

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

DECLARATION OF COVENANTS AND RESTRICTIONS

**AMENDMENT TO ORIGINAL DECLARATION FILED MARCH 15, 2000
IN BOOK 1054, P720-744 IN HENDERSON COUNTY NORTH CAROLINA
TO RESTATE THE ORIGINAL DECLARATION IN TOTAL**

HIGH VISTA FALLS TOWNES

WHEREAS, Mountain Properties, LLC, Carolina Enterprise, Inc. and K&M Development Resources, Inc., hereinafter referred to as "Developer" and High Vista Homeowners' Association, Inc., hereinafter referred to as HOA entered into an agreement for restrictions on the additional Subdivision called High Vista Falls:

WHEREAS, HOA, joined in said Declaration for the purpose of indicating its agreement to perform the obligations placed upon it by said Declaration, and,

WHEREAS, the Developer is the fee simple owner of the real property which is the subject of the Supplemental Declaration of Covenants and Restrictions, and,

WHEREAS, the Developer is desirous of publishing this plan for the ownership and maintenance of the Townhome Regime, and,

WHEREAS, the developer desires to convey the subject property pursuant and subject to this Declaration so as to reflect the different character, design and ownership on the real property affected hereby and further subject to certain protective covenants, conditions, restrictions, reservations, liens, agreements and charges hereinafter set forth, and,

WHEREAS, the HOA has agreed that said lands hereinafter described and currently included within the High Vista Falls subdivision shall, subject to the terms and conditions of this Declaration be covered and included under the terms, provisions, assessments and liens as provided in the Declaration above referred to, subject, however, to the following modifications: Units owned by the Developer shall not be subject to assessments until a deed has been executed and filed to convey ownership, at which time the new owner becomes a regular member in HOA and subject to provisions applicable in connection therewith.

WHEREAS, the Townhomes shall be governed by the Covenants, By-laws, rules and regulations of the HOA, but shall be a separate association from the HOA and are subject to the terms and conditions set forth in the aforementioned Declaration and thereby joins in the execution of this Supplemental Declaration.

WHEREAS, a separate association will be created for the Townhomes, hereinafter referred to as POA.

NOW, THEREFORE, in compliance with the Covenants and Restrictions of the HOA which are of record in the office of the Register of Deeds for Henderson County, North Carolina, Developer hereby submits the property hereinafter set forth and hereby publishes its plan as to its imposition of covenants, conditions, restrictions, reservations, liens, agreements and charges thereon and Developer hereby specifies that this Declaration of Covenants and Restrictions shall constitute covenants, conditions, reservations and restrictions, which shall run with the property and shall bind and inure to the benefit of the Developer and its successors and or assigns, and all subsequent owners and interest in the property described below and their respective grantees, successors, heirs, executor, administrators, devisees or assigns, which lands referred to are situated in Mills River Township, Henderson County North Carolina and shown on plat(s) duly recorded in the office of the Register of Deeds for Henderson County, North Carolina as further shown in Article XXVII herein.

The Developer and HOA join in the Declaration for the purpose of indicating their agreement to perform as to this additional property the obligations placed upon them by the HOA Declarations of Covenants and Restrictions and this additional Declaration.

ARTICLE I DEFINITIONS

1. Assessment, means a share of the funds required for payment of common expenses and maintenance which are, from time to time, assessed against townhouse unit owners by the POA or as levied by the HOA as empowered in the Covenants of High Vista Estates , and the POA in the manner herein provided.

2. Association, means High Vista Falls Townes Association or POA unless explicitly preceded by “High Vista Homeowner’s”, in which case it means High Vista Homeowner’s Association, Inc. HOA shall mean High Vista Homeowner’s Association

3. Board of Directors, means an executive and administrative body, by whatever name denominated, designated as the governing body of the POA, unless preceded by ”HOA” or “High Vista Homeowner’s”, in which case it means the Board of Directors of High Vista Homeowner’s Association, Inc.

4. Limited Common Area, Limited Common Elements or Limited Common Property, means all portions of the Common Area described on plat referenced in Article XXVII and any common elements allocated for exclusive use of one or more units within the Townhome Regime.

5. Common Expenses, means and include (1) all expenses incident to the administration, maintenance, repair and replacement of the limited common elements and payment of insurance premiums, after excluding therefrom any and all expenses which are the responsibility of a unit owner; (2) expenses determined by the POA to be common expenses; and (3) assessments assessed to each unit by the POA

6. Common Profits, means all income allocated or accrued by or on behalf of the POA

- 7. Unit, means a single family residential dwelling contained in a multiple dwelling building, the boundaries of each such dwelling being the perimeter of a lot and separated from contiguous lots by a party wall. Unless the context clearly requires otherwise, the Unit shall include the land thereunder and the sky above.

8. High Vista Falls Townes means that tract of parcel of land described herein above, and those Townhomes, improvements and fixtures located upon said tract, now submitted to the provision of this Declaration or any duly authorized amendment hereof.

9. Declarant or Developer, means POA, as successor to Developer.

10. Management Agreement, means and refers to an agreement providing for management of High Vista Falls Townes.

11. Occupant means the person or persons other than the unit owner in possession of a unit.

12. Unit Owner(s), means one or more persons, his heirs, successors and assigns, who own or owns a townhouse unit or who has contracted to purchase same.

13. Special Assessment shall mean any special assessment levied by the HOA in accordance with the Declarations of the HOA. Special assessment may also mean any special assessment made by the POA under the provision of this Declaration.

14. Party Wall means any wall which is built as a part of the original construction of a Unit and which forms the dividing line between two units.

15. Lot, for the purpose of this agreement and within the Townhome regime, shall mean the numbered Unit and the land thereunder and adjacent thereto as designated on plat(s) referenced in Article XXVII.

16. Townhome Regime, means the lots, limited common elements and designated common areas within the townhome area described on plat(s) referenced in Article XXVII.

ARTICLE II NAME

The name of the project shall be High Vista Falls Townes, and said project is located in Henderson County, North Carolina.

**ARTICLE III
IDENTIFICATION OF UNITS**

High Vista Falls Townes consists of the land described herein above and the improvements and fixtures located thereon. Each unit is identified by a separate number as shown on Slides in the Office of the Register of Deeds for Henderson County, North Carolina and identified as lots thereon.

**ARTICLE IV
MEMBERSHIP IN THE HIGH VISTA HOMEOWNERS' ASSOCIATION**

Each Townhome unit owner shall become a member of the High Vista Homeowners' Association (HOA) as required by and in accordance with the terms, conditions and requirements set forth in the HOA Declaration of Covenants and Restrictions and all amendments thereto. This membership shall become effective on the date of such purchase as recorded in the warranty deed. Membership shall include all responsibilities, obligations, privileges and assessments the same as all other members in the HOA.

