

Restated Declaration of Restrictive Covenants, Conditions and Restrictions

Of Sunset Point, September 14, 2005

Legal Description **Pages 1-2**

Article I, Definitions **Pages 3-5**

Section 1, "Association" **Page 3**

Section 2, "Common Area"

Section 3, "Community"

Section 4, "Declarant"

Section 5, "Declaration"

Section 6, "Development Period"

Section 7, "Lot" **Page 4**

Section 8, "Member"

Section 9, "Membership Fee"

Section 10, "Mortgage"

Section 11, "Owner"

Section 12, "Person"

Section 13, "Plat"

Section 14, "Property"

Section 15, "Reserved"

Section 16, "Residence" **Page 5**

Section 17, "Restrictive Covenants"

Section 18, "Review Board"

Section 19, "Sunset Point"

Article II, Legal Property Description **Pages 5-6**

Section 1, Applicability of Restrictions

Section 2, Reserved Areas

Section 3, The Legal Description

Restated Declaration of Restrictive Covenants, Conditions and Restrictions

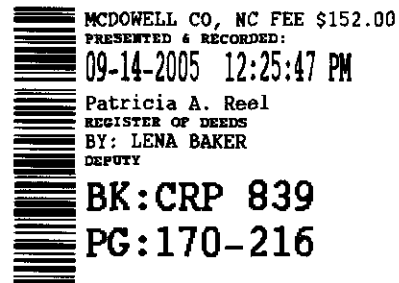
Of Sunset Point, September 14, 2005

<u>Article III, Restrictions and Covenants</u>	Pages 6-15
Section 1, Duration	Page 6
Section 2, Single Family Residential Use of Property	
Section 3, Building Construction	Pages 6-8
Section 4, Restricted Activities	Page 8
Section 5, Prohibited Conditions (<i>Structures & Improvements</i>)	Page 8-9
Section 6, Permitted Accessory Structures	Page 9-10
Section 7, Site Development Requirements	Page 10
Section 8, Buffer Area Restrictions	Page 10-11
Section 9, Setbacks and Building Lines	Page 12
Section 10, Size and Subdivision of Lots	
Section 11, Delivery Receptacles and Property Identification Markers	
Section 12, Use of Out Buildings and Similar Structures	
Section 13, Completion of Construction	Page 13
Section 14, Livestock	
Section 15, Offensive Activities	
Section 16, Signs	
Section 17, Aesthetics, Nature Growth, Screening, Underground Utility Service	
Section 18, Fences	Pages 13-14
Section 19, Maintenance of Property	Page 14
Section 20, Trailers, Trucks, School Buses, Motor Homes, Campers	
Section 21, Garbage and Refuse Disposal	
Section 22, Changing Elevations	
Section 23, Mining	
Section 24, Underground Utilities	Pages 14-15
Section 25, Vacant Lots	Page 15
Section 26, Light Restrictions	
Section 24 (<i>Error, should say 27</i>), Entrance Gate	
 <u>Article IV, Sunset Point Homeowners' Association</u>	 Pages 15-21
Section 1, Duties and Responsibilities of Association	Pages 15-17
Section 2, Use of Common Property Subject to Rules of Association	Page 17
Section 3, Assessments: Liability, Lien and Enforcement	Page 17-20
Section 4, "Common Surplus"	Page 20
Section 5, Right of Declarant to Vote as Member of Association	Page 20-21
Section 6, Relinquishment of Control	Page 21

Restated Declaration of Restrictive Covenants, Conditions and Restrictions**Of Sunset Point, September 14, 2005**

