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**1993 AMENDMENTS OF DECLARATIONS OF COVENANTS,  
RESTRICTIONS AND EASEMENTS  
FOR  
GRANNY SQUIRREL GAP SUBDIVISION**

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**THESE AMENDMENTS OF DECLARATIONS OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR GRANNY SQUIRREL GAP SUBDIVISION, VALLEYTOWN TOWNSHIP, CHEROKEE COUNTY, NORTH CAROLINA** (hereinafter referred to as "Amendments of Declarations") are made this the 22nd day of October, 1993 by the Owners of more than fifty-one (51%) percent of the Lots in the Granny Squirrel Gap Subdivision (hereinafter referred to as "the Subdivision") and by the Board of Control of the Subdivision (hereinafter referred to as "the Board Of Control") as follows:

**BACKGROUND STATEMENT**

Granny Squirrel Gap Subdivision is a subdivision consisting of certain real property including TWO HUNDRED AND FIVE (205) numbered parcels and various Common Property located in Cherokee County, North Carolina, which is more particularly described in plats recorded in the Office of the Register of Deeds for Cherokee County, North Carolina as follows:

Section 1: Plat Cabinet A, Slide 38

(formerly Plat Book 1, Page 81)

Section 1A: Plat Cabinet C, Slide 63

Section 2: Plat Cabinet A, Slide 40

(formerly Plat Book 1, Page 86)

Section 3: Plat Cabinet A, Slide 41

(formerly Plat Book 4, Page 2)

Section 3A: Plat Cabinet C, Slide 63

(previously recorded in Plat Cabinet A, Slide 174)

The Subdivision is subject to covenants previously recorded by the developer in the Office of the Register of Deeds for Cherokee

County, North Carolina (hereinafter referred to as "the Existing Covenants") as follows:

Covenants 1: Book 290, Page 115, recorded April 10, 1970.

Covenants 2: Book 312, Page 116, recorded July 20, 1972.

Covenants 3: Book 331, Page 25, recorded November 14, 1973.

Covenants 4: Book 333, Page 166, recorded February 14, 1974.

On or about June 6, 1991, in the case of Granny Squirrel Mountain Club Homeowners Association, Inc. v. Leisure Properties, Inc., file number 90-CVD-375, The General Court of Justice, District Court Division for Cherokee County, North Carolina issued an Order and Judgment which was filed in written form on October 6, 1991 declaring that all four (4) sets of covenants were in effect but also declaring that each could be amended by the mutual consent in writing of the Board of Control or its successors and assigns, and Fifty-One (51%) per cent of the owners of the sold lots as provided by Paragraph 22 of Covenants 1 (Book 290, Page 115, Cherokee County Registry) as amended by Article X of Covenants 4 (Book 333, Page 166, Cherokee County Registry).

The consenting Owners and the Board wish to clarify the effect of all covenants and restrictions related to the Subdivision by establishing one set of covenants to cover the entire Subdivision and to eliminate the confusion caused by the existence of four (4) separate sets of covenants. It is the intent of these Amendments of Declarations to amend the previous covenants and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Subdivision by the recordation of these Amendments of Declarations and any future amendments thereto. The consenting Owners and the Board of Control desire to provide a flexible and reasonable procedure for the overall management and development of the Subdivision and the interrelationship between the Association (as hereinafter defined) operated pursuant to the covenants as amended hereby and any non-residential areas which are or may become a part of the Subdivision. The consenting Owners and the Board of control also desire to establish a uniform method for the administration, maintenance, preservation, use and enjoyment of the property that is now or hereafter subjected to the covenants as amended hereby.

There presently exists a homeowners association known as the Granny Squirrel Mountain Club Homeowners Association, Inc. which is a North Carolina Corporation (hereinafter referred to as "the Association"). The Association was formed as a non-profit civic organization to perform certain functions for the common good and general welfare of the Owners (as hereinafter defined).

It is hereby declared that all of the real property which is a part of the Subdivision shall be held, sold and conveyed subject to these Amendments Of Declarations of Covenants, Restrictions and Easements, which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined). The Covenants, Restrictions and Easements set forth herein shall run with the Property, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall, subject to the limitations herein provided, inure to the benefit of each Owner, his heirs, grantees, distributees, successors and assigns and to the benefit of the Association.

## 1. DEFINITIONS.

The following words, when used in these Amendments Of Declarations of Covenants, Restrictions and Easements, shall have the following meanings:

- a. Assessment Date. "Assessment Date" means January 1st of each year for annual assessments and the date set herein, by the Board, by a vote of the members as provided for herein or otherwise as the date any other assessment is due. If no date is specifically set, the Assessment Date shall be the date the assessment is first billed to the Owners.
- b. Association. "Association" means Granny Squirrel Mountain Club Homeowners' Association, Inc. (a non-profit, non-stock, membership corporation organized under the North Carolina Nonprofit Corporation Code which is the successor to Granny Squirrel Mountain Club, Inc., a non-profit, non-stock, membership corporation organized under the Georgia Nonprofit Corporation Code and previously dissolved for the purpose of transferring its assets and obligations to the North Carolina corporation), its successors and assigns.
- c. Board. "Board" means the Board of Directors of the Association.
- d. Board Of Control. "Board Of Control" means the board of control created by and referred to in the Existing Covenants. The current members of the Board of Control are Robert D. Eshbaugh, Leonard Friedman and Michael A. Kessler.
- e. By-Laws. "By-Laws" mean the By-Laws of the Association.
- f. Commencement Date. "Commencement Date" means the date on which these covenants along with the written consents of the Board of Control and Fifty-One (51%) per cent of the owners of the sold lots are recorded in the Office of the Register of Deeds for Cherokee County, North Carolina.
- g. Commercial Activity. "Commercial Activity" shall mean the operation of any ongoing business and shall include, but is not limited to, the production of manufactured goods, the repair of automobiles, small engines or appliances, the operation of a retail outlet or flea market and any other business activity in which customers, clients or deliveries come to the Residence.
- h. Common Property. "Common Property" means all real property (together with any and all improvements now or hereafter located thereon) owned by the Association or in certain instances over which the Association has been granted permanent easements or right of ways, including roads thereon, for the common use and enjoyment of the Owners but does not include Lots owned by the Association for resale.
- i. Lot. "Lot" means those parcels of land shown as numbered lots upon the Subdivision plats recorded in the Office of the Register of Deeds for Cherokee County, North Carolina, and referred to hereinabove, provided, however, that none of those parcels shown as number 80A, number 110 or number 178 on the aforesaid plats and no portion of the Common Property shall ever be a Lot except as may be provided herein.
- j. Member. "Member" means any member of the Association.

k. Membership. "Membership" means the collective total of all Members of the Association.

l. Occupant. "Occupant" shall mean any person occupying all or any portion of a Residence located within the Development for any period of time, regardless of whether such Person is a tenant, visitor or the Owner of such property.

m. Owner. "Owner" means the record owner of any lot, whether one or more persons or entities is the record owner of a fee simple title to any Lot; provided, however, that where fee simple title has been transferred and is being held merely as security for the repayment of a loan, the person or entity who would own the Lot in fee simple if such loan were paid in full shall be considered the Owner.

n. Property. "Property" means that certain real property hereinabove described, together with such additional real property as may be subjected to the provisions of the Existing Covenants or these Amendments Of Declarations in accordance with the provisions hereof.

o. Residence. "Residence" shall mean a Structure situated upon a Lot intended for independent use and occupancy as a residence for a single family.

p. Restrictions. "Restrictions" mean all covenants, restrictions, easements, charges, liens and other obligations created or imposed by these Amendments of Declarations.

q. Structure. "Structure" means:

i. Any thing or object, the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, shed, greenhouse, bathhouse, coop, cage, covered or uncovered patio, swimming pool, dock, fence, curbing, paving, wall, tree, shrub (and all other forms of landscaping), sign, signboard, temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement to such Lot;

ii. Any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

r. Subdivision. "Subdivision" means sections 1, 1A, 2, 3 and 3A of the Granny Squirrel Gap Subdivision and all other property owned or hereinafter owned by the Association.