**ARTICLE V
RESPONSIBILITIES OF TOWNHOME OWNERS**

- A. Owners of Units in the Townhomes shall be bound by the covenants, bylaws, rules and regulations governing the HOA and shall benefit from such covenants, bylaws, rules and regulations as do other property owners in High Vista subject to the HOA,
- B. Owners of Units in the Townhomes shall be subject to assessments levied by the HOA in accordance with the Covenants and Annexation Agreement.
- C. Any association or management organization established to carry out responsibilities of the Townhome owners with respect to the townhome units and/or common areas within the Townhome Regime will develop rules and regulations and conduct its activities to be not in conflict with the Covenants, bylaws, rules and regulations of the HOA. Any conflicts in the foregoing should be presented to the HOA Board for resolution. In the absence of a HOA resolution of a conflict, the HOA provision will govern.

**Article VI
Responsibilities of High Vista Homeowners' Association**

- A. The HOA shall provide the same general and administrative services to the residents owners, guests or lessees of units in the Townhomes as it does to all other property owners in the HOA, in accordance with HOA rules and practices.

- B. The HOA shall assume responsibility for maintenance of all finished service roads and roadways (excluding driveways) within the platted boundaries of the Townhomes (Townhome Regime) after written acceptance of responsibility by the HOA from the developer or POA and may assume responsibility for selected portions of common areas at the option of the HOA, and with agreement of the POA.
- C. Except as noted in VI A & B above, The HOA shall have no obligations, liabilities or responsibilities for care, maintenance, repair or condition of areas, lots, structures, improvements, equipment, utilities or services within the boundaries of the Townhome platted area (Townhome Regime).

Article VII

Agreement Regarding Common Areas Within the Townhome Regime

- A. Common areas including limited common elements within the platted boundaries of Townhomes (Townhome Regime) shall be subject to comparable rules, regulations and practices established by the HOA for other common areas within High Vista. Controls or limitations imposed by the Covenants on individually owned lots shall also apply to common areas within the Townhome Regime.
- B. Landscape and usage plans for common areas within the Townhome Regime shall be submitted to the HOA Board or its designee for consideration, and shall not be implemented or altered without the approval such Board or designee.

Article VIII

Amendment of Declaration

The Homeowners' Association shall have the duty to ensure changes to any and all provisions of this Declaration should changes to the Covenants, By-laws, rules and regulations of the HOA require such changes in this declaration to maintain consistency.

ARTICLE IX

EXPANSION OF HIGH VISTA FALLS TOWNES

Additional buildings containing additional units may be added to the High Vista Falls Townhomes. By filing amendments to these Declarations, in accordance with the provisions contained herein, these Declarations may be extended to apply to such additional units. The Developer will select the configuration, i.e., the number and arrangement of living units prior to the filing of additional plats which will be located in the area designated. Changes to plats within the High Vista annexed area require approval by the HOA Board of Directors.

The Developer does hereby covenant and warrant to each and all of the purchasers that if any additional buildings are added to the area they will be of similar quality and constructed in a workmanlike manner and in the same architectural style as the original buildings comprising the

area, and that further such construction will conform generally with the specifications set forth in this Declaration.

**ARTICLE X
OWNERSHIP OF ALL COMMON AREAS AND LIMITED COMMON ELEMENTS**

The Developer shall convey to the POA the legal title to all Common Areas and Limited Common Elements upon the assumption of responsibilities by the POA as further provided for herein free and clear of all liens and encumbrances.

**ARTICLE XI
PARTY WALL**

Owners of adjoining lots separated by a party wall shall own the half of the wall which rests inside each of such Owner's lot line. Each such Owner shall also have a support easement over the entire party wall. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of adjoining Lots. A line running longitudinally down the center of a party wall shall form the lot lines for the adjoining Lots lying on either side of such party wall, notwithstanding the fact that the Plat might show such lot lines being elsewhere.

To the extent not inconsistent with the provision of this Article, the general rules of law of the State of North Carolina regarding party walls and liability for damage thereto shall apply.

A. **Damage Due to Negligence.** If a party wall is damaged through the negligence or willful acts or omissions of an Owner of an adjoining Lot, that Owner shall bear the whole cost of repairing such wall to the extent necessary to put it in a condition substantially the same as it was before such negligence or willful acts or omissions occurred.

B. **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, and such fire or casualty was not caused by the negligence or willful acts or omission of an Owner of an adjoining Lot, then either of the Owners of adjoining Lots may restore the wall to its original condition, and he shall thereafter be entitled to contribution from the Owner of the adjoining Lot for one-half of the cost thereof.

C. **Weatherproofing.** Any Owner of a Lot containing a party wall who, by his negligent or willful acts or omissions, causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.

D. **Right to Contribution Runs With Land.** The right of any Owner of a part of a party wall 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, such dispute shall be presented to the Board of Directors of the POA for resolution. After disqualification of

any interested Directors, the decision of a majority of the remaining Directors shall be binding upon all Owners concerned.

F. Enforcement. The Board may suspend all voting rights, if any, and all rights to use the limited Common Areas for any period during which such Owner refuses to comply with a decision of the Board relative to disputes over party walls.

**ARTICLE XII
VOTING RIGHTS AND MEMBERSHIP
IN THE ASSOCIATION AND
HIGH VISTA HOMEOWNER'S ASSOCIATION**

A. Voting Rights and Membership in the POA. There shall be one person with respect to each town home unit who shall be entitled to vote at any meeting of the POA and such person shall be known and is hereinafter referred to as the "Voting Member". If a town home unit is owned by more than one person, the owners of said town home unit shall designate one of them as the Voting Member, or in the case of a corporate town home unit owner, an officer or employee thereof shall be the Voting Member. The designation of the Voting Member shall be made as provided for and subject to the provisions and restrictions set forth in the Bylaws of the Association.

B. Voting Rights and Membership in the High Vista Homeowner's Association. Each town home unit owner shall become a member of the High Vista Homeowner's Association as required by and in accordance with the terms, conditions and requirements set forth in the Declaration of Covenants and Restrictions and all amendments thereto. At such time as a townhome unit owner is deeded his unit, he shall then be entitled to one (1) vote in the HOA as set forth in the By Laws of the HOA. A townhome unit owner shall be entitled to one (1) vote for each town home unit so deeded.

**ARTICLE XIII
COMMON EXPENSE AND COMMON PROFITS**

The common expenses of the Association shall be the obligation of the townhome unit owners. The common expenses shall be determined according to the square footage of the townhome unit to which such common expenses are assessed. The specific amount of such common expenses shall be equitably determined by the Board of the POA. The term "common expense" is defined in Article I, Section 6 hereof.

The common profits shall be applied to the payment of common expenses, and the rights in any surplus remaining shall appertain to the townhomes in proportion to the liability for common expenses appertaining to each townhome unit.

**ARTICLE XIV
METHOD OF AMENDMENT OF DECLARATION**

This Declaration may be amended at any regular or special meeting of the townhome owners of the Association, called and convened in accordance with the Bylaws of the Association, by the affirmative vote of Voting Members casting not less than 67% of the total vote of the members of the Association.

