurance. The Association shall procure and maintain adequate liability insurance covering the Association and the Directors and officers thereof, and adequate hazard insurance on the property owned by the Association including premises liability insurance for the common areas and open space.

B. Extended Coverage Requirement. Each Owner shall secure and maintain in full force and effect, at such Owner's expense, one or more insurance policies insuring Owner's townhome and the improvements therein for the full replacement value thereof against loss or damage from all hazards and risks normally covered by a standard "Extended Coverage" insurance policy, including fire and lightning, vandalism and malicious mischief.

C. Comprehensive Personal Liability Requirement. Each Owner, at Owner's expense, shall secure and maintain in full force and effect comprehensive personal liability insurance for damage to person or property occurring in said owner's townhome, in an amount not less than the amount designated by the Association. Each Owner shall provide the Association with satisfactory evidence that such insurance as herein required is in full force and effect, and the Association will be given thirty (30) days notice prior to the expiration or cancellation of any owner's insurance coverage. The insurance policy must state that the Association must be given this thirty (30) days notice prior to the expiration or cancellation of any owner's insurance coverage. In the event Owner fails or refuses to maintain such insurance coverage as herein required, the Association may, but shall not be obligated to, through its agent or representative, secure and maintain such insurance coverage for Owner's benefit, and the cost or expense thereof shall be deemed a special assessment levied by the Association against Owner and Owner's townhome in accordance with the other provisions of this Declaration, and Owner covenants and agrees to pay to the Association such special assessments upon demand. Evidence of any insurance coverage required hereunder shall be provided to the Association by the Owner at or prior to the purchase of a unit by the Owner.

ARTICLE XI

CONDEMNATION

A. Partial Taking Without Direct Effect on a Townhome. If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no townhome is taken, all compensation and damages for and on account of the taking of the Common Area, exclusive of compensation for the consequential damages to certain affected townhomes, shall be paid to the Board of Directors of the Association, in trust for all Owners and their mortgagees, according to the loss or damages to their respective interests in such Common Area. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues and with respect to the taking and compensation affecting the Common Area, without limitation on the right of the Owners to represent their own interests. Such proceeds shall be used to restore the Common Area with the excess, if any, paid to the Owners pro-rata. Nothing herein is to prevent Owners whose townhomes are specifically affected by the taking or condition, from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected home or personal improvements therein, exclusive of damages relating to Common Area. In the event that the condemnation award does not allocate consequential damages to the specific Owners, but its terms includes an award for reduction in value of townhomes without such allocation, the award shall be divided between affected Owners and the Board of Directors of the Association as their interests may appear by arbitration in accordance with the rules of the American Arbitration Association.

B. Partial or Total Taking Directly Affecting Townhomes. If part, or all, of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any townhome or a part thereof (including specific easements assigned by any townhome) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area, and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective townhomes. All compensation and damages for and on account of the taking of any one or more of the townhomes or personal improvements therein shall be paid to the Owners of the affected townhome and their mortgagees, as their interests may appear.

C. Notice to Mortgagee. A notice of any eminent domain or condemnation proceeding shall be sent to holders of all first mortgages.

ARTICLE XII

DECLARATION PERIOD, EXTENSION AND  
AMENDMENT

A. Declaration Period. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. After the initial 25 year declaration period, the Declaration shall be automatically extended for successive periods of ten (10) years.

B. Amendment. This Declaration may be amended by an instrument signed by the Owners of at least seventy-five percent (75%) of the townhomes. No such amendment shall be effective until properly recorded in the Office of the Register of Deeds for Henderson County, North Carolina.

C. Zoning Ordinance. This Declaration shall not be amended in any manner that would violate the provisions of the applicable governmental zoning ordinances.

ARTICLE XIII

GENERAL PROVISIONS

A. Enforcement. The Association, and/or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. Severability. Invalidation of any one of the provisions of this Declaration shall not affect any other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Association has caused this instrument to be executed by its duly authorized President, on the day and year first above written.

BROOKSIDE HOMEOWNERS ASSOCIATION, Inc.

By \_\_\_\_\_  
PRESIDENT

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, \_\_\_\_\_ Notary Public for the above State and County, certify that Joseph Marin, personally came before me this day and acknowledged that he is President of Brookside Homeowners Association, a North Carolina Non-profit Corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the Non-profit Corporation.

WITNESS my hand and official seal, this \_\_\_\_ day of

\_\_\_\_\_  
NOTARY PUBLIC