<u>Article V, Sunset Point Review Board</u>	Page 21
Section 1, Appointment of Review Board	Page 21
Section 2, Appeals	
Section 3, Consideration of Plans	Page 21-22
Section 4, Modification of Restrictions	
 <u>Article VI, Property Rights</u>	 Pages 22-23
Section 1, Use of Common Areas	Page 22
Section 2, Owner's Easement of Enjoyment	Page 22-23
Section 3, Delegation of Use	Page 23
Section 4, Assignment	
 <u>Article VII, Dedication of Roads and Easements</u>	 Pages 23-24
Section 1, Public Ownership	
 <u>Article VIII, Easement and Utility Provisions</u>	 Page 24
Section 1, Utility and Drainage Easements	
Section 2, Sewerage Disposal and Maintenance	
 <u>Article IX, General Provisions</u>	 Page 24-25
Section 1, Enforcement	Page 24
Section 2, Severability	Page 25
Section 3, Amendment	
Section 4, Interpretation	
Section 5, Appurtenant to the Land	
 <u>Article X, Sunset Point Community Boat Dock and Classes of Lot Ownership</u>	
Section 1, Sunset Point Community Boat Dock	
Section 2, Classes of Lot Ownership and Exclusive Right of Use of Community Boat Slips	
Section 3, Community Boat Dock Slip Assessment	
Section 4, Transfer of "Exclusive Right of Use of a Community Boat Dock Slip"	

2005006499



SASE
Melonie McKinney
P.O. Drawer 1269
Morganton
NC
28680

RESTATED DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUNSET POINT

This Restated Declaration is made on the date hereinafter set forth by Sunset Point, LLC, hereinafter referred to as "Declarant". This is a restatement of the Declaration of Restrictive Covenants, Conditions and Restrictions of Sunset Point, recorded in Book 680, Pages 447-485 in the Office of the Register of Deeds of McDowell County, North Carolina.

RECITALS:

Declarant is the owner of real property located in McDowell County, North Carolina, which is known as Sunset Point. At the time of commencement of development, a Plat, or Plats, was which included residential Lots, Common Areas, including roads and other improvements. Except for exceptions and conditions noted on a Plat, amendments to this Declaration, or other exceptions and conditions set forth in Article II, hereof, the portion of the real property included in the Plats which were recorded subject the Property in such Plats to the covenants, conditions and restrictions in this Declaration and are herein referred to as the "Property".

The Property was conveyed to the Declarant subject to restrictions in Exhibit B of the deed from Crescent Resources, LLC to Sunset Point, LLC, recorded December 6, 2001 in Book 666, Page 586 in the McDowell County Registry. The Restrictions are recorded in pages 588 to 594. If these is a conflict between the Restrictions attached to the deed and the restrictions in this Declaration the restrictions attached to the deed control.

Sunset Point is subject to the Lake James Protection Ordinance of McDowell County, North Carolina.

Declarant desires to create a community named "Sunset Point" with open spaces and other common facilities for the benefit of the homeowners; and in connection therewith, is establishing

CRP 839 171

the covenants, conditions and restrictions in the Declaration, as the same may be amended or restated from time to time, for the benefit of purchasers of Lots in Sunset Point.

Declarant recognizes the need for collective action by the purchasers of the Lots within Sunset Point to protect the interests of the purchasers in certain common facilities and functions, to enforce these covenants and restrictions, to provide for the preservation of the values and amenities of the Property and to assure the best use and most appropriate development and improvement of the Property.

To this end, Declarant has subjected the Property to the covenants, conditions and restrictions hereinafter set forth, which are for the benefit of the Property and each Owner thereof.

Declarant has caused to be incorporated, under the laws of the State of North Carolina, Sunset Point Homeowners' Association, Inc., a non-profit corporation, for the purpose of maintaining and administering the Common Areas and facilities, as shown on the Plats, administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created, or which are created in the By-Laws of Sunset Point Homeowners' Association, Inc.

A Copy of the Articles of Incorporation of the Sunset Point Homeowners' Association is attached to this Declaration as Exhibit A and a copy of the By-Laws of Sunset Point Homeowners' Association is attached to this Declaration as Exhibit B.

The portions of the Declaration Of Restrictive Covenants, Conditions and Restrictions recorded in Book 680, Pages 447 through 470 which are being amended by this Restatement include: Article I Section 9; Article II, Section 3; and Article III, Section 3., b. The amendments in this Restatement were approved in writing by seventy-six percent (76%) of the Members of the Association as required by Article IX, Section 3.

