

Prepared by and Return to: Charles G. Beemer, Attorney, 62 Church Street, Suite 4, Waynesville, N.C., 28786

NORTH CAROLINA

**DECLARATION OF INGRESS-EGRESS  
EASEMENT, ROAD MAINTENANCE  
AGREEMENT AND RESTRICTIVE COVENANTS**

HAYWOOD COUNTY

THIS DECLARATION OF INGRESS-EGRESS EASEMENT, ROAD MAINTENANCE AGREEMENT AND RESTRICTIVE COVENANTS, hereinafter "Declaration," made and entered into this the \_\_\_\_th day of September, 1999, by 4309 MAGGIE VALLEY PARTNERSHIP, a Florida General Partnership, party of the first part, hereinafter "Declarant," whose address is 4309 Salisbury Avenue, Jacksonville, Florida, 32216.

WITNESSETH:

Whereas, Declarant is the owner of the real property located partially inside and adjacent to the Town of Maggie Valley, Ivy Hill Township, Haywood County, more particularly described as:

BEING all of Lots 1 - 20, Phase One, APPALACHIAN VILLAGE, per plat and survey thereof by \_\_\_\_\_ dated \_\_\_\_\_ recorded in Plat Cabinet C, Slot \_\_\_\_\_, Haywood County Registry, to which plat reference is hereby made for a more particular description of same.

AND WHEREAS, Declarant intends to develop said land as a residential subdivision to be known as APPALACHIAN VILLAGE, Phase One, with twenty (20) building lots; to have the construction upon each Lot restricted to a single family detached residential home; and to convey each such Lot subject to the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant declares that all the property in the development known as APPALACHIAN VILLAGE, Phase One, as shown on a plat recorded in Plat Cabinet C, Slot \_\_\_\_\_, Haywood County Registry, and any subsequently recorded plat of APPALACHIAN VILLAGE, Phase One, shall be held, sold, and conveyed subject to this Declaration.

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**PREAMBLE**

The purpose of this Declaration is to protect the value, desirability and attractiveness of the aforesaid real property; to ensure the best use and the most appropriate development and improvements of each Lot located therein; to protect the Owner of each Lot against such improper use of surrounding Lots as will depreciate the value of said Owner's property; to preserve, as far as practicable, the natural beauty of said property; to guard against the erection of poorly designed or proportioned structures and/or structures built of improper or unsuitable materials; to obtain harmonious color schemes; to ensure the highest and best development of said property; and to enhance, as far as is practical, the value of investments made by Owners of Lots therein. To that end, Declarant herein reserves the right to create a Homeowners' Association for Appalachian Village, Phase One, and if created, to vest it with certain powers and authority consistent with the intentions expressed in this Preamble. Lastly, the easements herein created as well as the system of road maintenance and the restrictions herein set forth shall be appurtenant to and run with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**DEFINITIONS**

(1) "Property" shall mean and refer to that certain real property, the twenty single family residential Lots subdivided therefrom, all known collectively as Appalachian Village, Phase One, as shown on plat recorded in Plat Cabinet C, Slot \_\_\_\_\_, Haywood County Registry, and any subsequently recorded plat of this land. All of the Property is herein made subject to the terms and conditions of this Declaration. Upon the sale and conveyance of each of the aforesaid Lots to a third party purchaser but not to a General Contractor, Declarant, and the new Owner of said Lot, will make a written offer of the Lot for annexation into the Town of Maggie Valley.

(2) "Lot" shall mean and refer to any subdivided plot of land as shown on any recorded subdivision map of the "Property."

(3) "Owner" shall mean and refer to the record owner, whether one or more

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persons or entities, of a fee simple title to any Lot which is a part of the "Property," including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(4) "Declarant" shall mean and refer to 4309 MAGGIE VALLEY PARTNERSHIP, a Florida General Partnership, its successors and assigns. Such assignment, if any, shall be evidenced by a written statement of assignment of rights as Declarant filed in the Haywood County Registry.