## 2. COMMON PROPERTY.

a. Association Property.

i. The Association owns real property, easements and rights of way, together with improvements thereon, for the common use and enjoyment of the Owners, not including Lots held by the Association for resale (such property is herein referred to as "Common Property").

ii. In addition to the property presently owned, the Association may acquire such other real and personal property or easements as the Board may determine to be necessary for the proper management of the Development.

b. Right of Enjoyment. Every Owner of a Lot shall have a non-exclusive right and easement to use and enjoy the Common Property, which right shall be appurtenant to and shall pass with the title to every Lot upon transfer; provided, however, that no Owner shall do any act which interferes with the free use and enjoyment of the Common Property by all other Owners. The Association may permit guests of Owners to use and enjoy part or all of the Common Property subject to such limitations, and upon such terms and conditions as the Board may from time to time establish. The right and easement of enjoyment granted or permitted herein is subject to suspension by the Association acting through the Board as hereinafter provided or as provided in the By-Laws of the Association. The Board shall have the right to promulgate rules and regulations governing the use of any Common Property.

c. Rights of the Association. The rights and privileges conferred herein shall be subject to the right, and where applicable, to the obligation, of the Association acting through the Board to:

i. Promulgate rules and regulations relating to the use, operation and maintenance of the Common Property;

ii. Borrow money for the purpose of carrying out the activities of the Association, including the acquisition, construction, improvement, equipping and maintenance of the Common Property, and in aid thereof, to encumber by deed to secure debt, mortgage or other security interest, any or all of the Association's property, including Common Property and revenues from assessments, user fees and other sources;

iii. Grant easements or rights of way over Common Property to any municipality or other governmental body, agency or authority, to any quasi-public agency or to any utility company or cable television system;

iv. Dedicate or transfer all or any part of the Common Property or interests therein to any municipality or other governmental body, agency or authority for such purposes and subject to such provisions and conditions as may be agreed upon by the Association and such grantee, including a provision that such property or interest shall, if such dedication or transfer is approved by a majority vote at a meeting of Members duly held in accordance with the By-Laws of the Association, cease to be subject to these Amendments of Declarations Of Covenants or all or any part of these restrictions while held by any such municipality or other governmental body, agency or authority;

v. Charge reasonable fees in connection with the admission to and use of facilities or services by Members and non-members; provided that in setting any such fee, the Board may establish reasonable classifications which shall be uniform within each such class but need not be uniform between such classes;

vi. Suspend, pursuant to the provisions hereof or the By-Laws, the voting rights of any Member and the rights of enjoyment granted or permitted herein;

vii. To sell, lease or otherwise convey all or any part of its properties and interests therein; and

viii. Enforce all applicable provisions of valid agreements of the Association relating to the Common Property or any part thereof.

d. Delegation of Use. Any Owner may delegate to the members of his family or his tenants who reside on a Lot, in accordance with the By-Laws, subject to the terms and conditions of these Amendments of Declarations, his right to use and enjoy the Common Property.

e. Maintenance. The Association shall maintain and keep in good repair the Common Property. The scope and extent of this maintenance shall be determined by the Board and may include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all improvements situated on the Common Property.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into easements and covenants to share cost agreements regarding such property where the Board has determined that this would benefit the Owners.

### 3. GRANNY SQUIRREL MOUNTAIN CLUB HOMEOWNERS ASSOCIATION, INC.

a. Purposes, Powers and Duties of the Association. The Association has been formed as a non-profit civic organization for the purpose of performing certain functions for the common good and general welfare of the Subdivision, as set out in the Articles of Incorporation. The Association shall have such powers as set forth in the Articles of Incorporation and the duty to promote the common good and general welfare of the Subdivision. To the extent necessary to carry out such purposes, the Association: (a) shall have all of the powers of corporation organized under the North Carolina Nonprofit Corporation Code; and (b) shall have the power and duty to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in these Amendments of Declarations, its Articles of Incorporation, its By-Laws or as determined from time to time by the Board of Directors including the power to indemnify its directors and officers. Nothing herein shall be deemed to restrict the Association's power to amend its Articles of Incorporation in any way.

b. Membership in the Association. Every Owner shall automatically be a member of the Association. Membership shall cease only when a person ceases to be an Owner. However, any member may be suspended as provided herein. There shall be only one (1) class of Members.

c. Voting Rights. Each Lot shall represent one vote to be voted by the Owner or Owners of each Lot, either in person or by proxy, as recorded on the records of the Corporation. When any Lot is shown on the Association's records to be owned by two (2) or more persons or entities, regardless of the capacity of those persons or entities; if only one such person votes either in person or by proxy, his vote binds all of the other Owners of those Lots. If more than one Owner of a Lot attempts to vote and if the Owners of a Lot attempting to vote separately cannot agree as to how to cast their votes, the votes attributable to any such Lot will not be counted.

d. Proxies. Members may vote and transact any business at any meeting of the Association by proxy provided the proxy is given in writing and delivered to the Secretary at or prior to the commencement of the meeting for which it is to be used. A proxy may be canceled by a member at anytime.

e. Board of Directors. The affairs of the Association shall be managed by the Board of Directors. The number of Directors and the method of election of Directors shall be as set forth in the By-Laws of the Association.

f. Suspension of Membership. The Board may suspend the voting rights of any Member and the right of enjoyment of the Common Property of any person who:

i. Shall have failed to take the reasonable steps to remedy a violation or breach of these Amendments of Declarations or any rules and regulations adopted by the Association within thirty (30) days after having received notice of the same pursuant to the provisions hereof; or

ii. Shall be delinquent in the payment of any annual, special or other assessment levied by the Association or on any other indebtedness to the Association.

Such suspension shall be for the balance of the period in which said Member or person shall remain in violation, breach or default. No suspension shall prevent an Owner's ingress to or egress from his Lot.

The Lots of any member who is suspended shall not be included in the total number of Lots required for a quorum nor may they be counted as part of a quorum. Suspended members shall not be entitled to notice of meetings and can, at the option of the Board, be removed from the mailing list.

g. Meetings, Quorum and Voting Procedures. The time, place and manner of conducting meetings, the number of Members required for a quorum and the procedures for the election of Directors of the Association, the appointment of officers and the resolution of such other issues as may be brought before the membership of the Association shall be governed by the North Carolina Nonprofit Corporation Code, the Articles of Incorporation of the Association, and the By-Laws of the Association, as each shall from time to time be in force and effect.

h. Voting By Mail. Any action requiring a vote of the membership may be conducted by a mail referendum if authorized by the By-Laws.

i. Designation of Homeowners Association. Each and every reference to the Homeowners Association or to Granny Squirrel Mountain Club, Inc. in the existing covenants is hereby amended to refer to the Association.