No amendment shall change the rights and privileges of the Developer without the Developer's written approval.

No amendment shall change the rights, privileges or obligations of the HOA without the written approval of the HOA Board of Directors

Notwithstanding the foregoing paragraphs of the Article:

A. The Developer reserves the right to change the interior design and arrangement of all unsold units. The Developer reserves the right, as to units for which it is the record owner, to subdivide said units into separate units or may at its option combine two or more such units or portions thereof into a single unit. If the Developer shall make any changes in units as provided in this paragraph, such changes shall be reflected by the amendment of the Declaration with a survey attached reflecting such authorized alteration of units, and said amendment need only be executed and acknowledged by the Developer. If there is such a combination or division of units as provided for herein, the Common Expenses applicable to the newly created unit(s) shall be adjusted accordingly. Such changes to lot boundary lines will not be made without the written permission of the HOA Board of Directors, as required by the High Vista Covenants.

B. The Developer, so long as it has recorded title to more than 25% of the units in High Vista Townhomes that are subject to the provisions of this Declaration, reserves the right at any time to amend the Declaration as may be required by any lending institution or public body, or in such manner as the Developer may determine to be necessary or convenient to further clarify the intent of the Developer, to eliminate ambiguity herein and to correct errors in the preparation and recording of this document and all Exhibits and to insure that this document is in full compliance with any and all guidelines or requirements that may be promulgated by the Federal National Mortgage Association or similar financing entities. No such amendment shall change the rights, privileges or obligations of the HOA without the written approval of the HOA Board of Directors.

C. Any proposed amendments to these Declarations, however initiated, requires the approval of the Board of Directors of both the HOA and the POA to be evidenced by signature of the appropriate officer of each board on the amendment to be filed in county records.

**ARTICLE XV
BYLAWS**

The operation of High Vista Townhomes shall be governed by the Bylaws of the High Vista Townes Association.

The Bylaws may be amended in any manner provided for therein, but no amendment to said Bylaws shall be adopted which would affect or impair the validity or priority of any mortgage covering any portion of High Vista Townhomes or which would change the provision of the Bylaws with respect to institutional mortgages without the written approval of all institutional mortgagees of record. No amendment shall change the rights and privileges of the Developer without the Developer's written approval. No amendment shall change the rights, privileges or obligations of the HOA without the written approval of the HOA Board of Directors.

**ARTICLE XVI
THE OPERATING ENTITY**

The operating entity of High Vista Falls Townes Association shall be the Association, or POA, which has been organized pursuant to the not-for-profit corporation statutes of the State of North Carolina. Said Association shall have all the powers and duties granted to or imposed upon it by this Declaration, or by the Articles of Incorporation, attached hereto as Exhibit "D", and the Bylaws of the Association. It is contemplated that the powers and duties necessary to operate High Vista Falls Townes Association may be amended from time to time by changes and amendments to this Declaration and Bylaws.

The Association shall be entitled to delegate all or any portion of its authority, powers, duties, responsibilities, rights and interests set forth herein to a management firm or any such other entity which may be responsible for the management of the POA.

Every owner of an Association town home unit whether he has acquired his ownership by purchase, by gift, by conveyance or transfer by operation of law, or otherwise, shall be bound by the Bylaws and Articles of Incorporation of the said Association, the provisions of the Declarations and any Management Agreement.

**ARTICLE XVII
ASSESSMENTS: FEES AND LIEN RIGHTS**

The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sum or sums necessary and adequate to provide for the common expenses of the Association and such other assessments as are specifically provided for in the Declaration. The procedure for the determination of all such assessments shall be as set forth in the Bylaws of the POA and this Declaration.

The common expenses shall be assessed against each town home unit owner as provided for in Article XIII of this Declaration. Common expenses will not be assessed against lots or town homes owned by the Developer.

The Association shall hold in an insured bank account all special and regular assessments which are collected by the Association from townhome unit owners. Each year the Association shall have prepared a budget projection of expenses and income for the upcoming year. The amount of regular and special assessments will be sent pursuant to the discretion of the Association's Board of Directors and in appropriate proportion with such budget. The Board shall structure such assessments so that there exists an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Townhome Regime common and limited common areas.

Assessment and installments that are unpaid for over ten (10) days after due date shall bear interest at the highest legal rate authorized under North Carolina law from due date until paid, and at the sole discretion of the Board of Directors, a late charge of \$25.00 may be imposed. Regular assessments shall be due and payable monthly on the first of each month and monthly bills for same shall be mailed or delivered to townhome unit owners.

The Association shall have the right to file a lien on each townhome for unpaid assessments and interest thereon. Such liens upon the aforesaid tangible property shall be subordinate to prior bona fide liens of record. Reasonable attorney's fees incurred by the Association incident to the collection of such assessments or the enforcement of such liens, together with all sums advanced and paid by the Association for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, shall be payable by the townhome unit owner and secured by such lien. The Board of Directors may take such action as it deems necessary to collect assessments by personal action or by enforcing and foreclosing said lien, and may settle and compromise the same if deemed in its best interest. The Association shall be entitled to bid at any sale held pursuant to a suit to foreclose an assessment lien, and to apply as a cash credit against its bid, all sums due, as provided herein and covered by the lien enforced. In case of such foreclosure, the townhome unit owner shall be required to pay a reasonable rental for the townhome unit plus the percentage of common expenses attributable to such town home unit for the period of time said townhome unit is occupied by the townhome unit owner or anyone by, through or under said townhome unit owner; and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect same from the townhome unit owner and/or occupant.

Any person who acquires an interest in a townhome unit, except through foreclosure of a first mortgage of record or acceptance of deed in lieu of foreclosure, including without limitation, persons acquiring title by operation of law and purchasers at judicial sales, shall be entitled to occupancy of the townhome unit or enjoyment of the limited common elements until such time as all unpaid assessments due and owing from the former townhome unit owner have been paid. The Association, acting through its Board of Directors, may enforce its claim and lien rights for the recovery of any unpaid assessments owed to the Developer, any townhome unit owner or group of townhome unit owners, or any third party.

Every townhome unit owner acquiring title, legal or equitable, to any unit in High Vista Falls Townes shall become a member of the Association and of the HOA, and as long as he is the owner of any such townhome unit he must remain a member of the Association and of the HOA. Such membership is not intended to apply to those persons who hold an interest in any townhome unit merely as security for the performance of an obligation to pay money, e.g. mortgages and deeds of trust. If a mortgagee should realize upon its security and become the real owner of a townhome unit, he will then be subject to the requirements and limitations imposed in these restrictions on townhome unit owners and on members of the Association and of the HOA.

The general purpose of the HOA is to further and promote the community welfare of the home owners in the High Vista Community. In addition to the assessment of the HOA, the townhome unit owners must pay a regime fee to the Association for their unique requirements.

