



DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR
ALARKA HIGHLANDS

THIS DECLARATION is made on the date hereinafter set forth by ANC CAPITAL, a Florida Corporation (hereinafter sometimes called "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of the Real Property set forth and described in Exhibit "A" hereof; and

WHEREAS, Declarant intends to subdivide the land into various Lots and intends to sell those Lots individually. The Declarant desires that the land be developed in an orderly manner and in a way that will benefit all present and future owners of the Lots in the Community; and

WHEREAS, Declarant desires to subject the said Real Property to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of additional real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the said Real Property is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof. The provisions contained herein shall constitute a material part of the consideration for the purchase and sale of the Real Property.

Article 1
North Carolina Planned Community Act.

Regardless of the number of lots that initially or ultimately are included within the Community, Chapter 47F of the North Carolina General Statutes, the North Carolina Planned Community Act, shall apply in full to the Community pursuant North Carolina General Statute 47F-1-102(b)(1).

Article 2
Definitions

The following words, when used in this Declaration or in any Supplementary or Amended Declaration, shall have the following meanings:

2.1 “Articles of Incorporation” means the Articles of Incorporation of Alarka Highlands Community Association, Inc., filed with the North Carolina Secretary of State and incorporated herein by this reference as may be amended from time to time.

2.2 “Association” means Alarka Highlands Community Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

2.3 “Board of Directors” or “Board” means the appointed or elected body of the Association, as defined in North Carolina General Statute 47F-1-103(13) vested with the authority to manage the affairs of the Association pursuant to the provisions set forth herein and in addition hereto pursuant to the provisions set forth in North Carolina General Statute 47F-3-102 and 103.

2.4 “Bylaws” means the Bylaws of Alarka Highlands Community Association, Inc., duly adopted by the Board as may be amended from time to time.

2.5 “Common Property” means any and all real and personal property, including, without limitation, easements and other interests therein, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

2.6 “Community” refers to the said Real Property set forth and described in Exhibit “A” of the Declaration of Protective Covenants, Conditions, Restrictions And Easements For Alarka Highlands recorded in Book 358 at page 709, Swain County; and shall include that certain 0.50 acre, more or less, tract of land as set forth in Deed recorded in Book 360 at page 117, Swain County Registry, reference to which is hereby made for a more complete and particular description and incorporated herein by express reference.

2.7 “Community-Wide Standard” means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

2.8 “Declarant” means Southern Timber Company, a Georgia Corporation and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Declarant hereunder by the then holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease so that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

2.9 “Lot” means any tract or parcel of land within the Community, whether or not improvements are constructed thereon, which constitutes a single-family dwelling site conveyed by the Declarant. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto, membership in the Association and all rights and interest of an Owner in the Common Property.

2.10 “Mortgage” means any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

2.11 “Mortgagee” means the holder of a Mortgage.

2.12 “Occupant” means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

2.13 “Owner” means the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of an obligation.

2.14 “Person” includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under North Carolina law.

2.15 “Real Property” shall include all real property set forth and described in Exhibit “A” hereof, reference to which is hereby made for a more complete and particular description and for incorporation herein.

2.16 “Supplementary Declaration” means an amendment or supplement to this Declaration which subjects additional real property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

2.17 “Total Association Vote” means the votes attributable to the entire membership of the Association (including votes of Declarant) as of record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

Article 3 Property Subject To This Declaration

3.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is said Real Property set forth and described in Exhibit “A” hereof, reference to which is hereby made for a more complete and particular description and for incorporation herein.

3.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until twenty (20) years after the recording of this Declaration to subject additional tracts or parcels of real property as may be, from time to time, identified by Declarant in a Supplementary Declaration describing the real property being subjected. Any annexation shall be effective upon the filing

for record of a Supplementary Declaration unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

3.3 Additional Covenants, Restrictions and Easements. The Declarant may unilaterally subject any portion of the Real Property or additional real property to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such real property. Similarly, portions of the Real Property may be developed as an age-restricted Neighborhood and the restrictions on age may be set forth in one or more Supplementary Declarations.