#### 4. ASSESSMENTS.

a. Covenant for Assessments and Creation of Lien and Personal Obligation. Each Owner and Co-Owner of a Lot, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by continued ownership or acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, does hereby covenant and agree as follows:

i. To pay to the Association the annual assessments which may or shall be levied by the Association pursuant to these Amendments of Declarations against all Lots owned by him;

ii. To pay to the Association any special assessments and other charges which may or shall be levied by the Association pursuant to these Amendments of Declarations against all Lots owned by him;

iii. That there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided herein and all costs of collection including reasonable attorneys' fees;

iv. That such continuing charge and lien on such Lot binds all Lots in the hands of the then Owner, and the Owner's heirs, devisees, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter arise in any manner or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except (i) such liens for taxes or other public charges as by applicable law are made superior, and (ii) all deeds to secure debt given to secure a loan, the proceeds of which are used (1) to purchase a Residence or Residences (together with any and all Structures which may from time to time be placed or located on any Lot) and (2) to finance the construction, repair or alteration of such Structures which are recorded prior to the date of the assessment.

v. That no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Owner from liability for any assessment thereafter assessed;

vi. That all annual, special and other assessments (together with interest thereon as provided herein, together with all costs of collection including reasonable attorneys' fees) levied against any Lot owned by him during the period that he is an Owner shall be (in addition to being a continuing charge and lien against such Lot) a personal obligation which will survive any sale or transfer of the Lot owned by him; provided, however, that, while the indebtedness shall remain a lien against each Lot, such personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by such successor.

b. Purpose of Assessment. The assessments levied by the Association shall be used for the purpose of providing for the common good and general welfare of the people of the community of the Subdivision, including, but not limited to, security, the acquisition, construction, improvement, maintenance and equipping of Common Property, the enforcement of the Restrictions contain in these Amendments of Declarations, the payment of operating costs and expenses of the Association, including insurance and legal fees, and the payment of all principal and interest when due on all debts owed by the Association, all as may be more specifically authorized from time to time by the Board. However, nothing herein shall obligate or require the Association to provide security.

c. Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of annual assessments or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply such surplus to the reduction of the amount of the Annual Assessments in any succeeding year, but may carry forward from year to year such surplus and reserves as the Board may deem desirable for the greater financial security of the Association and the effectuation of its purposes.

d. Annual Assessment.



i. Beginning on January 1, 1994 or the date these covenants become effective, whichever is later, each Lot shall be subject to an annual assessment as follows unless said assessment is increased or decreased by the Board as hereinafter provided:

(a) All property owned by the Association: None.

(b) Each Lot without a Residence erected on it: \$100.00.

(c) Each Lot with a Residence erected on it: \$350.00.

ii. Commencing with January 1, 1995, the annual assessment may be increased at any time and from time to time during each year by a total amount of all such increases not to exceed ten percent (10%) of the annual assessment for the previous calendar year only by a majority vote of the Members of the Association who are present in person or by proxy at a meeting of the Members duly held in accordance with the provisions of the By-Laws of the Association. **(Amended October 22, 1994)**

~~ii. Commencing with January 1, 1995, the annual assessment may be increased by the Board of Directors at any time and from time to time during each year by not more than ten percent (10%) above the annual assessment for the previous calendar year. The annual assessment may be increased more than this in any one calendar year only by a majority vote of the Members of the Association who are present in person or by proxy at a meeting of the Members duly held in accordance with the provisions of the By-Laws of the Association and these Amendments of Declarations.~~

iii. The Assessment Date for annual assessments shall be January 1st of each year.

e. Special Assessments.

i. In addition to the annual assessments authorized herein, the Association may levy, in any year and with such frequency as the Association shall deem necessary, special assessments for the purpose of paying, in whole or in part, any unanticipated operating expenses, as well as the cost of any construction, reconstruction, repair or replacement of a capital improvement on the Common Property. Such special assessments may be levied only upon ten (10) days prior written notice to the Members of the intention to vote upon such an assessment and with the approval of a majority of the Members of the Association who are present in person or by proxy at a meeting of the Members duly held in accordance with the provisions of the By-Laws of the Association and these Amendments of Declarations. Any special assessment so approved shall be due on the date set by the Board which shall be at least ten (10) days after the assessment's approval.

ii. The Association shall be authorized to levy, in any year and with such frequency as the Board shall deem necessary, such assessments as may be necessary to provide funds to comply with any requirements or orders of any governmental unit, agency, authority, or court including, but not limited, any requirement of either the federal or state government relative to the water system.

f. Assessment Procedure.

i. The Board shall establish an annual budget which shall list the estimated operating expenses and shall contain an amount to be set

aside each year into a reserve allowance to be used for future repair and replacement of the Common Property and the Association's personal property, including the water system; provided, however, in no event shall the Board be required to provide for a reserve sufficient to cover all such future repair and replacement of the Common Property, it being intended that a portion of such costs may be covered by Special Assessment. The budget shall separately state all estimated costs ("the water system operating costs") associated with the operation of the water system (including the costs associated with repairing any leaks) but these costs shall not include any capital equipment replacement or repairs or improvements to the water system. The Board shall then set the annual assessment for Lots without a residence construction thereon based upon a prorata share (based upon all Lots) of the budget not including the water system operating costs but including any budgeted amounts for capital repairs, replacement, or improvements to the water system. The Board shall also set the annual assessment for Lots with a residence constructed thereon to be an amount equal to the assessment for an unimproved Lot plus a prorata share (based upon improved Lots only) of the water system operating costs. The amount of the assessments shall be rounded off to the nearest dollar. The annual assessment shall be due on January 1st of each year. The Board may establish reasonable payment procedures to allow or require payment of the annual assessment in installments during the year. The Board may also establish payment procedures for payment of any special assessments which may be levied hereunder.

g. Uniform Rate of Assessment. Annual assessments must be fixed at a uniform rate for all Lots having no residences upon them and at a separate but uniform rate for all Lots having a residence upon them. If any single residence is built upon two separate Lots, only one of the Lots shall be treated as a Lot with a residence on it. Special Assessments shall be set at the same amount for all Lots without regard to whether or not a residence is constructed thereon.

h. Effect of Nonpayment of Assessments. All annual assessments must be paid before March 1st of each year and all other assessments must be paid within sixty (60) days of the Assessment date. Any assessment not paid by these dates shall be delinquent and shall bear interest from the Assessment Date at the lower of the (i) the highest legal rate of interest which can be charged or eighteen (18%) percent per annum, whichever is less, if no rate is set by the Board, or (ii) such rate as the Board may from time to time establish. Provided, however, in no event shall the Board have the power to establish a rate of interest in violation of the laws of the State of North Carolina. The Board may establish such late fees as it deems appropriate for any assessment not paid within sixty (60) days of the billing date. In the event of default in the payment of any one or more installments of an assessment, the Board may declare any remaining balance of the assessment at once due and payable. In the event that an Owner shall fail to pay fully any portion of any assessment prior to the date on which payment is due, such unpaid portion (including any remaining balance declared immediately due and payable in accordance with the preceding sentence), together with interest and costs of collection including reasonable attorneys' fees, shall be a binding personal obligation of such Owner, as well as a lien on such Owner's Lots enforceable in accordance with the provisions hereof.

i. Fine Assessments. The Board may assess reasonable fines as may be imposed as to any Lot and any Owner for violating any By-Laws, rules or regulations of the Association or these Amendments of Declarations. Said assessments shall be billed to the Owner with the Assessment date being the date it is first billed to the Owner. However, no such assessment may be made until the Owner has first been given written notice of the breach and an opportunity to comply.