(5) "Builder and/or General Contractor" shall mean and refer to any person or entity to whom Declarant sells and conveys a Lot for the express purpose by Builder and/or General Contractor of constructing thereon a residential dwelling to be sold to a third party purchaser. For purposes of this Declaration, such a person or entity shall be known and identified as "General Contractor."

**INGRESS-EGRESS-REGRESS EASEMENT**

Declarant grants unto itself, its successors and assigns, and to all future record Owners of the twenty Lots of Appalachian Village, Phase One, as shown on a plat recorded in Plat Cabinet C, Slot \_\_\_\_\_, Haywood County Registry, a perpetual right of ingress, egress, and regress along, over, across and through all road rights of way shown on the aforesaid recorded plat and any subsequently recorded plats of Appalachian Village, Phase One. Declarant further grants easements within each of the private road rights of way within Appalachian Village, Phase One, for the installation and maintenance of utilities. The road rights of way to which this private access and utility easement grant pertain are identified as Cheyenne Court, Hiawatha Drive, and Appalachian Trail.

This access easement grant may be extended by Declarant, without joinder of any Lot Owner and without joinder of the Association, if created, to the record owners of tracts of land adjacent to Appalachian Village, Phase One, as in the case of the access easement simultaneously granted herewith to Charles H. Moody and Hazel Mae Moody, their heirs and assigns. Any such grant by Declarant will be, according to the granting instrument, either with or without attendant maintenance responsibilities for the roads in Appalachian Village, Phase One, being imposed upon the beneficiary

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of the easement grant.

#### **SYSTEM OF ROAD MAINTENANCE**

Declarant, until such time as it may create by written instrument a Homeowners' Association for all the Lot Owners in Appalachian Village, Phase One,, shall be solely responsible for the co-ordination of maintenance and repair of the private road rights-of-way constructed in Appalachian Village, Phase One.

(1) Road maintenance shall include, but not necessarily be limited to, the costs of gravel or rock hauled in to fill ruts, holes and washed out sections, required asphalt repair and necessary replacement of or construction of additional drainage culverts. Road Maintenance shall not include any type of upfitting of the road, including, but not limited to, laying deeper or wider levels of gravel than previously existed or paving or asphaltting, all of which shall be Declarant's responsibility in the initial development phase of Appalachian Village, Phase One.

(2) Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay an annual assessment for Road Maintenance, said assessment to be established and collected as herein provided. The annual Road Maintenance assessment, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the continuing personal obligation of the Owner of the Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to said Owner's successors in title unless expressly assumed by them. For each recorded Lot owned by Declarant and for each recorded Lot owned by a General Contractor, whether vacant or in any stage of construction but not yet conveyed to a third party purchaser, Declarant and/or General Contractor shall pay one-tenth (1/10) of the annual Road Maintenance assessment set forth in Paragraph 4.

(3) The assessment levied herein shall be used to defray the costs of any road maintenance required upon the private road rights-of-way serving Appalachian Village,

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Phase One, subsequent to the construction of the roads by Declarant. Further, the assessment shall be used for any normal and reasonable expenses associated with additional landscaping undertaken after Declarant has finalized any initial landscaping of the Property, including, but not limited to, bush and plant replacement, grass mowing and snow removal. Lastly, the assessment set forth herein may be used to repair or reconstruct the sign identifying the name of the subdivision that may be constructed by Declarant at the entrance to the Property or any other signs within the subdivision pertaining to the Property.

(4) From the date the annual Road Maintenance assessment first commences as herein set forth until January 1, 2002, the annual Road Maintenance assessment shall be One Hundred Fifty (\$150.00) Dollars per Lot, payable annually on January 1 of each year.

(a) From and after January 1, 2002, the maximum annual Road Maintenance assessment may be increased each year, without a vote of the Lot Owners, in an amount equal to but not more than ten (10%) percent of the prior year's assessment or, in the alternative, in an amount equal to but not more than the increase in the Consumer Price Index (as published by the United States Department of Labor) for the preceding calendar year, whichever amount is greater.