Article 4 Association Membership and Voting Rights

4.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No owner, whether one or more Persons, shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

4.2 Voting. Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it.

Declarant shall have one vote for each lot owned or, in the case of acreage not yet divided into lots, one vote for each acre owned.

4.3 Notice of Sale, Lease or Acquisition. Within seven (7) days after the sale or lease of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

Article 5 Assessments

5.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

5.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; and (c) specific assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required, except as required by North Carolina law. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the property. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

5.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The General Assessment to be levied against each Lot shall be an equal amount for all Lots. The Board shall cause the budget and the assessments to be levied for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote and the Declarant. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds assessment the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred assessment provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

5.4 Special Assessments. The Association may levy a special assessment if approved by the Board and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

5.5 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall

not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

5.6 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the property pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation or relieve such property or the then Owner from liability for any assessment authorized hereunder become due after such sale and transfer.

5.7 Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. In the event that the assessment remains unpaid after thirty (30) days, the Association may file a claim of lien to collect such amounts and may foreclose its lien as provided in the North Carolina Planned Community Act. The Association shall have the right to name and/or designate a Trustee to conduct the foreclosure of any line arising hereunder. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on any property within the Community at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities, if any, maintained by the Association and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such property in favor of the Association.

5.8 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The Declarant shall have no liability for assessments, except for Lots, if any, owned by Declarant which have been occupied for residential purposes.

5.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the annual, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

5.10 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner as assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis for the last year for which assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

5.11 Estoppel Letter. The Association shall, within five (5) days after receiving a written request therefor and for the reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

Article 6

Maintenance; Common Property

6.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features, (b) Community landscaping originally installed by the Declarant, whether or not such landscaping is in a Lot, privately owned property or public right-of-way; (c) all storm water detention/retention ponds and storm water drainage facilities serving the Community. (d) all roads and streets located in the community, at such time as Declarant conveys the roads and streets to the Association, which at such time said roads and streets are completed according to specifications. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and cost-sharing agreements regarding such property where the Board has determined that such action would benefit Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

6.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 6.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repair of exterior damages to improvements. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a specific assessment.

6.3 Conveyance of Common Property by Declarant to Association, No Implied Rights. The Declarant may transfer or convey to the Association at any time from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. The Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the county where the property is located.

6.4 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, Lots located within the Community.

6.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property in which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote and the consent of Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

6.6 Liability. Owners, Occupants and their guests shall use the Common Property at their own risk and shall assume sole responsibility for their personal belongings used or stored on the Common Property. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on the Common Property.

Article 7 Architectural Standards

7.1 Architectural Requirements.

a) *Dwelling Size*: The minimum size of any single family residence in Alarka Highlands shall be 1200 square feet of heated/air conditioned floor finished space (excluding garages, basements, porches, patios, etc.).

b) *Dwelling Design*: Similar house designs must be separated by a minimum of 2 lots/homes. Designs will be reviewed with respect to such items as roof elements, size and location of doors and windows of front elevations, etc. One level flat roof will not be permitted. In order to assist the applicant, it is recommended that a sketch or plan book representation of the proposed dwelling be submitted to the Architectural Review Committee at the earliest moment in order to verify basic design guideline acceptance prior to completion of plans.

c) *Built on Site*: All residences must be built on site. No mobile homes, trailers or modular homes shall be permitted to be placed or remain on any Lot.

d) *Outbuildings*: All outbuildings must be approved by the Architectural Review Committee and must be compatible with the home itself. Outbuildings are defined as gazebos, Jacuzzis, dollhouses, play equipment, doghouses and storage buildings. All play equipment shall be placed only in the rear yard and trampolines are not permitted.

e) *Pools and Spas*: Approval must be obtained for the construction of an in ground pool or extra spa from the Architectural Review Committee. All pools will be required to be fenced and all filter tanks, pool chemical feeders and any other above ground apparatus must be enclosed or hidden from view. Pools shall be placed in the rear yard only and no above ground pools shall be allowed.

f) *Fences*: All fencing or fencing type barrier of any kind shall be approved by the Architectural Review Committee before placed on any lot. No chain link fences will be allowed and invisible fencing for animals is preferred.

g) *Set back lines*: All lots shall have the following building setbacks: 50 feet from the front of each lot, 20 feet from the side of each lot and 30 feet from the back of each lot.

h) *Prohibited Items*: No window air-conditioning units, exterior clotheslines or four wheelers shall be allowed on any lot. Four wheelers will be allowed to be stored in garages.