NOW, THEREFORE, Declarant hereby declares that the Property included in the recorded Plat(s) for Sunset Point, shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions in this Declaration, which may be amended or restated from time to time, and are for the purpose of providing Common Area maintenance, for protecting the value or desirability of, and which shall run with such Property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. In consideration of said benefits to be derived by Declarant and subsequent Owners of the Lots, Declarant does hereby establish, publish and declare that the covenants, conditions and restrictions hereinafter set forth shall be binding upon the Owners of the Lots included on the Plat(s) and that such Lots will be held, transferred, sold, conveyed, and occupied, subject to the covenants, conditions, restrictions, and easements hereinafter set forth. Such covenants, conditions and restrictions shall become effective at the time of recording of the Plat(s) and shall run with the land, and be binding upon all Persons claiming under the Declarant, its grantees, successors and assigns.

Article I
Definitions

CRP 839 172

Section 1. "Association" shall mean and refer to Sunset Point Homeowners' Association, Inc.

Section 2. "Common Area" shall mean and refer to those areas of land designated as such on any recorded subdivision Plat of Sunset Point (herein the "Property") intended to be devoted to the use and enjoyment of the purchasers of Lots or to prevent use of areas adjoining portions of the lake which have been designated as environmental areas. "Common Area" shall mean all real property owned by the Association and/or easements for the common use and enjoyment of the Owners, including, but not limited to, ingress and egress easements, pedestrian access easements, and other easements shown on the Plats; provided, however, Declarant reserves unto itself and its mortgagees, Common Area for (1) construction vehicles and crews, (2) maintenance and service vehicles, including, but not limited to, fire, police, public works, refuse collections, electric company, cable television company, telephone company, (3) any and all delivery vehicles and necessary service companies needing access to the Lots within Sunset Point, and (4) any successor or assign as designated by Declarant in writing. During the Development Period, the Declarant retains the full authority and power to assign to any third party the use of the Common Area as defined herein. The streets within Sunset Point are private roads owned by Declarant over which Lot Owners and the Association have a non-exclusive easement for ingress, egress and regress. The streets are, therefore, a part of the "Common Area". At the end of the Development Period, the ownership of the streets will be in the Association. Initially the Declarant, and after the Development Period, the Association, shall have the right to determine whether the streets will become part of the North Carolina Highway system. Declarant is responsible to construct the streets and the Association will be responsible to repair and maintain the streets, however, maintenance of the right of way not actually used for streets shall be "Common Area" also maintained by the Association.

Section 3. "Community" shall mean the Property as presently described and any additions thereto by the Declarant.

Section 4. "Declarant" shall mean and refer to Sunset Point, LLC, its successors and assigns or any successors-in-title to Sunset Point, or to all or some portion of the Property then subject to this Declaration; provided that, if in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Declarant" by the grantor of such conveyance, such grantor shall be the "Declarant" hereunder at the time of such conveyance.

Section 5. "Declaration" shall mean and refer to this Declaration of Restrictive Covenants, Conditions and Restrictions of Sunset Point, as the same may be amended, renewed or extended from time to time in the manner herein prescribed.

Section 6. "Development Period" shall mean the time period during which the Declarant is developing Sunset Point which begins upon filing of this Declaration in the McDowell County Registry and ends when ninety-five percent (95%) of the Lots to be developed in the Sunset Point have been sold, or in any event, three (3) years after the Declaration is filed, whichever is the later

to occur.

CRP 839 173

Section 7. "Lot" shall mean and refer to any numbered plot of land or numbered tract shown on a Plat for a portion of Sunset Point recorded in the Office of the Register of Deeds of McDowell County, North Carolina, now or hereafter made subject to this Declaration, to include the present configurations or any subdivision of these Lots or any additions of surrounding properties added to these Lots in areas contiguous with and included in a recorded subdivision map of plots of land constituting a part of Sunset Point.