## 5. ARCHITECTURAL CONTROL.

a. Approval of Plans. No Building, fence or other Structure shall be erected, placed or altered in the Subdivision until the proposed building plans, specifications, plot plans (showing the proposed location of such building or Structure, drives and parking areas) shall have been approved in writing by the Board. No alterations may be made in such plans after approval by the Board is given except with the consent of the Board in writing. Three copies of all plans shall be provided to the Board. Refusal to approve any plans, location or specification may be based upon any grounds, including purely aesthetic considerations in the sole discretion of the Board. The Board's failure to act on any request with sixty (60) days of the Board's actual receipt of the written submission of all necessary documents shall constitute the Board's consent.

b. Requirements. No Residence shall be erected with an enclosed floor area of less than 650 square feet, exclusive of carports, screened areas, patios, terraces and gazebos. No Structure, except as otherwise provided herein, shall be erected, altered, placed or permitted to remain on any Lot other than one detached single family dwelling and one small accessory building which may include a garage, guest suite (without a kitchen), or both, but neither may be rented or leased except as a part of the entire premises

including the Residence. However, the accessory building may not be constructed prior to the construction of the main Residence without the express written consent of the Board. No mobile home, trailer, barn or outside toilets shall be allowed in the Subdivision. No fuel tanks or similar storage receptacles may be exposed to view, and may only be installed within the Residence, within an accessory building, within an enclosure shielding it from view by fencing, trees, plants, bushes, shrubbery, grading or otherwise, or buried underground and only with the written approval of the Board. The exterior of all Residences and other Structures must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergency or natural disaster.

c. Inspection Rights. Any employee or agent of the Association, after reasonable notice, at any reasonable time or times, may enter upon any Lot, Structure or Property in the Subdivision for the purpose of ascertaining whether the installation, construction, alteration, use or maintenance of any Lot, Structure or Property in the Subdivision is in compliance with the provisions of these Amendments of Declarations; and neither the Association, or any such agent, shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

## 6. WATER RIGHTS AND WATER SYSTEM.

The provisions of the Existing Covenants are amended and revised so that hereinafter the Association, its successors and assigns, shall be granted title to all waters and springs located in the Subdivision, together with the rights, at any time and from time to time, to (i) impound the flow thereof in reasonable quantities for purpose of providing a normal and adequate water supply to homes and recreational facilities constructed within the Subdivision and filling and maintaining any lakes constructed on said subdivision for the benefit of the Owners and their guests; (ii) to install wells and underground pipelines for said waters or spring sites and related reservoirs and install, maintain and repair water systems and underground pipelines therefrom to the Lots to supply water to the residences for individual use. Title to, and use of, said waters is specifically reserved to the Association, its successors and assigns, and is specifically excepted from the operation of any deed to a Lot or other Property in the Subdivision.

The Association presently owns underground pipelines for the transmission of water to the Lots. Each Owner, his heirs successor or assigns may install underground pipelines on the Owner's Lot and, subject to any applicable government regulations, connect the same to the pipelines owned by the Association upon the Owner's payment of such tap-on charges as may be established by the Board for the privilege of such connection. Provided, however, that no connection may be made in violation of any state, federal or local law, ordinance, rule, regulation or order. The connection to the water system by any Owner shall be the Owner's sole expense. However, no Owner may use water from the water system for any purpose other than those consistent with the occupancy of a single family residence and in no event for any commercial purpose.

The Association shall have the right to inspect and approve in advance all water lines to be tapped onto the water lines owned by the Association to insure that such tap-ons will not jeopardize the efficient operation of the Association's water system. The Association may require such piping, valves, filters, meters and other items as the Board deems appropriate as a condition precedent to an Owner tapping on to the water system. No pipe or water line which is connected to the water system by any Owner shall be covered until it has been inspected and approved by the Association. The Association shall have no obligation to provide or to continue to provide water to any Owner who fails to comply with this paragraph. No swimming pools, tanks, ponds or other water retention device or Structure, with a capacity in excess of fifty (50) gallons, shall be erected, placed, or maintained anywhere within the Subdivision or otherwise supplied or filled from the Association's water system without the express permission of the Board.

No wells may be drilled or maintained within the Subdivision without the express written consent of the Board. No well may be connected to any Residence which is also connected to the Association's water system or otherwise maintained in violation of any state, federal or local law or regulation.

Nothing herein shall require the Association to extend the water system pipelines beyond the present location of those pipelines. However, the Board may extend the pipelines on such terms and conditions as the Board deems appropriate.

Neither the Association, its members, directors, officers, agents, or employees shall be liable to any person or entity in the event of any leak, overflow or damage related to the water system or for any interruption in the supply of water or for the inability to provide water hereunder due to governmental orders, restrictions, rules, regulations, ordinances or statutes.

Nothing herein shall prevent the Association from installing meters to measure water usages by any Owner or from establishing charges for excess water use.

## 7. GENERAL COVENANTS AND RESTRICTIONS.

a. Application. The covenants and restrictions contained herein shall pertain and apply to the Subdivision, each Lot and to all Structures erected, maintained or placed thereon.

b. Restriction of Use.

i. Lots shall be used for single-family residences only and for no other purpose. No Commercial Activity shall be carried on in the Subdivision, upon any Lot or in a Residence. However, it is recognized that certain activities related to a Commercial Activity may be conducted by an individual at his home while away from the primary location of the Commercial Activity. Therefore, nothing herein shall be construed as prohibiting any Owner from conducting limited activities in his Residence relative to a Commercial Activity or investment located outside of the Subdivision so long as the activity is not inconsistent with the use of the Lot for residential purposes.

ii. Any Owner may rent or lease his Residence but all rentals must be pursuant to a lease in writing and shall have a minimum term of seven (7) days. (Amended October 22, 1994)

~~Any Owner may rent or lease his Residence but all rentals must be pursuant to a lease in writing and shall have a minimum term of six (6) months.~~

All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of these Amendments of Declarations, the By-Laws, and any rules and regulations promulgated by the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner for any violation or failure to act on the part of the Owner or such tenant under these covenants, and specifically assess all costs associated therewith against the Owner and the Owner's property.

iii. All provisions of these Amendments of Declarations, the By-Laws, and all rules and regulations which govern the Owner and which provide for sanctions against Owners shall also apply to all persons who occupy the property (the "Occupants"), even though Occupants are not specifically mentioned.

c. Resubdivision of Property. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise, without the prior written approval of the Board. An application for approval must include such plans and specifications, in recordable form, for such split, division or subdivision as the Board may require. Notwithstanding the foregoing, nothing herein shall prevent the Owner of any Lots from combining two or more Lots into one lot for construction of a single Residence thereon; provided, however, that such combined lot may not be subdivided thereafter and further provided that the Owner of the Residence on such Lot shall be responsible for annual and special assessments based upon the number of Lots combined into one lot.

d. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken in the Subdivision without the prior written approval of the Board of plans and specifications for the prevention and control of such erosion or siltation. The Board may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling such erosion or siltation. Such means may include, but are not limited to, physical devices for controlling the run-off and drainage of water, special precautions in grading and otherwise changing the natural landscape.

e. Temporary Buildings. No temporary building, trailer, garage, mobile home, motor home or building under construction shall be used, temporarily or permanently, as a residence in the Subdivision. However, in addition to the provisions of paragraph 5B, one small storage building may be located on a Lot with the prior written consent of the Board.

f. Signs.