I) *Entry Features*: Owners may not alter, remove or add or modify improvements to any entry features in the Community.

k) *Garbage Containers*: All garbage or waste containers must be concealed from view from the streets and adjoining lots. Containers which are taken to the curb for collection must be timely removed.

Garbage pickup, if available, will be provided by one waste company only which contract shall be negotiated and provided by the Declarant.

m) *Dwelling Exterior*: The exterior of all foundations shall be covered in natural stone and the exterior of all dwellings above the foundation must be wood or other stain grade material.

7.2 Variances. Notwithstanding anything to the contrary contained herein, the Declarant shall be authorized to grant individual variances from any of the provisions of this Declaration and the architectural guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) stop the Declarant from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

7.3 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Neither the Declarant, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this Article. In addition to any other remedies available to the Declarant and the Association, in the event of noncompliance with this Article, the Declarant or the Association may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Declarant and the Association shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

7.4 Architectural Review Committee. Until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued, the Declarant shall have the sole right, power and authority under this Article. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant and recorded in Office of the Register of Deeds for Swain County. Upon expiration or earlier surrender in writing of all or any portion of such right and authority by the Declarant, the Association shall then have such jurisdiction over architectural control under this Article as may have been relinquished by the Declarant. The Association may appoint and delegate all or a portion of its right, power and authority hereunder to an Architectural Review Committee of the Association. The Declarant may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to the Architectural Review Committee while retaining control over all other building and construction in the Community. For example and without limitation, the Declarant may relinquish control over modifications of existing structures to the Architectural Review Committee while retaining all authority to review and approve new home construction. Any right, power or authority of the Declarant which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory Architectural Review Committee by the Declarant shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder. After the termination of all rights of Declarant hereunder, the Association shall have all right, power and authority to review and approve

building and construction activity within the Community hereunder and this Article shall then be read and interpreted as if any reference to approval or other action to be taken by the Declarant in this Article 7 were a reference to approval or action by the Association.

Article 8 Use Restrictions and Rules

8.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

8.2 Residential Use. Each Lot shall be used for single-family residential purposes exclusively. For the purposes of this restriction a “single-family” means a group of individuals related by blood, marriage, adoption, or guardianship, or not more than six persons not so related, living together as a single housekeeping unit. Leasing of a Lot for single-family residential occupancy shall not be considered a business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the dwelling unit so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

8.3 Leasing. Lots may be leased for single-family residential purposes. All leases shall require, without limitation, the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate the Occupants to comply with the foregoing. Notwithstanding anything contained in the Restrictions on Use to the contrary, all Lots may be used for vacation rental purposes as the same is defined North Carolina General Statute Chapter 42A.

8.4 Single residence. Only one single-family residence shall be permitted upon each lot.

8.5 Signs. No sign of any kind shall be erected within the Community without prior written consent of the Declarant or, after the termination of the rights of Declarant hereunder, the Architectural Review Committee. Notwithstanding the foregoing, the Board, any approved builder and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgage in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

8.7 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on the exterior of any Lot, with the exception of two (2) dogs, cats or other usual and common indoor pets. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 7 hereof. All pets when outdoors should be contained on the Owner's lot either by leash, invisible fence or other means approved by Declarant and any pet which becomes a nuisance to neighbors must be removed or kept indoors. All Owners must clean up after their pets.

8.8 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No Lot shall be used for the storage of anything that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owner and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot. Any noise that can be heard inside a neighboring house with the windows and doors closed will be considered too loud and in violation of this provision.

8.9 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

8.10 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any Lot without prior approval as set forth in Section 7 herein; provided, however, no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive television broadcast signals.