Section 8. "Member" shall mean and refer to all who are members of the Association. Each Lot Owner shall be eligible to be a Member of the Association. If more than one person owns an interest in a Lot, either as a joint owner, or through a corporation, partnership or limited liability company, no more than two of such persons may be considered as Members and such joint owners, corporation, partnership or limited liability company shall designate one individual to act as the Member on behalf of such Owner.

Section 9. "Membership Fee" shall mean the amount required to be paid to the Association prior to the purchase of a Lot in Sunset Point, which entitles the purchaser to become a Member of the Association.

Section 10. "Mortgage" shall mean and refer to bills of sale to secure debt, deeds to secure debt, deeds of trust and any and all other similar instruments given to secure the payment of an indebtedness.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of a fee simple title to any Lot as per a recorded Plat which is a part of the Property, or any additional lots added hereto by Declarant, but shall not include a party having such interest merely as security for the performance of any obligation.

Section 12. "Person" shall mean and refer to an individual, firm, corporation, partnership, trust, or any other legal entity.

Section 13. "Plat" shall mean and refer to the Plat(s) for Property subjected to this Declaration, including amendments to this Declaration, located in McDowell County, North Carolina. References are to records in the Office of the Register of Deeds of McDowell County.

Section 14. "Property" shall mean and refer to that certain real property included within the Plats, and any additional Property which Declarant may subject to this Declaration, including amendments to this Declaration.

Section 15. "Reserved" shall mean and refer to those areas designated as "Reserved" on Plats of Sunset Point, which during the Development Period, the Declarant and after the Development Period, the Association, retains the right, in its discretion, to determine the uses to which such areas may be subjected.

CRP 839 174

Section 16. "Residence" shall mean and refer to the building located upon a Lot designated and intended for use and occupancy as a residence by a single family.

Section 17. "Restrictive Covenants" and "Restrictions" as used in the By-Laws shall refer to the restrictive covenants, conditions and restrictions governing and controlling Lots and Common Areas in Sunset Point.

Section 18. "Review Board" shall mean and refer to that Board containing three (3) members for the review of certain matters as recited herein and as recited in the Association By-Laws. Declarant shall reserve the right to initially serve as the Review Board and shall have the right to approve all plans and specifications as provided in this Declaration or in the Sunset Point Homeowners' Association By-Laws dated and recorded simultaneously herewith. At the end of the Development Period, the Declarant shall assign its rights to appoint the member of the Review Board to the Association. The Declarant further reserves the right, but shall not be obligated, to assign its right for architectural control to the Association prior to end of the Development Period.

Section 19. "Sunset Point" as used herein shall mean and refer to only that portion of the residential Community known as Sunset Point which is located on a portion of the Property, shown on a recorded Plat(s), being developed as a part of Sunset Point on the Property now owned by Sunset Point, LLC, together with such additions thereto as may from time to time be designated by Declarant. Sunset Point may be referred to herein as "subdivision," "community," or "development" and such words shall be taken interchangeably to mean the Property described in detail hereinabove.

Article II

Legal Property Description

Section 1. Applicability of Restrictions. The legal description, below, includes the real property owned by Sunset Point, LLC, including that portion of such property as the Declarant may subject to this Declaration, or amendments to this Declaration, to be developed as the subdivision known as Sunset Point. The portion of the real property subject to the covenants, conditions and restrictions in this Declaration will be included in the recorded Plat(s) of Sunset Point which are recorded in the Office of the Register of Deeds of McDowell County, North Carolina, provided, however, that any areas marked on said Plat(s), as "Reserved" are not subject to this Declaration of Restrictive Covenants, Conditions and Restrictions.

Section 2. Reserved Areas. Any portion of the property marked on a Plat recorded in the Office of the Register of Deeds of McDowell County, North Carolina as "Reserved" may be developed by the Declarant or the Association for other purposes and will not be subject to the covenants, conditions and restrictions in this Declaration, unless subsequently filed Plats or an amendment to this Declaration expressly subjects the "Reserved" area to this Declaration.