(b) From and after January 1, 2002, the annual Road Maintenance assessment may be increased above the amount set forth in Paragraph 4(a) above only by a vote of two-thirds (2/3) of all the Lot Owners who are voting in person or by proxy, at a meeting duly called for this purpose. Written notice of any meeting called for such a purpose shall be sent to all Lot Owners not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Lot Owners or of the proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quota at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

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(5) The annual Road Maintenance assessment shall commence on the day of closing and conveyance of the first Lot to a third party purchaser for residential occupancy pursuant to a duly issued Certificate of Occupancy. At each such closing, the assessment due for the balance of the year, prorated for the day in which the closing occurs, shall be collected. The annual Road Maintenance assessment for all Lots owned by Declarant and for all Lots owned by a General Contractor shall commence on the first day of the month following the closing and conveyance of the first Lot to a third party purchaser for residential occupancy pursuant to a duly issued Certificate of Occupancy. Declarant shall, upon demand, and for a reasonable charge, furnish a certificate signed by it setting forth whether the assessment on a specified Lot has been paid. A properly executed certificate from Declarant as to the status of assessments on a Lot is binding upon Declarant as of the date of its issuance.

(6) Any annual Road Maintenance assessment not paid within thirty (30) days after the due date shall bear interest from the due date, until paid in full, at the rate of twelve (12.0%) percent per annum, or at the rate of the Prime Rate as published daily in the Wall Street Journal plus one (1.0%) percent, whichever is greater, plus a maximum one-time late payment penalty of Thirty-five (\$35) Dollars. Pursuant to Article 8, Chapter 44, North Carolina General Statutes, said costs, penalties and reasonable attorney's fees, if any, shall be reduced to a judgment and shall become a lien on the land of the defaulting record Owner. Declarant may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Such action shall be for not only the delinquent assessment plus accrued interest thereon but also for all costs associated with bringing the action, including, but not limited to, reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by alleging non-use of the roadways or by abandonment of his Lot.

(7) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to

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payments which became due prior to such sale or transfer except that such an extinguished lien may be reallocated and assessed to all of the Lots as a common expense. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

(8) In addition to the annual Road Maintenance assessment, each Lot and Lot Owner in Appalachian Village, Phase One, will pay a road impact fee of Two Hundred Fifty (\$250.00) Dollars to the road maintenance fund established herein prior to commencing construction of a dwelling on said Owner's Lot. If construction is commenced prior to Declarant paving the roads in Appalachian Village, Phase One, then Declarant has the option to waive the road impact fee. After the sale and conveyance of the last Lot in Phase One, or, stated alternatively, after the sale and conveyance of all twenty (20) lots in Appalachian Village, Phase One, Declarant will assess each Lot Owner a fee of Seven Hundred Fifty (\$750.00) Dollars, payable to Declarant, to defray in part the cost of paving the roadways in Appalachian Village, Phase One (Cheyenne Court, Hlawatha Drive, Appalachian Trail) to a width of eighteen (18) feet with two (2) inches of B.S.T.

(9) Working Capital or Additional Reserve Account. Upon the first-time sale and conveyance of a Lot to a third party residential purchaser, the third party purchaser thereof shall pay a one-time sum of money equal to one half of the annual Road Maintenance assessment to create or be added to a capital reserve fund. Such sum shall not be deemed an advanced payment of the regular Annual Assessment.

**RESTRICTIVE COVENANTS**

All Lots in Appalachian Village, Phase One, shall be conveyed subject to the following restrictions which shall be appurtenant to and run with the land until January 1, 2020, at which time the restrictions shall be automatically extended for successive periods of ten (10) years.

(1) Each Lot shall be used only for single family residential living purposes. No Lot may be used for commercial purposes, and no multi-family dwelling may be constructed on any Lot. No Lot may be further subdivided although adjacent lot owners may, as necessary, adjust any common lot line between them so long as no

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additional building lot is created thereby.