The POA shall have all of the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including but not limited to the power to levy against each member of the POA annual dues, which shall be payable monthly, the amount of said dues to be determined by the Board of Directors of the POA after consideration of current maintenance expenses and future needs of the POA. No such charge shall ever be made against, or be payable by the Developer, the POA itself or any corporation or corporations that may operate those facilities presently being operated and maintained by the POA.

If the periodic Association dues are not paid when due, they shall bear interest from the date of delinquency as previously provided for herein. The periodic dues, if unpaid within 30 days of their due date, shall become a lien or encumbrance upon the town home unit and the acceptance of each deed to a town home unit or the execution of a contract of sale for the purchase of a town home unit shall be construed to be a covenant on the part of the grantee or purchaser to pay the charge. The POA may publish a list of the delinquent members and may record a lien to secure payment of the unpaid dues plus costs and reasonable attorney's fees. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the POA shall have the right to sue for such unpaid charges, interest, costs and reasonable attorney's fees, in any court of competent jurisdiction as for a debt owed by any delinquent member to the HOA.

Each townhome unit owner, whether he shall have legal or equitable title to his townhome unit, shall be conclusively held to have covenanted to pay the HOA or its designee all charges that the HOA shall make pursuant to any paragraph or subparagraph of this Declaration, the aforementioned Declaration of Covenants and Restrictions with Protective Covenants attached thereto or the HOA's Bylaws. Any townhome unit acquired is taken subject to the lien for any prior unpaid charges. The lien of the Association and the lien of the HOA to secure the payment of their respective annual dues shall be concurrent and on equal parity.

The POA shall upon demand at any time furnish a certificate in writing signed by an officer of the POA certifying that the charges on a specified townhome unit have been paid or that certain charges against said townhome unit remain unpaid, as the case may be. The POA will

include the status of assessments levied by the HOA; such information to be furnished by the HOA upon POA request. A reasonable charge may be made by the Board of Directors for the issuance of the certificates. Such certificates shall be conclusive evidence of payment of any charges therein stated to have been paid.

The lien of a mortgage or deed of trust representing a first lien placed upon any townhome unit for the purpose of construction and/or permanent financing and recorded in accordance with the laws of North Carolina shall be, from the date of recordation, superior to any and all such liens provided for herein. A lien for common expense assessments is not affected by any sale or transfer of a townhome unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for assessments which become payable prior to such sale or transfer. However, any such delinquent assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the townhome units as a common expense. Any such sale or transfer pursuant to a foreclosure does not relieve the purchaser or transferee of a townhome unit from liability for, nor the townhome unit from the lien of any assessments made thereafter.

The Board of Directors shall have the right to suspend the voting rights, if any, and the right to the use of the properties which may be owned and operated or maintained by the POA members (1) for any period during which the POA's annual dues remain unpaid; (2) during the period of any continuing violation of the Declaration after the existence of the violation shall have been declared by the Board of Directors and (3) during the period that any bill for utility service owned by POA, HOA or Developer rendered to the member shall remain unpaid.

In addition to the aforementioned assessments, a contribution shall be made at closing of the initial purchase of each Unit towards the creation of a non-refundable Working Capital Fund which shall be maintained by the Association or its designee. The amount of such contribution shall be equal to that regular assessment which would be charged by the Association over a two-month period. Such funds shall be maintained in an account for the sole use and benefit of the Association. The purpose of the fund is to insure that the Association board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund are not to be considered as advance payment of regular assessments.

ARTICLE XVIII INSURANCE, RECONSTRUCTION AND REPAIR

The following provisions shall not apply to household furnishings and appliances which are owned by townhome unit owners. Townhome unit owners shall be responsible for purchasing, maintaining and insuring their furniture, appliances and any other personal effects belonging to such townhome unit owners which may be located in or about the townhome unit.

A. Purchase of Insurance. The Association shall obtain policies of insurance providing coverage as follows:

1. Casualty. The buildings and all improvements upon the property shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors. Such coverage shall afford protection against:

(a) Loss or damage by fire and other hazards covered by a standard extended coverage and endorsement.

(b) Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as such buildings, including but not limited to vandalism and malicious mischief.

2. Public Liability. Public liability insurance shall be obtained in such amounts and with such coverage as shall be required by the Board of Directors, which amount shall not be less than \$1 million, including but not limited to hired automobile and non-owned automobile coverages, and with cross-liability and endorsements to cover liabilities of the townhome unit owners as a group to a townhome unit owner.

3. Workers' Compensation. Workers' Compensation insurance sufficient to meet the requirements of loss shall be obtained.

4. Fidelity Bond. The Association shall obtain a fidelity bond in an amount it deems reasonable to cover the misfeasance and/or malfeasance within the scope of their employment of any of its officers, directors, agents or employees.

5. Other Insurance. Such other insurance shall be obtained as the Board of Directors shall determine desirable from time to time.

B. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the townhome unit owners as a part of the common expense, provided that the Developer shall be responsible for paying its portion of the insurance premiums to cover unsold townhomes, and also the limited common elements when and if owned by the Developer.

C. Insurance Trustee and Shares of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the townhome unit owners, and their respective mortgages, and the Developer, as their interests may appear, and shall provide that all proceeds shall be paid to the Board as insurance trustee. The duties of the insurance trustee shall be to receive such proceeds as are paid, to make distribution of such proceeds, and prior to distribution to hold such proceeds in trust for the benefit of those entitled thereto in undivided shares, which shares need not be set forth on the records of the insurance trustee. Proceeds on account of damage to buildings shall be distributed as follows:

1. Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired, the proceeds shall be paid to defray the costs thereof. Immediately after a determination is made to reconstruct or repair damage, the determination shall obtain reliable and detailed estimates of the cost to reconstruct or repair. In the event the amount of the

estimated costs of reconstruction and repair is less than \$5,000.00, then the proceeds shall be disbursed in payment of such costs at the discretion of the POA; provided, however, that upon request by a mortgagee which is a manner hereinafter provided for the reconstruction and repair of damage in excess of \$5,000.00. In the event the amount of the estimated cost of reconstruction and repair is more than \$5,000.00, then the proceeds shall be disbursed in payment of such costs in a manner required by the POA only upon approval of an architect licensed to practice in North Carolina and employed by the Association to supervise the work. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, remittance to unit owners and their mortgagees being payable to them jointly. This is a covenant for the benefit of any mortgagee and may be enforced by such mortgagee.

2. The Failure to Reconstruct or Repair. In the event the damage for which the proceeds are paid is not to be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being made payable jointly to them. This is a covenant for the benefit of any mortgagee and may be enforced by such mortgagee.

3. Mortgagees. In the event a mortgage endorsement has been issued relating to a unit, the share of the unit owner shall be held in trust for the unit owner and the mortgagee as their interest may appear; provided, however, that no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the unit owner and mortgagee pursuant to the provisions of this Declaration.