Section 3. The Legal Description. The legal description of the property being developed as a part of Sunset Point, which is subject to this Declaration, is described as follows:

CRP 839 175

Being that property shown on Plat recorded in Plat Book 7, Pages 56 and 57, as revised in Plat Book 8, Page 51 of the McDowell County Registry, which is incorporated herein by reference.

REFERENCE: Book 666, Page 586; in the Office of the Register of Deeds of McDowell County.

Article III
Restrictions and Covenants

The following covenants, conditions, restrictions and easements are herewith imposed on the Property.

Section 1. Duration. The covenants, restrictions and easements as set forth in this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by the Owners of any land subject to this Declaration, their respective heirs, legal representatives, successors and assigns, the Declarant or the Association for a term of thirty (30) years from the date this Declaration is filed or recorded in the Office of the Register of Deeds for McDowell County, after which time said covenants, restrictions and easements shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then record Owners of seventy percent (70%) of the Lots has been recorded, agreeing to change said covenants and restrictions in whole or in part.

Section 2. Single Family Residential Use of Property. The Property shall be used only for detached, single-family residential purposes, together with the accessory buildings and structures permitted pursuant to Section 6 below. No more than one detached single-family residential dwelling may be constructed on a Lot on the Property. No condominium, townhouse, duplex, apartment or other multi-family residential uses are permitted on the Property. No commercial uses or marinas are permitted on the Property or adjacent to the Property within the boundary of the Lake. Further, no camper, trailer, motor home, boat (including, without limitation, any boat docked adjacent to the Property), recreational vehicle, or similar habitable or transportable unit or structure shall be allowed to remain on the Property or adjacent to the Property within the boundary of the Lake as a place of residence. Also, no houseboat shall be allowed on the Property or adjacent to the Property within the boundary of the Lake whether or not the houseboat serves as a residence. The single-family residence restrictions set forth above shall not prohibit the construction of pools, tennis courts, or other recreational facilities or amenities such as are commonly constructed and maintained for the benefit of lot owners with planned unit developments; provided that such recreational facilities or amenities shall be solely for the common use of the owners of lots subdivided from the Property and, provided further, that no such recreational facilities may be located within any Buffer Area (defined below).

Section 3. Building Construction. Prior to construction of any improvements on any Lot, the Owner must provide the Review Board a site plan, building plans which include exterior finishes and elevations of all proposed structures, and landscape plans. The Review Board shall have the right

CRP 839 176

to approve the site plan, the exterior design and finishes, building plans, and other particulars of any dwelling or improvements on any lot prior to the start of construction. The Review Board shall review and approve or disapprove Owners' submissions as provided hereinafter in Article V.

All buildings and outbuildings erected upon the Property shall be built on site of new materials of good grade, quality and appearance, and shall be constructed in a good, workmanlike manner, conforming to all applicable building codes. Further, all dwellings must meet the following construction requirements:

- a. Dwellings built within two hundred fifty feet (250') of the shoreline of Lake James shall meet the following minimum size requirements:
 - (i) One story dwellings shall not contain less than 1,600 square feet of Heated Living Area (defined below);
 - (ii) One and one-half story dwellings shall not contain less than 1,800 square feet of Heated Living Area;
 - (iii) Two (or more) story dwellings shall not be less than 1,800 square feet of Heated Living Area;
- b. Dwellings built more than two hundred fifty feet (250') from the shoreline of Lake James shall contain not less than 1,600 square feet of Heated Living Area (defined below)
- c. All dwellings and accessory structures shall be completely supported with solid brick, brick or stone covered block, or stucco covered foundation;
- d. Roofs shall have not less than a 6 foot pitch, and not less than a 12 inch overhang, and shall be covered with asphalt or fiberglass shingles, terra cotta tile, real or man-made slate, copper sheathing or wood shingles or pre-painted metal roofing;
- e. The exterior surfaces of all dwellings and accessory structures shall be covered only with brick, stone, hard stucco (synthetic stucco is not permitted), wood, or siding consisting of wood, composite or vinyl material; provided, that any horizontal siding must be completely supported to maintain a straight and even outer surface and must be fully and properly finished; and
- f. Exteriors of all dwellings and accessory structures must be completed within one year after the commencement of construction, and a certificate of occupancy issued within two years after commencement of construction.