(2) Declarant intends to create in Appalachian Village, Phase One, a community which is both functional and aesthetically pleasing. To facilitate achieving this goal, Declarant establishes itself as an Architectural Review Committee to review all plans, specifications and site location drawings for all improvements to be constructed on any Lot in Appalachian Village, Phase One, prior to any ground breaking occurring. As part of this mandatory review process, Declarant will approve only those plans, specifications and site locations which, in its sole opinion and discretion, will best maintain a harmonious relationship among all structures within Appalachian Village, Phase One, its topography, its vegetation, and its overall community design. It is intended by Declarant that Appalachian Village, Phase One, shall be comprised of rustic appearing homes.

(a) This approval process will remain the sole responsibility of Declarant until such time as Declarant, in writing, voluntarily transfers this responsibility to the Board of Directors of any Association which Declarant has created. At such time as this responsibility is transferred by Declarant to the Board of Directors, the Board will then have the authority and responsibility to establish an Architectural Review Committee, consisting of three (3) or more representatives appointed by the Board. Once created, the Architectural Review Committee shall be the successor in interest to the Declarant but shall remain subject to the authority of the Board of Directors.

(b) Declarant shall have the right to refuse to approve any improvements to any Lot which are, individually or collectively, in its sole opinion and discretion, incompatible with the external design, construction and location of said improvement(s) with respect to surrounding structures, topography or the general plan of development for the Property; subject, however, to the provision that in the event Declarant fails to give written approval or disapproval within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed fully complied with. All such requests shall be sent by certified mail to the Declarant or directly to the Architectural Review Committee, as the case may be, at the last known address of the party to whom the request is being

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sent.

(3) No residential structure or outbuilding shall be erected within fifteen (15) feet of the right of way of Cheyenne Court, Hiawatha Drive, or Appalachian Trail or within ten (10) feet of any side or rear lot line.

(4) No one story structure shall be erected on any Lot containing less than 900 square feet, outside measurements of enclosed floor heated area, with a minimum of 160 square feet of decks and/or covered porches with a roof pitch of no less than 7/12 pitch. No two story structure shall be erected on any Lot containing less than 700 square feet, outside measurements of enclosed floor heated area, on the main level and an additional 300 square feet, outside measurements of enclosed floor heated area on the second or loft level, likewise with a minimum of 160 square feet of decks and/or covered porches with a roof pitch of no less than 7/12 pitch. No residential structure shall exceed two stories in height, excluding the basement. Garages and/or carports are not required but if built, must match the main dwelling in architectural appearance. All exterior siding is to be of logs or wood siding. T-111 siding and/or rough-sawn siding is not permitted. No concrete block may be left exposed on any structure.

(5) All construction and final grading of a Lot shall be completed within eight (8) months from the commencement of construction as evidenced by the issuance of a building permit. Failure to complete construction and final grading within the allotted time will, in the absence of a waiver in writing by Declarant based upon unforeseen circumstances and/or bad weather delays shall result in a penalty against Lot Owner of Twenty-five (\$25.00) Dollars per day, such penalties, if unpaid, shall become a lien on the land of the Lot Owner pursuant to Article Eight, Chapter 44, General Statutes of North Carolina. No Lot may be stripped of its topsoil and trees or permitted to go to waste by being excavated, neglected or having trash or refuse thrown, dropped or dumped on it.

(6) The heating and cooling system for each home built in Appalachian Village, Phase One, will be total electric and shall meet all the specified requirements of Carolina Power and Light Company's "Common Sense Housing Program." The

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requirements for qualification under this program shall be provided to each Lot Owner, including a General Contractor, at the time of the sale and conveyance of a Lot to such a person or entity.

(7) No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other commonly domesticated household pets may be kept, provided they are not kept or bred for commercial purposes and provided further that said animals do not become a nuisance to the owners of any other Lot and that said pets are not permitted to roam freely beyond the borders of their Owners' Lot.

(8) Each Lot Owner shall be responsible for providing adequate garbage and refuse disposal. Trash containers and dumpsters shall not be located in the front yard of any Lot and shall be screened from view on all sides by visual screens and/or landscape buffers.