8.11 Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Architectural Review Committee of plans and specifications for the prevention and control of such erosion or siltation. The Architectural Review Committee may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include (by way of example and not of limitation) physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape, and required landscaping. Guidelines for the prevention and control of erosion and siltation may be included in the Design Standards of the Architectural Review Committee.

8.12 Landscaping. No construction or alteration of any Structure shall take place without the prior written approval by the Architectural Review Committee of plans and specifications for the landscaping to accompany such construction or alteration. Guidelines for the landscaping to accompany the

construction or alteration of any Structure may be included in the Design Standards of the Architectural Review Committee.

8.13 Temporary Buildings. No temporary building, trailer, garage, or building under construction on any Lot shall be used, temporarily or permanently, as a residence except as temporary sleeping or living quarters required or desirable for security purposes in accordance with plans and specifications therefore approved by the Architectural Review Committee. Unless extended by Declarant, all temporary buildings, trailers, and sheds used by contractors or builders shall be removed at any time such contractor or builder has no house actively under construction.

8.14 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 7 hereof. Declarant, however hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the effected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such Lot(s).

8.15 Guns. The use or discharge of firearms in the Community is prohibited. The term “firearms” includes, without limitation, “B-B” guns, pellet guns and other guns of any type, regardless of size.

8.16 Utility Lines. Overhead utilities shall be permitted to be installed along the perimeter of Alarka Highlands and within all subdivision road easements. Lot Owners must install underground utilities from the main lines along the roads to the residence situate upon their lots.

8.17 Creeks and Streams. No creek or stream may be altered. No upper riparian owner may divert water from any creek or stream that diminishes the water flow to a lower riparian owner.

8.18 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 7 hereof.

8.19 Accessory Buildings, Sculpture, Flags. No artificial vegetation shall be permitted on the exterior of any Lot. No accessory building, fuel tank, sculpture, fountain, flag or similar item may be constructed or displayed on the exterior of any Lot unless and until the plans, color and location have been approved in writing under Article 7 hereof.

8.20 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant or the Architectural Review Committee as the case may be in accordance with the provisions of Article 7 hereof.

8.21 Solid Waste.

(a) No person shall dump rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

b) Except during approved construction and as approved by the appropriate governmental authority, no person shall burn rubbish, garbage, or any other form of solid waste on any Lot or on Common Property or within the right-of-way of any street in the Development.

c) Except for building materials employed during the course of construction of any Structure approved by the Architectural Review Committee, no lumber, metals, bulk materials, or solid waste of any kind shall be kept, stored, or allowed to accumulate on any Lot unless screened or otherwise handled in a manner set forth in the Design Standard.

d) If rubbish, garbage, or any other form of solid waste is to be disposed of by being collected in a regular and recurring basis, containers may be placed in the open on any day that a pick-up is to be made, in order to provide access to persons making such pick-up. At all other times such containers shall be screened or enclosed in a manner set forth in the Design Standards. Guidelines relating to the type of containers permitted, the manner of storage and the place of pick-up may also be included in the Design Standards.

8.22 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to anyone in the Development.

8.23 Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the By-Laws, the Articles of Incorporation, use restrictions, rules and regulations, Design Guidelines, and any amendments thereto, until Declarant's right unilaterally to appoint and remove members of the Board as provided herein terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Development as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property subject to this Declaration, including, but without limitation: the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Development; the right to tie into any portion of the Development with driveways, parking areas, and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for doing so), replace, relocate, maintain, and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Development; the right to carry on sales and promotional activities in the Development; and the right to construct and operate business offices, signs, construction trailers, material storage areas, model residences, off-street parking areas, and sales offices. Declarant and any such builder or developer may use residences or offices owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing any damage at its sole expense.