i. Other than small signs (less than 400 square inches) identifying the Owner of a residence or number of a Lot, no signs whatsoever (including but not limited to commercial and similar signs) shall, without the Board's prior written approval of plans and specifications therefor, be installed, altered or maintained on any Lot, on any portion of a Structure visible from off the Lot, or elsewhere in the Subdivision except:

(1) such signs as may be required by legal proceedings;

(2) such permits as may be required by a governmental entity;

(3) traffic or directional signs for vehicular or pedestrian safety approved and erected by the Board.

ii. "For Sale", "For Rent", "For Lease" and similar signs are prohibited.

iii. Nothing herein shall be deemed to limit the display of the American flag on any residence or the use of lights and ornaments during the holiday season.

g. Setbacks. The establishment of standard inflexible building setback lines for the property owners is completely impractical in view of the great variety of contours, lot shapes, frontages, and potential views. Accordingly, the location of structures on building Lots will be independently determined as to each individual Lot and will not only relate itself to the specific Lot but will also be related to the surrounding property. While the fullest enjoyment of the Lot owners is of primary concern, no Structure shall be located on any Lot other than in locations approved by the Board which shall have the sole discretion and control over the precise size and location of any Structure.

h. Maintenance. Each Owner shall keep and maintain each Lot and Structure owned directly or indirectly by him, in good condition and repair, in a neat and attractive condition. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt conditions of building or grounds which shall tend to substantially decrease the beauty of the Subdivision, as a whole, or of the specific area. Each Owner shall clean up and correct any such condition upon written request by the Board to do so.

i. Fire Extinguisher. Each residence in the Subdivision shall be equipped at all times with an operable fire extinguisher of at least five (5) pounds capacity. The Association, its successors and assigns, shall have the right but not the duty, during reasonable hours and upon prior notice to and in the presence of the Owner, to make periodic inspections of any Residence to determine the presence and operable condition of said fire Extinguisher.

j. Commercial and Recreational Vehicles and Trailers. No commercial vehicle, house trailer, mobile home, camper, (but not including a pickup truck with or without camper top), tent, boat or boat trailer or like equipment shall be permitted in the Subdivision on a permanent basis, but shall be allowed on a temporary basis not to exceed forty-eight (48) consecutive hours. Notwithstanding the foregoing, any such vehicles or equipment may be stored on a Lot, provided such vehicle or equipment is kept in an enclosed space and is concealed from view from neighboring residences and streets. Camper tops shall not be stored in any area where they are visible from the street or from neighboring Lots.

k. Offensive Activities. No noxious or offensive activity shall be carried on in the Subdivision, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance, or nuisance to any person. No plants, animals, devices, or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other Owners in the neighborhood shall be brought into the Subdivision or maintained on any Lot. No activity shall be carried on which creates dust, noise, odors, glare, vibrations, or electrical disturbances across the property lines of any Lot unless of short duration or in any connection with normal construction activities approved by the Board.

l. Weapons, Explosives and Hunting. No firearms, guns, pistols, or bow and arrows of any type shall be discharged, fired or shot within the Subdivision except as part of an event or festival authorized by the Board. No explosives may be detonated within the Subdivision unless necessary for construction and then only if approved by the Board and under the direction of an experienced detonation expert. No hunting of any kind shall be carried on within the Subdivision.

m. Prohibited Vehicles. No motorcycles, motorbikes, scooters, mo-peds, motorized unlicensed vehicles, go karts, all terrain vehicles, snowmobiles, or similar vehicles shall be operated in the Subdivision or on any Lot. No abandoned cars shall be left on any Lot or in the Subdivision.

n. Animals. No agricultural animals may be kept on any Lot in the Subdivision and no animals, including birds, insects, and reptiles may be kept on any Lot unless kept thereon solely as household pets and not for any commercial purpose whatsoever. **(Amended October 22, 1994)**

~~No agricultural animals may be kept on any in the Subdivision and no animals, including birds, insects, and reptiles may be kept on any Lot unless kept thereon solely as household pets and not for any commercial purpose whatsoever.~~ Household pets shall be limited to a reasonable number. No animal shall be allowed to become or remain a nuisance. No Structure for the care, housing or confinement of any animal shall be constructed, placed or altered in the Subdivision unless plans and specifications for said Structure have been approved by the Board. Dogs which are household pets shall, at all times whenever they are outside a residence, be on a leash or otherwise confined in a manner acceptable to the Board. Without limiting the foregoing, no pet that has caused damage or injury may be allowed to roam in the Subdivision. No stable, poultry house, rabbit hut or other similar yard Structure, with the exception of a doghouse, shall be constructed or allowed to remain in the Subdivision. The installation, construction or maintenance of other pet houses or pet runs shall be made only with the approval of the Board. In all cases, the Owner shall take all steps necessary to reduce or eliminate any odors which arise as a result of a pet or pets being kept on the premises.

o. Solid Waste.

i. No person shall dump rubbish, garbage, or any other form of waste, solid or otherwise, in the subdivision.

ii. No person shall burn rubbish, garbage, or any other form of solid waste in the Subdivision;

iii. Except for building materials employed during the course of construction of any Structure approved by the Board, no lumber, metals, bulk materials or solid waste of any kind shall be kept, stored, or allowed to accumulate in the Subdivision. Nothing herein shall be construed as prohibiting any Owner from storing cut and stacked firewood on his Lot. Nothing herein shall be deemed to require any Owner to remove leaves, branches or the remains of any other vegetation which naturally accumulates on any Lot;

iv. Each Owner shall provide receptacles for garbage within the Residence, or provide underground, animal proof garbage receptacles or similar facilities in accordance with reasonable standards established by the Board. Any outside garbage receptacles shall be constructed and maintained so that can not opened or entered by animals;

v. Each Owner shall be responsible for removing his own garbage and other solid waste from the Subdivision for disposal.

p. Septic Tanks. Prior to the occupancy of a residence on any Lot, a proper and suitable septic tank shall be constructed on said Lot, or an adjoining Lot owned by the same Owner, for the disposal of all sewage, and all sewage shall be emptied or discharged into such tank or tanks. No Sewage shall be emptied or discharged into any marsh, creek, lake, pond, culvert, ravine, open ground or otherwise, except as provided herein. No sewage disposal system shall be built, operated or maintained in the Subdivision, nor may an sewage disposal system be used, unless such system is designated, located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authorities, who's approval and permits, if required, shall be obtained prior to the beginning of the construction of said system, during construction and after its completion. No Owner shall allow any septic tank discharge or other sewage to flow on to any adjoining Lot or Common Property.

q. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereof which may be or may become an annoyance or nuisance to the community.

r. Vehicle Parking. The Owner of each Lot shall provide space for parking two automobiles off of the roadways, prior to and continuously after the occupancy of any dwelling constructed on said Lot in accordance with reasonable standards established by the Board.

s. Hobbies. The pursuit of hobbies or other activities, including without limitation, the assembly or disassembly of motor vehicles and other mechanical devices, or other activities which might tend to be disorderly or unsightly shall not be pursued or undertaken on any Lot or in any driveway, garage, carport, or other place in the Subdivision where such activity is visible from any road.