D. POA as Agent. The POA hereby is appointed irrevocably as agent for each unit owner and for each holder of a mortgage or other lien upon a unit and for each owner of any other interest in the High Vista Falls Townes to adjust all claims arising under insurance policies purchased by the POA and to execute and deliver releases upon the payment of claims.

E. Notice of Insurance Companies. In any legal action in which the POA may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the POA shall give notice of the exposure within a reasonable time to all unit owners who may be exposed to the liability and such unit owner shall have the right of intervene and defend.

F. Inspection of Insurance Policy. A copy of each insurance policy obtained by the POA shall be made available for inspection by unit owners and their mortgagees at reasonable times.

G. Developers' Interest and HOA Interest. All insurance purchased by the POA on the Behalf of the unit owners shall include the Developer and HOA as its interest may appear, and the Developer and HOA shall share in the proceeds of any insurance payment as its interest may appear.

H. Reconstruction or Repair After Casualty. Unless the POA shall be terminated as herein provided, in the event of any damage or destruction to any building of the High Vista Falls Townes by virtue of fire, casualty or other hazard, the POA shall forthwith cause such damage to be repaired and the building reconstructed. If the damage is not covered by insurance or if the insurance proceeds are insufficient, the deficit shall be assessed as a common expense; provided, however, that if the damage was caused by the intentional or negligent act or omission of any unit

owner or his family, guests, invitees or lessee, such unit owner shall be responsible to the POA for the amount of such assessment and shall pay same within ten (10) days following submission of a statement of the amount thereof by the POA . Upon failure of such unit owner to make payment of such amount to the POA when same shall be due as provided above, the POA shall be entitled to a lien on such unit owner's unit and all tangible personal property owned by such unit owner located upon or within such unit, and such lien may be perfected and foreclosed as provided herein.

In the event it is determined in accordance with these Articles that there shall be no reconstruction or repair of a building or any portion of a building or unit, then all debris shall be promptly removed and the property shall be cleared and restored to its original condition and maintained thereafter in its original condition as it existed prior to the construction of any building thereon pending ultimate reconstruction or later use of the property. The POA shall assure that said restoration shall be compatible with the surrounding areas. The Housing Committee for the HOA shall be requested to approve restoration and if the restoration does not meet the approval of said committee, then said committee may require the POA to take whatever reasonable additional action is necessary to restore the property in such a manner as to meet the approval of said committee. The POA shall be required to extend such funds and make such assessments against the unit owners as is necessary to fulfill the requirements of this paragraph.

ARTICLE XIX USE AND OCCUPANCY

A. Residential Use Restriction: The unit owners shall occupy and use their units as a single family private dwelling for themselves and the members of their family, their social guests, lessees and invitees. Provided, however, that said single family private dwelling designation shall not prevent any unit owner from leasing his entire unit to any third party or parties. In order to maintain the residential character of the neighborhood, such leases must be for a minimum of six (6) months in duration, and no more than two such leases may be entered into in any twelve (12) month period without the prior written approval of both the POA Board of Directors and the HOA Board of Directors.

B. Prohibited Act. The unit owner shall not permit or suffer anything to be done or kept in his unit which will increase the rate of insurance on High Vista Falls Townes, or which would violate the Covenants, by-laws, rules or regulations of the HOA, or which will obstruct or interfere with the rights of other unit owners, or annoy them by unreasonable noises, or otherwise, nor shall the unit owners commit or permit any nuisances, immoral or illegal acts in or about the High Vista Falls Townes.

C. Restrictions on Alterations. Unit owners shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, windows or wooden decking of the units or the limited common elements, nor shall they cause any type of ground coverage to be installed nor shall they grow any type of plant, shrubbery, flower, vine or grass outside their unit, nor shall they cause awnings or storm shutters, screens, enclosures and the like to be affixed or attached to any units or limited common elements, nor shall they place any furniture or

equipment outside their unit except with the prior written consent of the Board, and further, when approved, subject to the rules and regulations adopted by the Board. No clothes line or similar device shall be allowed on any portion of the High Vista Falls Townes, nor shall clothes be hung anywhere except where designated by the Board.

D. Limited Common Elements. No person shall use the limited common elements or any part thereof, or any unit, or the High Vista Falls Townes, or any part thereof, in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time promulgated by the POA or HOA.

ARTICLE XX MAINTENANCE AND ALTERATIONS

A. The Board may enter into a contract with any firm, person or corporation, or may join with other associations and entities in contracting for the maintenance and repair of the High Vista Falls Townes and other type properties, and may contract for or may join with other associations in contracting for the management of the High Vista Falls Townes and other type properties, and may delegate to the contractor or manager all of the powers and duties of the POA, except as are specifically required by this Declaration, or by the Bylaws, to have the approval of the Board of Directors or the membership of the Association. The contractor or manager may be authorized to determine the budget, make assessments for common expenses and collect assessments, as provided by this Declaration, Bylaws and Exhibits to the Declaration. The POA, through its Board, may enter into a Management Agreement which encompasses the provisions of this paragraph, provided, however, that the Association, prior to passage of majority control of the Association from the Developer unto the property owners, is not bound either directly or indirectly to any contracts, leases or Management Agreements unless there is a right of termination of any such contract, lease or Management Agreement which is exercisable without penalty or cause at any time after transfer of control, upon not more than 90 days notice to the other party.

B. Each owner of a townhome unit agrees as follows:

(1) To maintain in good condition and repair his townhome unit and all interior surfaces within or surrounding his town home unit (such as the surface of the walls, ceilings, floors) whether or not a part of the townhome unit or limited common elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to his townhome unit.

(2) Not to make or cause to be made any structural addition, alteration, decoration, repair, replacement or change of the limited common elements or to any outside or exterior portion of the building (including the porches and exterior decking) within a townhome without the prior written consent of the Board of Directors of the POA and designated committee of the HOA.

(3) To allow the Board of Directors or the agents or employees of any management firm or the POA to enter into any townhome unit for the purpose of maintenance, inspection, repair, replacement of the improvements within the townhomes, limited Common Areas or the Common

Areas, or to determine in case of emergency, circumstances threatening townhomes, limited Common Areas or the Common Areas, or to determine compliance with the provisions of this Declaration and the Bylaws of the POA or the applicable rules and regulations of the HOA.

(4) To show no signs, advertisements or notices of any type on the Common Areas, limited Common Areas, or his town home, and to erect no exterior antenna or aerials except as consented to by the Board of Directors of the POA and designated committee of the HOA; provided, however that nothing herein shall prevent the Developer from displaying such signs as it deems necessary (in accordance with established sign restrictions) to promote the sale of townhomes.

C. In the event a townhome unit owner fails to maintain the said unit and limited common elements as required herein, or makes any alterations or additions without the required consent of the Board of Directors, or otherwise violates or threatens to violate the provisions hereof, the POA shall have the right to proceed in a court of equity for an injunction to seek compliance with the provisions hereof. In lieu thereof and in addition thereto, the POA shall have the right to levy an assessment against the owner of a town home unit, and the townhome unit, for such necessary sums to remove any unauthorized addition or alteration and to restore the property to good condition and repair. Said assessment shall have the same force and effect as all other special assessments.