8.24 Expansion. Declarant reserves the option, in Declarant's unfettered discretion, to expand the Subdivision by adding to the Subdivision all or any part of additional real property on one or more occasions. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements of the additional real property may be added as a whole at one time or portions may be added at different times. There are no limitations fixing the boundaries of any portion of the additional real property which may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the additional real property may be submitted to this Declaration. This option shall expire twenty (20) years from the date of the recording of this Declaration. No assurances are made that any improvements will be made on all or any of the additional real property that may be submitted to the Declaration. The additional real property shall be subject to the use restrictions set forth

herein when it is added to the Subdivision. The Declarant shall have the right to assign Limited Common Elements on the additional real property with the provisions hereof. The undivided interests in the Common Elements shall be owned by the Association. Any expansion under this Paragraph shall be affected by Declarant's executing and recording the amendments to this Declaration, the plats and the plans required by the Act, at Declarant's sole expense. The Lots thereby created and added shall be owned by Declarant, but the common Elements shall be owned by the Association.

Article 9 Easements

9.1 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as the document recorded in the Office of the Register of Deeds for Swain County.

9.2 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owners Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, to limit the number of Persons who may use the Community recreational facilities, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

b) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Community recreational facilities, for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant of any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community.);

d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and right-of-way over, under and through the Common Property;

e) the right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Lots;

f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

g) all encumbrances and other matters shown by the public records affecting title to the Common Property.

9.2 Easements for Utilities. All Utilities shall be placed underground. When possible and practical all utilities serving the Community or any portion thereof shall be inside or along the subdivision road rights of way as set forth on the various maps of Alarka Highlands. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television, or security system which the Declarant or the Association might decide to have installed to serve the Community. Declarant, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

9.3 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplementary Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

9.4 Easement for Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

9.5 Easement for Entry Features and Streetscapes. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes as may be more fully described on the recorded subdivision plats for the community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

9.6 Easement for Drainage. There is hereby reserved to the Declarant and granted to the Association and each approved builder a blanket easement across all Lots for creating and maintaining satisfactory storm water drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. This easement shall

include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. It is anticipated that increased storm water runoff across downstream Lots will result from the construction of impervious surface within or adjacent to the Community. Neither the Declarant, the Association or any builder or Owner constructing according to plans and specifications approved under Article 7 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

9.7 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, architectural guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any approved builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such approved builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such approved builder, including, but not limited to: the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way at street intersections within the Community; the right to access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any approved builder may use residences, offices or other buildings owned or leased by Declarant or such approved builder as model residences and sales offices and may also use Community recreational facilities as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

9.8 Community Roads.

(a) Declarant expressly dedicates and conveys easements for all existing roads within the Community, all roads constructed in the future as Community roads and all roads to connect the Community to a state road. Road Easements conveyed are forty-five (45) feet in width, twenty-two and one half (22.5) feet on either side of the centerline of the Community roads.

b) Declarant expressly states that the Community roads are not suitable for acceptance by the North Carolina Department of Transportation as state maintained roads. The Association shall maintain the development roads. Except as Lot Owner, the Declarant has no responsibility for the maintenance of any Community roads.

c) All Community roads shall remain open at all times for the purpose of ingress and egress and for the maintenance of the roads.

d) Lot Owners shall be solely responsible for damage to any portion of a Community road that exceeds ordinary wear and tear, such as damage incurred during any construction or improvement on the Owner's Lot, damage caused by the placement of underground utilities or by reason of travel by equipment, trucks or other vehicles to and from the Lot the state road.

e) The Declarant reserves a non-exclusive easement thirty (30) feet in width, for ingress, egress and regress and for utilities centered across all developments roads, either presently existing or constructed in the future. This reservation is for the benefit of the Declarant, its successors and assigns to access all Lots within the Community and for the benefit of any other real property that the Declarant now owns or may acquire in the future adjoining the Community.

9.9 Reservation of Special Declarant Rights. Declarant expressly reserves all Special Declarant rights as the same are defined in North Carolina General Statute 47F-1-103(28), including, without limitation, the right (a) to complete improvements indicated on plats and plans filed with this Declaration; (b) to exercise any development right; (c) to maintain sales offices, management offices, signs advertising the planned community, and models; (d) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (e) to make the planned community part of a larger planned community or group of planned communities; (f) to make the planned community subject to a master association; or (g) to appoint or remove any officer or executive board member of the association or any master association during the period of Declarant control.