As used herein, "Heated Living Area" excludes basement areas (defined as any level in which at least one perimeter wall is below, or partially below, grade), unless such basement areas have two or more perimeter walls above surrounding grade, and such basement areas are fully heated and air-conditioned and constructed to a quality equal to the above grade levels of the dwelling. In addition, Heated Living Area excludes vaulted ceiling areas, attics, unheated porches, attached or detached

CRP 839 177

garages, portecocheres and unheated storage areas, decks and patios. The term “story” shall mean a finished horizontal division of Heated Living Area extending from the floor of such division to the ceiling above it. The term “half story” shall mean a story which contains fifty percent (50%) or less Heated Living Area than the story in the house containing the most Heated Living Area.

Section 4. Restricted Activities. The following activities are prohibited on the Property and adjacent to the Property within the boundary of the Lake:

- a. Raising, breeding, or keeping of animals, livestock or poultry of any kind, except that dogs, cats or other usual and common household pets (which are registered, licensed and inoculated as required by law) may be permitted on the Property;
- b. Any activity which violates local, state, or federal laws or regulations;
- c. Institutional uses, including but no limited to group homes, day care centers, churches, temples or shrines, rest homes, schools, medical care facilities, lodges, inns, bed and breakfasts; and
- d. Any business or trade, except that an owner or occupant residing on the Property may conduct business activities within a dwelling on the Property as long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling unit; (ii) the business activities conforms to all zoning requirements for the Property; (iii) the business activity does not involve regular visitation of the Property by clients, customers, suppliers, or other business invitees; (iv) the business activity does not involve any service or delivery business in which more than one vehicle used in such business would be parked overnight on the Property, or for which any parts, equipment supplies, raw materials, components or tools are stored on the Property and (v) the business activity is consistent with the residential character of the Property and does not constitute an unreasonable disturbance to adjoining land owners or others, a nuisance, or a hazardous or offensive use. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities provided that such activities are not held on the Property more than once in any six-month period. The terms “business” and “trade,” as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. The leasing of the Property for single-family residential use shall not be considered a business or trade within the meaning of this subsection.

Section 5. Prohibited Conditions. None of the following structures or improvements may be located upon the Property:

CRP 839 178

- a. Structures, equipment or other items which are visible from any road or adjacent property which have become rusty, dilapidated, or otherwise fallen into disrepair;
- b. Towers, antennas, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind which are located outside of the dwelling on the Property other than (i) a customary antenna, which shall not extend more than ten (10) feet above the top roof ridge of the dwelling; and (ii) a satellite disc or dish no longer than eighteen inches (18") in diameter; and
- c. No residence or building of a temporary nature shall be erected or allowed to remain on any lot, and no metal fiberglass, plastic, vinyl, or canvas structure shall be placed or erected on any lot or attached to any residence.
- d. No mobile, manufactured or modular home or structure having the characteristics or appearance of a mobile, modular or manufactured home, including, without limitation, any mobile, modular or manufactured home as defined by the building codes or other applicable laws of the State of North Carolina, shall be located upon the property.
- e. Any freestanding transmission or receiving towers or any non-standard television antenna.
- f. Chain-link fences.

Section 6. Permitted Accessory Structures. No buildings, structures or improvements of any kind may be located on the Property other than one detached, single-family residential home, and the following permitted accessory structures:

- a. Storage and shop outbuildings, including detached garages, workshops, storage and utility buildings, greenhouses and similar buildings, not exceeding fourteen (14) feet in height. The total square footage contained within all such outbuildings combined shall not exceed two thousand (2,000) square feet. All outbuildings shall be permanently affixed to the Property and shall be covered with the approved exterior materials described in Section Article III, Section 3, paragraph (e) above. Further, no outbuildings shall be located wholly or partially within any Buffer Area (as defined below).
- b. Recreational structures, including decking, gazebos, covered patios, playhouses, barbecue pits and similar structures. The total square footage contained within such structures when combined shall not exceed one thousand (1,000) square feet in area. Further, no such structure shall be located wholly or partially within any Buffer Area (as defined below).
- c. To the extent permitted at the time of construction and installation by Duke Energy Corporation (or its successor, with respect to ownership and/or management authority over the Lake, if applicable) (hereinafter, "Duke Energy") and all applicable governmental authorities, waterfront structures, including fixed piers, boat slips or floats, covered docks,