## 8. ROADS, RIGHT OF WAYS, EASEMENTS, ZONING AND RESTRICTIONS.

a. Right of Ways. There are existing roads and roadways shown upon the Subdivision maps and plats . Any and all right of way reserved to Granny Squirrel Mountain Club, Inc. by the prior covenants or otherwise is amended so that it shall now be reserved to the Association. The Association, its successors and assigns shall be granted a right of way 60 feet in width, 30 feet on either side of the centerline of all roads shown on any duly recorded Granny Squirrel Gap Subdivision map or plat, which right of way subsequently may, with the consent of the Board, be conveyed to the North Carolina Highway Commission, Department of Transportation or its successors, and specifically, the rights of way hereinabove described are reserved for the creation of future public roadway or highway. Said right of ways and roads are the property of the Association and the Board may make such rules and regulations as may be reasonably necessary to control the operation of any vehicles, motorized or otherwise upon said right of

ways or roads. Furthermore, said right of ways are reserved from all conveyances of land in the Subdivision. Neither the Association, its members, directors, officers, agents, or employees shall be liable to any person or entity in the event of any collapse, wash out, hole or similar damage to any right of ways or roads or for the interruption in the use of said right of ways or roads.

b. Easements. The Association, its successors and assigns, shall have a perpetual, alienable and releasable easement and right on, over and under the ground to erect, maintain, and use electric and telephone poles, wires, cables, conduits, sewers, and storm sewers, water mains, and distribution lines and other suitable equipment for the transmission and use of electricity, telephone, telegraph, cable television, gas, sewer, water, or other public conveniences or utilities on, in or over ten (10) feet along the rear of each Lot, and five (5) feet along each side of each Lot (and such other areas as are shown on the applicable plat); provided that the Association may cut drain ways for surface water wherever and whenever such action may appear to the Board to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights specifically include the right to cut any trees, bushes, plants, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance. The rights herein reserved create no obligations on the part of the Association to do any of the things above stated.

c. Views and Vistas. While the Association shall have no obligation to cut or maintain any views or vistas, the Association, its successors and assigns, shall have an easement and right of way over each Lot giving it the right to control absolutely the cutting and maintaining of views and vistas by Owners, in the interest of the shared enjoyment of distant scenes by adjacent and neighboring Lot owners. It is understood, however, that the Association shall only grant permission to maintain and cut views and vistas which enhance the enjoyment of Owners and occupants of residences and that the cutting be done selectively, and to obtain an artistic result with every possible effort to preserve specimen trees and plants. View and vistas will be cut and maintained independently and will be independently determined as to each Lot but will be related to the surrounding property. No Owner may clear cut any Lot unless it is required for the benefit of all Owners and then only with the consent of the Board. Nothing herein shall be deemed to create any obligation on the Association to incur any expenses relative to any view or vista. All cutting or clearing shall be at the sole expense of the Owner or Owners seeking to cut or maintain a view or vista.

d. Easement Area. The words "Easement Area" as used herein, shall mean those areas on any Lot or any other portion of the Subdivision with respect to which easements (of any nature) are described herein or shown on a recorded deed, easement agreement or on any filed or recorded map or plat relating thereto.

e. Entry. The Association and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Area for any of the purposes for which such Easement Area is reserved, without being deemed to have committed a trespass or other wrongful act solely by reason of such entry and the carrying out of such purposes, provided, however, the same are done in accordance with the provisions of this Section. Whenever the Association, its employees, agents, successors and assigns are permitted by any covenant, restriction or easement to correct, repair, clean or do any act on any Lot or other property, entering upon the property and taking such action shall not be deemed a trespass and the Association, its employees, agents, successors and assigns, shall have no liability therefor.

f. Zoning and Private Restrictions. None of the covenants, restrictions or easements created or imposed by these Amendments of Declarations shall be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body. In the event of any conflict between such laws, rules or regulations and the covenants, restrictions and easements created or imposed by these Amendments of Declarations, the most restrictive provision shall govern and control.

## 9. ENFORCEMENT.

a. Right of Enforcement. These Amendments of Declarations and the Restrictions contained herein shall inure to the benefit of and shall be enforceable by (i) the Association, or (ii) each Owner, or their legal representatives, heirs, successors and assigns.



b. Specific Performance. Nothing contained in these Amendments of Declarations shall be deemed to affect or limit the rights of the Association or any Owner to enforce the Restrictions by appropriate judicial proceedings or to recover damages. However, it is hereby declared that it may be impossible to measure accurately in money the damages which will accrue to a beneficiary hereof, its transferees, successors or assigns by reason of a violation of or failure to perform any of the obligations provided by these Amendments of Declarations. Accordingly, any beneficiary hereof shall be entitled to relief by way of injunction or decree of specific performance, as well as any other relief available at law or in equity to enforce the provisions hereof.

c. Collection of Assessments and Enforcement of Lien.

i. If any assessment, interest, cost or other charge is not paid as required by these Amendments of Declarations, the Association may bring either an action at law against the Owner personally obligated to pay same, or an action to foreclose any lien created by these Amendments of Declarations against the Lot or Lots subject to the lien, or both, for the purpose of collecting such assessment, cost or charge, plus any interest thereon and costs of collection, including reasonable attorneys' fees.

ii. In addition to all other remedies provided by law or herein, but in no way as a limitation of the remedies available, any lien created hereunder may be enforced or foreclosed in any manner now or hereinafter authorized by the laws of the State of North Carolina for the enforcement or foreclosure of mechanics liens, material or materialmen liens, condominium liens, homeowner association liens or other similar liens against real property. **(Amended October 22, 1994)**

~~ii. As an additional remedy, but in no way as a limitation of the remedies provided herein, if any assessment, interest, cost or other charge is not paid as required by these Amendments of Declarations, each Owner hereby grants to the Association and its assigns the following irrevocable power of attorney: To sell the said Lot or Lots subject to the lien at auction, at the usual time and place for conducting sheriff's sales at the Cherokee County Courthouse to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four weeks immediately preceding such sale (but without regard to the number of days) in the paper in which the Sheriff's advertisements for Cherokee County, North Carolina are published, all other notice being hereby waived by each Owner, and the Association or any person on behalf of the Association, or its assigns, may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a conveyance of said property in fee simple, which conveyance shall contain recitals as to the happenings of the default upon which the execution of the power of sale herein granted depends, and each Owner hereby constitutes and appoints the Association and its assigns, the agent and attorney in fact of each Owner to make such recitals and to execute such deeds and conveyances as are necessary to carry out the purposes of this Section. Each Owner hereby covenants and agrees that the recitals and conveyances so made by the Association or its assigns shall be binding and conclusive upon the Owner whose property is the subject matter of such sale, and the heirs, executors, administrators and assigns of such Owner, and the conveyance to be made by the Association or its assigns shall be effectual to bar all equity of redemption of such Owner, or the successors in interest of such Owner, in and to said Lot or Lots, and the Association or its assigns shall collect the proceeds of such sale, and after reserving therefrom the entire amount of assessments, interest, cost or other charge due, together with all costs and expenses of sale, and fifteen percent (15%) of the aggregate amount due for attorneys' fees, shall pay any excess to such Owner, or to the heirs or assigns of such Owner as provided by law. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness as provided by law.~~

(Amended October 22, 1994)iii. ~~WAIVER. EACH OWNER, BY CONTINUED OWNERSHIP OR BY ACCEPTANCE OF A DEED CONVEYING A LOT SUBJECT TO THESE AMENDMENTS OF DECLARATIONS, WAIVES ANY RIGHT WHICH OWNER MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF NORTH CAROLINA OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THESE AMENDMENTS OF DECLARATIONS. OWNER HEREBY WAIVES OWNER'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THESE AMENDMENTS OF DECLARATIONS ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY OWNER IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER OWNER HAS FIRST BEEN ALLOWED THE OPPORTUNITY TO CONSULT LEGAL COUNSEL WITH RESPECT TO OWNER'S POSSIBLE RIGHTS.~~

d. No Waiver. The failure of the Association or the Owner of any Lot, his or its respective legal representatives, heirs, successors and assigns, to enforce any Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to any violation or breach occurring prior or subsequent thereto.