9.10 Common Property Easements. The DECLARANT and/or the Association may but is not required to convey and transfer rights of way and easements for septic and/or well water systems in the Common Property for the benefit of a particular Lot or a group of Lots.

The Declarant expressly reserves a period of control of the Association pursuant to North Carolina General Statute 47F-3-103(d), during which period the Declarant, or persons designated by the Declarant may appoint and remove the officers and members of the Board.

The period of Declarant control shall last until such time as Declarant (a) voluntarily relinquishes control of the Association as provided herein; or (b) shall have transferred more than eighty percent (80%) of the total acreage of the land subject to this Declaration, whichever occurs first.

Article 10 General Provisions

10.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or design guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

10.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and design guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

10.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

10.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with the bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, North Carolina law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Total Association Vote has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to terminate the same; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

10.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by Declarant in the public real estate records of each county where this Declaration is recorded, of a written instrument terminating all of Declarant's rights hereunder.

10.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder or shall it adversely affect title to any Lot without the

consent of the affected Owner. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder or shall it adversely affect title to any Lot without the consent of the affected Owner. The Board of Directors, with the written consent of the Declarant, and without a vote of the members may amend this Declaration for the sole purpose of electing to be governed by, and complying thereafter with, the provisions of the North Carolina Planned Community Act. In addition to the above, this Declaration may be amended upon the affirmative vote or written consent of the Owners of at least two-thirds of the Lots; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder or shall it adversely affect title to any Lot without the consent of the affected Owner. Amendments to this Declaration shall become effective upon the recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and North Carolina law were given.

10.7 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

10.8 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

10.9 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

10.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant, while owning all of the estate or interests shall execute a written statement or instrument.

10.11 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of North Carolina. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

10.12 Indemnification. To the fullest extent allowed by the North Carolina law, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee

member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by an officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

10.13 Agreements. Subject to the prior approval of Declarant all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

10.14 Variations. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

10.15 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least 75% of the Total Association Vote and the consent of the Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

10.16 Arbitration. Except as provided below, any controversy arising under this Declaration between the Association, the Declarant and any Owner or Occupant shall be submitted to binding arbitration pursuant to the provisions of Article 45C of Chapter 1 of the North Carolina General Statutes, the Revised Uniform Arbitration Act (NCGS 1-569.1 et seq.). Such arbitration shall in all respects be governed by the provisions of said Arbitration Act as to any controversy so submitted to arbitration. The following matters shall not require mandatory arbitration: (a) any suit by the Association against an Owner to collect assessments as provided in this Declaration; and (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and/or preserve the Association's ability to enforce any provision of this Declaration.

11.1 No Reverter: No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

11.2 Severability: A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

11.3 Notices: All amendments, notices, request, objections, waivers, rejections, agreements, approvals, disclosures, or consents of any kind made pursuant to this Declaration, whether made by the Declarant, the Association, the Owner, or any other person, shall be in writing. All such writings shall be sufficient if personally delivered or if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

Declarant: ANC Capital, LLC
551 Woodfern Court
Tallahassee, FL 32312

Owners: Each Owner's address is registered with the Association in accordance with the By-laws, or if no such address has been registered, at the owner's last known address.

The Declarant reserves the right to change its address from time to time by filing a written notice (a) with the North Carolina Secretary of State; (b) with the Association; or (c) in an amendment to this Declaration specifying its new address in the Office of the Register of Deeds, Swain County, North Carolina.

Except as specifically provided otherwise herein, any written communication mailed in accordance with this Section shall be deemed received on the third (3rd) day following the day such written notice is deposited in the United States Mail.

As recorded with Swain County Registry, to a Declaration of Protective Covenants, Conditions, Restrictions and Easements for Alarka Highlands as set forth in instruments recorded in Book 358 at page 709, as amended by instruments recorded in Book 364 at page 757, Book 365 at page 970, Book 377 at page 730, Book 384 at page 791, Book 386 at page 332, and Book 389 at page 498.