(9) No obnoxious or offensive activity or trade of any kind or nature whatsoever shall be permitted to be carried out on any Lot, nor shall a Lot Owner do anything thereon which may or shall reasonably become an annoyance or nuisance to the other lot owners in the subdivision. Each Lot Owner shall, at all times, maintain his lot and any improvements thereon in a neat and well-kept manner. For example, any and all storage tanks shall be buried or concealed from the view of the road rights of way and neighboring Lots. No commercial vehicles over one ton shall be regularly parked or stored on any Lot. All recreational vehicles if stored upon any Lot shall be hidden from view of all road rights of way and adjoining Lots by appropriate screening or landscape buffers. Satellite dishes can be no larger than twenty-four (24) inches in diameter and shall be located in as inconspicuous a place as possible. Outside lights shall be designed to illuminate, so far as practicable, only the area of a Lot owned by the person who installed such lighting. No above-ground swimming pools and no swing sets will be permitted on any Lot. No clothesline, rubbish, trash, stored materials (except for materials stored during the building phase on any Lot) shall be stored or maintained on any Lot. If the Owner of a Lot fails to cut and maintain his grass and/or shrubbery, Declarant can give notice to the Lot Owner and if no maintenance work is

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commenced within a seven day period after Notice is given, Declarant may hire the work done and collected the amount owed from the defaulting Lot Owner. Such an amount, if unpaid, shall become a lien on the land of the Lot Owner pursuant to Article Eight, Chapter 44, General Statutes of North Carolina.

(10) No mobile homes, trailers, tents or other types of temporary housing, no junk cars, junk trucks or any kind or type of unlicensed vehicle will be permitted to remain on any Lot.

(11) Declarant, so long as it owns one Lot in Appalachian Village, Phase One, reserves for itself, its successors and assigns, a perpetual easement for construction of electrical distribution lines and power poles, the same to be located within the road rights of way or in an area ten (10) feet in width running along the rear or side lot lines of any Lot. Declarant also reserves construction easements as required for the development of the subdivision and for the future development by Declarant of the remaining portion of land purchased by Declarant in Deed Book 471, Page 135, re-recorded in Deed Book 471, Page 1959, Haywood County Registry, or any land purchased in the future by Declarant and annexed into Appalachian Village subject to this Declaration, or any duly recorded amendment thereto.

(12) Declarant, so long as it owns one Lot in Appalachian Village, Phase One, may, in its sole discretion, allow reasonable variances and adjustments of these restrictions in order to alleviate difficulties and hardships in their enforcement and operation. Any such variance to be effective must be in writing and recorded in the Haywood County Registry. All Lots shall be subject to easements for encroachment of initial improvements constructed on adjacent Lots to the extent that such initial improvements reasonably and actually encroach, including, but not necessarily limited to, gravel driveways so long as said encroachment does not conflict with or violate any applicable governmental regulation or ordinance and so long as the encroachment is an encroachment and not an attempt to construct on a neighboring Lot improvements for the Lot then under construction.

(13) These covenants and restrictions may be amended by the recording in the Haywood County Registry of a written instrument executed by seventy-five (75%)

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percent of the Lot Owners in the subdivision agreeing to such an amendment provided that any amendment for any particular lot must receive, as part of the aforesaid majority occurrence, the consent of the lot owners whose property is adjacent to the lot for which the amendment is proposed.

(14) Any Lot Owner, either individually, or in conjunction with other Lot Owners, may enforce these covenants in law or in equity against a lot owner who violates the same, seeking, as appropriate, monetary damages and/or injunctive relief to enjoin the further occurrence of the act which violates any one or more of these covenants.

(15) So long as Declarant owns one or more Lots in the Property, Declarant shall have the right, in Declarant's sole discretion, to annex additional properties into the APPALACHIAN VILLAGE Subdivision, without a vote of the Lot Owners.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year first above written.

4309 MAGGIE VALLEY PARTNERSHIP,  
a Florida General Partnership

By: \_\_\_\_\_

FLORIDA - COUNTY OF

\_\_\_\_\_, a notary public in and for said county and state do hereby certify that Ronald K. Moody, General Partner in 4309 Maggie Valley Partnership, a Florida General Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the \_\_\_\_th day of September, 1998..

My commission expires:

\_\_\_\_\_  
Notary Public

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