#### 10. DURATION AND AMENDMENT.

a. Duration. These Amendments of Declarations and the Restrictions contained herein shall run with and bind the Property for a period of twenty-five (25) years from and after the date when these Amendments of Declarations is filed for record in the Office of the Register of Deeds for Cherokee County, North Carolina (herein referred to as "recorded")

after which time these Amendments of Declarations and the Restrictions shall be automatically renewed for successive periods of ten (10) years, provided however, that after the end of the said twenty-five (25) year period and during any ten (10) year renewal period (but only during any renewal period), these Amendments of Declarations and the Restrictions contained herein may be terminated by an instrument executed by the proper Association officers and recorded in the office of the Register Of Deeds for Cherokee County, North Carolina, or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution approving such termination which is approved by a two-thirds (2/3) vote of the votes cast by Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions of the By-Laws of the Association.

b. Amendments by Association. Amendments to these Amendments of Declarations shall be proposed and adopted only in the following manner:

i. Notice of the subject matter of the proposed amendment shall be included in the written notice of the meeting of the Association at which such proposed amendment is to be considered and shall be sent to each Member of the Association.

ii. At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board or by a Member or Members of the Association. Such amendment must be approved by a two-thirds (2/3) vote of the votes cast by Members of the Association who are present in person or by proxy and voting at a meeting of Members duly held in accordance with the provisions hereof and the By-Laws of the Association.

iii. The amendment of these Amendments of Declarations shall be evidenced by a notarized statement by the President or any Vice President of the Association, attested by the secretary or assistant secretary, attached to or incorporated into the amendment approved by the Association, which sworn statement shall state that the required votes were lawfully obtained. Any such amendment of these Amendments of Declarations shall become effective only when recorded or at such later date as may be specified in the amendment itself.

#### 11. MISCELLANEOUS.

a. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof and the offending provision shall be severed from these Amendments of Declarations.

b. Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the covenants of these Amendments of Declarations.

c. Gender. Throughout these Amendments of Declarations, the masculine gender shall be deemed to include the feminine and the neuter gender, as well as the singular, the plural and vice versa, where the context so requires.

d. Notices. All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures or consent of any kind made pursuant to these Amendments of Declarations, whether made by the Association, an Owner, or any other person, shall be in writing. All such writings shall be sufficient only if deposited in the United States Mail, with sufficient postage, and sent to the following addresses:

(a) As to Association: Granny Squirrel Mountain Club

Homeowners Association, Inc.

Post Office Box 1563

Andrews, NC 28901

(c) As to Owners: Each Owner's address as registered with the Association in accordance with the By-Laws. If no address is furnished to the Association or if mail is returned undeliverable, delivery shall be attempted at the Owner's Lot; otherwise said notice shall be delivered to the Secretary of the Association.

Any written communication transmitted in accordance with this Section shall be deemed received upon actual receipt or upon the third (3rd) day following the day such written notice is deposited in the United States Mail, whichever is earlier. Nothing herein shall limit the Association's rights to deliver notices in person, by telegram, mailgram or by overnight commercial delivery service. Each Owner shall have a duty to keep the Association advised of their current mailing address.

e. No Liability. The Association has, using its best efforts and diligence, prepared and recorded these Amendments of Declarations so that each and every Owner shall have the right and power to enforce the terms and provisions of these Amendments of Declarations against every other Owner. However, in the event that these Amendments of Declarations are, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, neither the Association, its officers, directors, the Board of Control nor anyone acting as the Association's agent shall have any liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot or by continued ownership, acknowledges that the Association, its officers, directors, the Board of Control or anyone acting as the Association's agent shall have no liability, and further covenants and agrees not to sue the Association, its officers, directors, the Board of Control or anyone acting as the Association's agent, on account thereof.

f. No Positive Duty Or Liability. It is not the intention of these Amendments of Declarations, except as specifically set forth herein, to create any positive obligations on the Association in so far as, but not limited to, cutting views or vistas, building or maintaining roads, water systems, sewage systems, furnishing garbage disposal, beginning or prosecuting any litigation to enforce any covenants, restrictions or easements, cleaning or policing areas affected, provide security or police protection, or to remove any persons, animals, plants or things that become offensive. Furthermore, the Association, its officers, directors, agents, employees, successors and assigns shall have no liability for failing to do any such act.

g. Notice of Sale. If an Owner sells his or her Lot, the Owner shall give to the Board, in writing, the name and mailing address of

the purchaser of the Lot and such other information as the Board may reasonably require within ten (10) days after the sale is effectuated. Any Owner who fails to give such notice to the Association shall remain personally liable for any assessments made against the Lot after such sale and prior to the Association's receipt of said notice.

h. Execution and Filing. The approval of these Amendments of Declarations and the consent of the Board of Control is shown by the signatures of the members of Board of Control hereon. The approval of these Amendments of Declarations and the consent of the Owner of a Lot to the amendment of the Existing Covenants as set forth herein shall be sufficiently shown by the execution of a certificate stating the name of the Owner, the number of the Lots owned by that Owner and containing a statement that the Owner approves and consents to the 1993 AMENDMENTS OF DECLARATIONS OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR GRANNY SQUIRREL GAP SUBDIVISION. Nothing herein shall be construed to prohibit the filing of a separate certificate, deed or declaration stating an Owner's approval and consent to these Amendments of Declarations at the time of or after the recording of these Amendments of Declarations.

12. AMENDMENT AND EFFECT OF EXISTING COVENANTS.

Upon the recording of these Amendments of Declarations in the Office of the Register Of Deeds for Cherokee County North Carolina, the Existing Covenants shall be merged herein and no covenants or restrictions contained in the Existing Covenants shall be effective as to the Subdivision except those specifically stated herein. However, all conveyances to the Association or its predecessor contained in the Existing Covenants and all descriptions necessary to define property subject to these covenants, restrictions and easements shall survive and remain in full force and effect except to the extent they may be modified herein.

13. FIRST MORTGAGEES.

All liens created hereunder shall be subordinated to any first mortgage properly recorded against any Lot prior to the date on which the charges giving rise to any such lien come due. The Board shall have the right to waive, by written document only, any requirements of these covenants and restrictions which any institutional lender may request to be waived relative to any loan to be made as to any Lot for a purchase money first mortgage. However, nothing herein shall obligate the Board to agree to any such waiver or limit the Board's ability to request consideration or concessions from any Owner or lender in return for such consent.

**IN WITNESS WHEREOF**, the undersigned have hereunto set their hands and seals on the day and year indicated indicating their consent and approval of the foregoing Amendments of Declarations.

Board Of Control:

\_\_\_\_\_ (Signed) \_\_\_\_\_

Robert D. Eshbaugh, Member

\_\_\_\_\_ (Signed) \_\_\_\_\_

Leonard Friedman, Member

\_\_\_\_\_ (Signed) \_\_\_\_\_

Michael A. Kessler, Member

North Carolina, Cherokee County

I, a Notary Public of said State and County, certify that Robert D. Eshbaugh personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp this (22) day of (October), 1993.

My commission expires \_\_\_\_\_

\_\_\_\_\_ (Diane Love) \_\_\_\_\_

Notary Public

(Seal/Stamp)

North Carolina, Cherokee County

I, a Notary Public of said State and County, certify that Leonard Friedman personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp this (22) day of (October), 1993.