D. The POA and HOA shall determine the exterior color scheme of all townhomes and buildings including, but not limited to, porches, wooden decking, stairway facilities and entry landings. Furthermore, the POA shall be solely responsible for the maintenance of the exteriors of all townhomes and buildings, including, but not limited to, the upkeep and replacement of roofs, wooden decking, stairway facilities and entry landings. No townhome unit owner shall paint or stain any exterior wall, door, window or any exterior surface, or replace anything thereon or affix anything thereto without the written consent of the Board of Directors of the POA and designee of the HOA.

E. The POA shall be responsible for the maintenance, repair and replacement of the limited common elements and all property not required to be maintained, repaired and/or replaced by townhome unit owners. It shall also be responsible for the maintenance, repair and upkeep of the exterior surfaces on all townhomes and buildings (including porches, wooden decking and stairways) and the limited common elements. Notwithstanding the townhome unit owner's duty of maintenance, repair, replacement and other responsibilities as to his townhome unit as provided for in this Declaration, the POA may enter into an agreement with such firms or companies as it may determine to provide certain services and/or maintenance for and on behalf of the townhome unit owners whereby maintenance and service are provided on a regularly scheduled basis for exterminating services, and other types of maintenance and services as the Association deems advisable and for such period of time and on such basis as it determines. Said agreements shall be on behalf of all townhome unit owners and the monthly assessment due from each townhome unit owner for common expenses shall be increased by such sum as the POA deems fair and equitable under the circumstances in relation to the monthly charge for said maintenance or service. Each townhome unit owner shall be deemed a party to said agreement with the same force and effect as

though said townhome unit owner had executed said agreement and it is understood and agreed that the POA shall execute said agreement as the agent for the townhome unit owners. The aforesaid assessments shall be deemed to be an assessment under the provisions of Article XVII of this Declaration.

ARTICLE XXI TERMINATION

This Declaration shall be binding upon all parties and all persons claiming under them for a period of forty (40) years from the date of execution of this document or until January 1, 2040 at which time said Declarations shall be automatically extended for an additional ten (10) years unless 67% of the then town home owners shall vote to change said Declaration, in whole or in part or otherwise terminate this regime.

Notwithstanding the above, changes and amendments to said Declaration may be made during the above periods in accordance with the provisions of Article XIV of this agreement.

ARTICLE XXII USE OF LIMITED COMMON ELEMENTS AND FACILITIES

For the purpose of this Article the term “limited common elements and facilities” shall include all those limited common elements as shown on the plat of High Vista Falls Townes.

The POA, its members, and townhome unit owners, their successors and assigns and all parties who own or may own an interest in and to the aforesaid “limited common elements and facilities” agree that they shall not have the right to partition any property that constitutes said facilities and that said parties do hereby waive said right of partition or division of said facilities. The Initial Rules and Regulations, and all amendments thereof and revisions thereof pertaining to the use of the limited common elements and facilities shall be posted in conspicuous places on the elements or facilities. The townhome unit owners hereby covenant and agree to be bound by all of such Rules and Regulations and said parties shall obey same and be responsible for their being obeyed by the said town home owners, their family, guests, invitees, lessees and servants.

Ownership of all limited common areas within the boundaries of the platted townhomes (Townhome Regime) that are subject to these Declarations shall be limited to the Developer or the POA without the express written approval of the Board of Directors of the HOA

Should a townhome unit owner fail to pay an assessment for common expenses as required under the terms of this Declaration for the period of time specified herein whereby said assessment becomes delinquent, the POA may deny the townhome unit owner or authorized user of the facilities the use and enjoyment of same until such time as all assessments are paid. The POA shall further have the right in its sole discretion to suspend any townhome unit owner and/or authorized user of said facilities from the use of same for a period not to exceed 30 days for any infraction of the promulgated Rules and Regulations pertaining to said limited common elements and facilities. Should the townhome unit owner or the authorized user of said facilities

rights to use same be suspended, there shall be no reduction in the assessments due and payable by said townhome unit owner or authorized user.

Any person who is a townhome unit owner together with members of his family, social guests, lessees, invitees and licensees, may use the limited common elements and facilities.

Where a corporation is a townhome unit owner the use of said limited common elements and facilities shall be limited at any one time to such officer, director or employee of said corporation who is in actual residence and such individual shall be deemed to be the unit owner for the purposes of this paragraph. Where a party owns one unit and leases same, the lessee shall be entitled to the use of the limited common elements and facilities and said lessee's right thereto shall be the same as though said lessee were the unit owner and during the term of said lease, the unit owner and his family shall not be entitled to use the limited common elements and facilities.

ARTICLE XXIII MANAGEMENT AGREEMENT

The POA may enter into a management agreement and may delegate to a management firm the powers of the POA, through its Board, to determine the budget, make assessments for common expenses and collect assessments. Each unit owner, his heirs, successors and assigns, shall be bound by said management agreement for the purpose therein expressed, including but not limited to:

1. Adopting, ratifying, confirming, and consenting to the execution of said management agreement by the POA.
2. Covenanting and promising to perform each and every one of the covenants, promises and undertaking to be performed by unit owners in the cases provided therefor in said management agreement.
3. Ratifying, confirming and approving each and every provision of said management agreement, and acknowledging that all of the terms and provisions thereof are reasonable.
4. Agreeing that the persons acting as directors and officers of the POA entering into such an agreement have not breached any of their duties or obligations to the POA.

It is specifically recognized that some or all of the persons comprising the original Board are or may be officers, directors and employees of the management firm, and that such circumstances shall not and cannot be construed or considered as a breach of their duties and obligations to the POA.

ARTICLE XXIV ASSOCIATION PROPERTIES

All properties acquired by the POA real, personal or otherwise, shall be held for the use

and benefit of all unit owners in High Vista Falls Townes subject to those conditions contained herein.

**ARTICLE XXV
DEVELOPER'S RIGHTS**

In addition to each and every right of the Developer as set forth herein, the Developer specifically reserves the following:

A. The right to use any unsold unit and/or any portion of the limited common elements for the purpose of aiding in the sale of units including the right to use portions of HIGH VISTA FALLS TOWNES for parking for prospective purchasers and such other parties as Developer determines. The foregoing right shall include the right to display and erect signs, billboards and placards and to store, keep and exhibit same and distribute audio and visual promotional materials upon the limited common elements.

B. The exclusive right to contract for or provide the servicing of High Vista Falls Townes and the townhome unit owners therein with water service and sewerage disposal service to the extent not prohibited by law. Pursuant to the foregoing, the Developer or POA with the approval of the HOA may contract with a utility company which may include a utility district, property owners association, a private company, a municipal or governmental agency, or a quasi-governmental authority for the furnishing of said services; and the POA and the town home owners agree to pay the charges therefor and to comply with all of the terms and conditions of said agreement. Provided, however, that the POA prior to the passage of majority control of the POA from the Developer unto the property owners, is not bound either directly or indirectly to any contracts, leases or Management Agreements unless there is a right of termination of any such contract, lease or Management Agreement which is exercisable without penalty or cause at any time after transfer of control, upon not more than 90 days notice to the other party.

C. The right to grant such easements for utility service, drainage, pedestrian and vehicular traffic, or otherwise, as may be considered by Developer or its successors and assigns desirable for the use of the property for the purposes herein stated or to provide such utility service, drainage, pedestrian or vehicular access to other properties of Developer adjacent to or contiguous thereto. Said reservation of easements shall be on an as-built basis. Said reservation of easements to adjacent or contiguous property shall be subordinate to HOA control of access to the High Vista community, and must comply with HOA security restrictions. In conjunction with the reservation as aforesaid, Developer hereby expressly reserves a perpetual easement over all driveways and parking areas constituting a part of the limited common elements, plus such additional area within the townhome regime as may be needed to connect said driveways and parking areas with the boundaries of the regime, the location of which may be chosen by Developer or others who may be rightfully using said driveways and parking areas, for access to all adjacent and nearby property now or hereafter owned by Developer, its successors or assigns, which easement shall be considered an easement appurtenant to said property and all portions thereof, to run with said property and all

portions thereof. Notwithstanding the above, access interconnections outside the townhome regime, or between regimes separated by High Vista common areas, shall be subject to the agreement of the HOA Board of Directors or designated HOA committee, and may require the posting of such bonds and sureties as required to maintain the HOA harmless from risk or damage arising from the use of such easements. The Developer additionally reserves an easement of access into and under all town homes and buildings within the townhome regime for the construction and maintenance of utility and sewerage lines. Furthermore, the Developer reserves an easement across the common areas of the property shown hereon for the construction, maintenance and expansion of said utility and sewerage lines. Such utility easements shall pass to the Association when the Developer is no longer responsible for the installation or maintenance of utility and/or sewerage lines.

ARTICLE XXVI MISCELLANEOUS PROVISIONS

A. Unit owners hereby grant to the POA and its designees an easement through their respective units for the purpose of repairing pipes, wires, conduits, sewer lines or other public utility lines running through said respective units which are utilized for or serve more than one unit. Said easement is specifically intended to apply to that certain sewer line which will run through the foundation works of the townhomes in question for the use and benefits of such townhomes.

B. The unit owners agree that if any portion of a townhome or limited common elements encroaches or encroached upon another, a valid easement for the encroachment and maintenance of same, so long as it stands, shall and does exist. In the event a building or buildings are partially or totally destroyed and then rebuilt, the townhome unit owners agree that encroachment on parts of the limited common elements or town homes, as described, due to construction, shall be permitted, and that a valid easement for said encroachments and the maintenance thereof shall exist. Such alteration and construction will require compliance with the rules and regulations of the HOA regarding permits and approvals.

C. No townhome unit owner may exempt himself from liability for his contribution toward the common expenses.

D. Townhome unit owners shall return their townhome unit for the purpose of ad valorem taxes with the Tax Assessor of Henderson County or for such other future legally authorized governmental officer or authority having jurisdiction over same. Nothing herein shall be construed, however, as giving to any unit owner the right of contribution or any right of adjustment against any other unit owner on account of any deviation by the taxing authorities from the valuation herein prescribed, each unit owner to pay ad valorem taxes and special assessments as are separately assessed against his unit.

E. All provision of this Declaration and exhibits attached hereto and amendments thereof shall be construed as covenants running with the land, and of every part thereof and interest therein, including but not limited to every unit and appurtenances thereto, and every unit owner and occupant of the property, or any part thereof, or of any interest therein, and his heirs,

executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and exhibits annexed hereto and any amendments thereof. The subjection of HIGH VISTA FALLS TOWNES or surrounding properties to zoning laws and regulations shall not then or thereafter cause any provision of this Declaration to terminate.

F. If any of the provisions of this Declaration, or of the Bylaws, the Articles of Incorporation of the HOA or POA, the Management Agreement, or any section, clause, phrase, word, or the application thereof in any circumstances, is held invalid, the validity of the remainder of this Declaration, the Bylaws, Articles of Incorporation, and Management Agreement and of the application of any such provision, action, sentence, clause, phrase or word, in other circumstances, shall not be affected thereby.

G. Whenever notices are required to be sent hereunder, the same may be delivered to town home unit owners either personally or by mail, addressed to such town home unit owners at their place of residence on file with the Association from time to time. Proof of such mailing or personal delivery by the POA or any management firm shall be given by the affidavit of the person mailing or personally delivering said notices. Notices to the HOA or POA shall be delivered by mail to the Secretary of the POA or HOA or the President of the POA or HOA or to any member of the Board of Directors of the Association. The change of the mailing address of any party as specified herein shall not require an amendment to this Declaration.

Notices to the Developer or POA shall be delivered by mail at: Carolina Development Resources P.O. Box 260 Lake Lure, North Carolina 28746.

Notices to the HOA shall be delivered by mail at: P.O. Box 98, Arden, NC 28704.

Upon written request to the POA or Developer, identifying the name and address of any holder, insurer or guarantor and the townhome unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of :

1. Any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage.
2. Any 60-day delinquency in the payment of assessments or charges owed by the owner of any town home unit on which it holds the mortgage.
3. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the POA.
4. Any proposed action that requires the consent of a specified percentage of mortgage holders.

All notices shall be deemed and considered sent when mailed. Any party may change his or its mailing address by written notice, duly receipted for. Notices required to be given the personal representative of a deceased townhome unit owner or devisee, when there is no personal representative, may be delivered either personally or by mail to such party at his or its address

appearing in the records of the court wherein the Estate of such deceased townhome unit owner is being administered. The change of the mailing address of any party, as specified herein, shall not require an amendment to this Declaration.

H. Each unit owner and the POA shall be governed by and shall comply with the Declaration, the Bylaws of the POA and the Rules and Regulations of the POA as amended. Failure to do so shall entitle the POA or townhome unit owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a unit owner or the POA in association proper cause by or against one or more unit owners and the prevailing party shall be entitled to receive reasonable attorney's fees. Such relief shall not be exclusive of other remedies provided by law.

I. Whenever the context so requires, the use of any gender shall be deemed to include all genders, and the use of the singular shall include the plural, and plural shall include the singular. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating POA uniform plan for the operation of High Vista Falls Townes.

J. The captions used in this Declaration and exhibits annexed hereto are inserted solely as Association matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text of this Declaration or exhibits hereto annexed.

K. Where an institutional first mortgage, by some circumstances, fails to be a first mortgage, but it is evident that it is intended to be first mortgage, it shall, nevertheless, for the purpose of this Declaration and exhibits annexed, be deemed to be an institutional first mortgage. The terms mortgagor and mortgagee shall also refer to and mean the same as the terms "grantor" and "grantee" in Association "Deed of Secure Debt", or "Deed of Trust".