My commission expires \_\_\_\_\_

\_\_\_\_\_ (Diane Love) \_\_\_\_\_

Notary Public

(Seal/Stamp)

North Carolina, Cherokee County

I, a Notary Public of said State and County, certify that Michael A. Kessler personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp this (22) day of (October), 1993.

My commission expires \_\_\_\_\_

\_\_\_\_\_ (Diane Love) \_\_\_\_\_

Notary Public

(Seal/Stamp)

**DECLARATIONS OF COVENANTS, RESTRICTIONS AND  
EASEMENTS FOR GRANNY SQUIRREL GAP SUBDIVISION**

Granny Squirrel Mountain Club, Inc., a North Carolina non-profit corporation, being the Owner of Lots number 1, 3, 45, 67, 83, 84, 87, 88, 89, 94, 95, 119, 120, 151, 154, 155, and 157 in the Granny Squirrel Gap Subdivision hereby consents to and approves the 1993 AMENDMENTS OF DECLARATIONS OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR GRANNY SQUIRREL GAP SUBDIVISION and submits all of the property described therein to all of the terms and provisions of said Amendments of Declarations.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be executed under hand and seal this \_\_\_\_ day of \_\_\_\_\_, 1993.

Granny Squirrel Mountain Club  
Homeowners Association, Inc.,

By: \_\_\_\_ (Signed) \_\_\_\_\_

Michael A. Kessler, President

Attest:

\_\_\_\_ (Signed) \_\_\_\_\_

Secretary

North Carolina, Cherokee County

I, a Notary Public of said State and County, certify that Robert D. Eshbaugh, Jr. personally appeared before me this day and acknowledged that he is the Secretary of Granny Squirrel Mountain Club Homeowners Association, Inc., North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by Robert D. Eshbaugh, Jr. as its Secretary.

Witness my hand and official stamp or seal this \_\_\_\_ day of \_\_\_\_\_, 1993.

My commission expires \_\_\_\_\_

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

(Seal/Stamp)

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RESTRICTIONS AND EASEMENTS  
FOR  
GRANNY SQUIRREL GAP SUBDIVISION

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This declaration is made and published this 28th day of October, 1994 by Granny Squirrel Mountain Club Homeowners Association, Inc., a North Carolina nonprofit corporation, pursuant to Article 10 of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision.

WHEREAS, Article 10 of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision provides for the amendment of the covenants, restrictions and easements; and

WHEREAS, the covenants, restrictions and easements have been amended as set forth herein pursuant to the aforesaid Article 10; and

WHEREAS, MICHAEL A. KESSLER is the President and Robert D. Eshbaugh is the Secretary of the Granny Squirrel Mountain Club Homeowners Association, Inc; and

WHEREAS, this declaration is made pursuant to Article 10 of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision;

NOW THEREFORE, the Granny Squirrel Mountain Club Homeowners Association, Inc. (hereinafter "the Association") does hereby declare, proclaim and publish the following amendments to the covenants, restrictions and easements for the Granny Squirrel Gap subdivision:

On October 22, 1994, during a called meeting of the membership of the Association, the following amendments to the 1993 Amendments of Declarations of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision were approved and adopted:

**AMENDMENT 94 - 1**

**RESOLVED:**

**That Article 4, Paragraph d, ii of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision be amended as follows:**

**By striking said paragraph in its entirety and replacing it with the following:**

**ii. Commencing with January 1, 1995, the annual assessment may be increased at any time and from time to time during each year by a total amount of all such increases not to exceed ten percent (10%) of the annual assessment for the previous calendar year only by a majority vote of the Members of the Association who are present in person or by proxy at a meeting of the Members duly held in accordance with the provisions of the By-Laws of the Association.**

**This amendment shall be effective upon its approval.**

**AMENDMENT 94 - 2**

**RESOLVED:**

**That Article 7, Paragraph b, ii of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision be amended as follows:**

**By striking the words and number "six (6) months" in the first sentence and replacing them with the words and number "seven (7) days" so that the first sentence of Article 7, paragraph b, ii shall now read:**

**ii. Any Owner may rent or lease his Residence but all rentals must be pursuant to a lease in writing and shall have a minimum term of seven (7) days.**

**This amendment shall be effective upon its approval.**

AMENDMENT 94-3

**RESOLVED:**

**That Article 7, Paragraph n of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision be amended**

**as follows:**

**By adding the word "Lot" in the first sentence after the word "any" and before the words "in the subdivision" so that the first sentence shall now read:**

**No agricultural animals may be kept on any Lot in the Subdivision and no animals, including birds, insects, and reptiles may be kept on any Lot unless kept thereon solely as household pets and not for any commercial purpose whatsoever.**

**This amendment shall be effective upon its approval.**

AMENDMENT 94 - 4

**RESOLVED:**

**That Article 9, Paragraph c, ii of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision be amended as follows:**

**By striking said paragraph in its entirety and replacing it with the following paragraph:**

**ii. In addition to all other remedies provided by law or herein, but in no way as a limitation of the remedies available, any lien created hereunder may be enforced or foreclosed in any manner now or hereinafter authorized by the laws of the State of North Carolina for the enforcement or foreclosure of mechanics liens, material or materialmen liens, condominium liens, homeowner association liens or other similar liens against real property.**

**This amendment shall be effective upon its approval.**

AMENDMENT 94 - 5

**RESOLVED:**

**That Article 9, Paragraph c, iii of the 1993 Amendments Of Declarations Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision be amended as follows:**

**By striking said paragraph c, iii in its entirety.**

**This amendment shall be effective upon its approval.**

Notice of the subject matter of these amendments was included in the written notice of the meeting of the Association held on October 22, 1994 and was sent to the membership. A total of eighty-two (82) lots were represented at the meeting either in person or by proxy and a quorum was present. The foregoing amendments were approved by a vote of 73 yes, 3 no, with 6 abstentions. The amendments, as set forth herein, having been approved by more than two-thirds (2/3) of the votes cast by members present and voting, and those votes having been lawfully obtained, the amendments were adopted in accordance with Article 10 of the 1993 Amendments Of Declaration Of Covenants, Restrictions And Easements For Granny Squirrel Gap Subdivision.

In Witness whereof, Granny Squirrel Mountain Club Homeowners Association, Inc. has caused this declaration to be executed in its name by its president and attested by its secretary with its corporate seal affixed, as authorized by the vote of the membership reflected herein.

\_\_\_\_\_) Signed)\_\_\_\_\_

Michael A. Kessler, President

Granny Squirrel Mountain Club

Homeowners Association, Inc.



Attest:

(Corporate Seal)

\_\_\_\_\_(Signed)\_\_\_\_\_

Robert D. Eshbaugh, Secretary

STATE OF NORTH CAROLINA:

COUNTY OF CHEROKEE:

I, \_\_\_(Naomi Williams)\_\_\_\_\_, a Notary Public of said State and County, certify that Robert D. Eshbaugh personally came before me this day and acknowledged that he is Secretary of Granny Squirrel Mountain Club Homeowners Association, Inc., a North Carolina nonprofit corporation, and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed by its President, sealed with its corporate seal, and attested by him as its Secretary.

WITNESS my hand and seal, this \_(28th)\_ day of October, 1994.

\_\_\_\_\_(Signed)\_\_\_\_\_

Notary Public

My Commission Expires: \_(April 13, 1996)\_\_\_\_\_

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