L. Developer specifically disclaims any intent to have made any warranty or representation in connection with the property or the Declaration, except as specifically set forth herein, and no person shall rely upon any warranty or representation not so specifically made herein unless otherwise stated. Common expenses, taxes or other charges are estimates only and no warranty, guaranty or representation as to these charges is made or intended, nor may one be relied upon.

M. The Developer, POA and HOA, by its execution of this Declaration approve the foregoing and all of the covenants, terms and conditions, duties and obligations of this Declaration. The unit owners, by virtue of their acceptance of the Deed of Conveyance as to their unit or execution of Association Contract to Purchase of their unit, and other parties by virtue of their occupancy of the units approve the foregoing and all of the terms and conditions, duties and obligations of this Declaration.

N. No unit owner shall bring or have any right to bring action for partition or division of High Vista Falls Townes or POA property.

O. The real property submitted to this Declaration is subject to all applicable zoning

ordinances now existing or which may hereafter exist, existing easements for ingress and egress for pedestrian and vehicular purposes, easements for utility service and drainage now existing or hereafter granted by the Developer for the benefit of such persons as the Developer designates, and, subject to the Covenants, rules and regulations of the HOA, the said Developer shall have the right to grant easements and designate the beneficiaries thereof for such time as it determines in its sole discretion, and thereafter, the Association shall be empowered to grant such easements on behalf of its members. During the period of time that the Developer has the right to grant the foregoing easement, the consent and approval the POA and its members shall not be subject to said easements not structurally weakening the buildings and improvements upon the High Vista Estates Association property nor unreasonably interfering with the enjoyment of the Regime property by the POA members.

P. Unit owners shall have as an appurtenance thereto a perpetual easement for ingress and egress to and from their units over stairs, terraces, balconies, walks and any limited common elements.

Q. Unit owners shall have an easement for ingress and egress over such streets, walks and other rights of way serving the units as a part of the “limited common elements” and also as a part of the public property or property that may be owned and maintained by HOA, as may be necessary to provide reasonable access, and such easements shall extend to the invitees and licensees of said unit owner. In the event that any of said easements for ingress and egress shall be encumbered by any leasehold or lien, other than those on the units, such leasehold or liens shall hereby be subordinate to the use rights of any unit owner whose unit is not also encumbered by said lien or leasehold. Additionally, the POA has the right to grant permits, licenses, and easements over the common area for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

R. All plans and specifications for any structure or improvement whatsoever to be erected on or moved upon any portion of High Vista Falls Townes, and the proposed location thereof, the construction material, the roofs and exterior color schemes, any remodeling, reconstruction, alterations, or additions thereto in addition to being subject to the approval of the HOA , shall also be subject to approval in writing by the POA before any such work is commenced of the High Vista Falls Townes, as the same is from time to time composed. The High Vista Falls Townes shall be established and maintained in accordance with Declarations of Restrictions pertaining to other properties in the High Vista Estates, as filed in previous Declarations pertaining thereto.

ARTICLE XXVII APPLICABILITY

The provisions of these Declarations apply to the townhome units and Townhome Regime as shown on Plat Slide 3130 of Henderson County to which reference is hereby made for a more full and complete description.

Witness our hands and seals this the 3rd day of April, 2001.

MOUNTAIN PROPERTIES, LLC.

_____(SEAL)
RAYMOND M. CHAPMAN
MANAGING MEMBER

CAROLINA ENTERPRISE, INC.

ATTEST

RAYMOND M. CHAPMAN
SECRETARY

_____(SEAL)
AVERY T. CASHION
PRESIDENT

HIGH VISTA HOMEOWNERS ASSOCIATION, INC.

ATTEST

SECRETARY

_____(SEAL)

PRESIDENT

K & M DEVELOPMENT RESOURCES, INC.

ATTEST

RAYMOND M. CHAPMAN
SECRETARY

_____(SEAL)
KENT E. SMITH
PRESIDENT

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary of the aforesaid County and State certify that **RAYMOND CHAPMAN** personally appeared before me this day and acknowledged the he is Secretary of **K & M DEVELOPMENT RESOURCES, INC**, and that by authority and duly given as an act of the corporation, the foregoing instrument was singed in its name by its President and attest by **RAYMOND CHAPMAN** as its Secretary.

Witness my hand and official Seal this the ____ day of April, 2001.

NOTARY PUBLIC
MY COMMISSION EXPIRES:

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, a Notary of the aforesaid County and State certify that **RAYMOND CHAPMAN** personally appeared before me this day and acknowledged the he is Secretary of **CAROLINA ENTERPRISE, INC**, and that by authority and duly given as an act of the corporation, the foregoing instrument was singed in its name by its **President** and attest by **RAYMOND CHAPMAN** as its Secretary.

Witness my hand and official Seal this the ____ day of April, 2001.

NOTARY PUBLIC
MY COMMISSION EXPIRES:

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, a Notary of the aforesaid County and State certify that _____ personally appeared before me this day and acknowledged the he is Secretary of **HIGH VISTA HOMEOWNERS ASSOCIATION, INC**, and that by authority and duly given as an act of the corporation, the foregoing instrument was singed in its name by its _____ President and attest by _____ as its Secretary.

Witness my hand and official Seal this the ____ day of April, 2001.

NOTARY PUBLIC
MY COMMISSION EXPIRES:

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, a Notary of the aforesaid County and State do hereby certify that **Raymond Chapman**, Managing Member of **Mountain Properties, LLC**, personally came before me this day and a acknowledged the due execution of this instrument.

Witness my hand and official seal this the ____ day of April, 2001.

NOTARY PUBLIC
MY COMMISSION EXPIRES:

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

February 18, 2003

**DECLARATION OF AMENDMENT OF THE COVENANTS AND RESTRICTIONS OF
HIGH VISTA TOWNES**

NC Four C's, LLC as successor in interest to the Developer of High Vista Townes and as present developer of High Vista Townes does hereby amend the declaration of covenants and restrictions of High Vista Townes as follows:

1. That lots 146 through 151 of the High Vista Falls Subdivision as shown on platys duly recorded in the Office of the Register of Deeds for Henderson County, North Carolina on Plat Slide 3130 are released from the covenants and restrictions of High Vista Townes and may be conveyed free of any further condition of membership in any POA other than High Vista Homeowners Association.

This the 18th day of February, 2003.

**NC FOUR C'S, LLC
P O Box 363
Lake Lure, NC 28746**

**RAYMOND M. CHAPMAN
Managing Member**

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, a notary public for the aforesaid County and State, certify that RAYMOND M. CHAPMAN, MANAGING MEMBER IN BEHALF OF NC FOUR C'S, LLC, personally appeared before me this day and executed the foregoing Agreement.

Witness my and seal this the 18th day of February, 2003.

My commission expires: _____

NOTARY PUBLIC