CRP 839 179

boat ramps, decking and sitting areas attached to piers, walkways and other similar structures. Grantee acknowledges by acceptance of this deed that policies, laws and regulations regarding its ability to construct or install such structures may change from time to time before or after Grantee's acquisition of the Property and Grantor makes no representation or warranty as to Grantee's ability to construct or install such structures either now or in the future. Such structures may be located wholly or partially within the Buffer Area provided no more than a total of two hundred (200) square feet of such structures shall be located within the Buffer Area.

Section 7. Site Development Requirements. The Property shall be subject to the following specific development requirements:

- a. No portion (or portions) of the Property greater than two thousand (2,000) square feet shall be; (i) denuded of ground cover or topsoil, (ii) graded, (iii) excavated or (iv) covered with earth or other natural or man-made fill material, unless all required building, grading and erosion control permits have been issued by the applicable municipal authorities.
- b. All denuded, graded, excavated or filled areas shall be stabilized and replanted on or before: (i) the thirtieth (30th) day following the initial denuding, grading, excavation, or filling (unless footings and foundations are being installed upon the disturbed area and construction is being diligently and continuously pursued upon such area); or (ii) such time as construction is completed or interrupted for a period of thirty (30) continuous days. In addition to, or in the absence of local or state government regulations on such land disturbance, none of the activities described in (i) through (iv) in Section 7 (a) above shall be allowed to commence without compliance with the following requirements:
 - (i) The surveying and flagging of the Buffer Area (defined below) and any portion of the Buffer Area that may be disturbed as a result of any activities permitted hereunder;
 - (ii) The flagging of all trees in the Buffer Area that equal or exceed six (6) inches in diameter, as measured four and one-half feet (4.5') from the base of each tree. The trees, Buffer Area (defined below) and disturbed areas referenced in Sections 7 (a) and (b) shall be clearly and distinctly flagged, staked, or otherwise designated in order to prevent the unintentional violation of these restrictions by parties performing work upon the Property.
 - (iii) The proper installation (in accordance with manufacturer's instructions) of construction silt fencing on the lower perimeters of all areas within the Property to be disturbed, and any other areas which may be impacted by silt runoff from any disturbed areas located on the Property.

Section 8. Buffer Area Restrictions. As used herein, the term "Buffer Area" shall mean any portion of the Property that is located within sixty five feet (65') of any common boundary (the "Contour Line") of the Property and Lake James (the "Lake"). No portion of the Buffer Area may

CRP 839 180

be disturbed in any way, including any disturbance or removal of topsoil, trees and other natural growth. The Contour Line of the Lake shall not change as a result of erosion or stabilization measures occurring following the conveyance of this Property to Grantee. Notwithstanding the second sentence in this Section 8, the following activities are permitted within the Buffer Area:

- a. Trees which are less than six (6) inches in diameter, as measured four and one-half feet (4.5') from the base of each tree may be removed. Any tree removal shall be performed using hand held gas or electric chain saws and/or manual handsaws. No other mechanical equipment or vehicles may be used in removing any trees. Additionally, trees having a greater diameter than that set forth above that have become diseased or damaged through natural processes may be removed in the same manner.
- b. An access corridor may be created within the Buffer Area for the purpose of providing lake access to install shoreline stabilization or to install and use water access structures (such as docks or boat ramps) that have been approved in advance by Duke Energy and otherwise comply with Section 6(c) above. The access corridor may not exceed fifteen (15) feet in width. Trees with diameters equaling or exceeding six (6) inches, as measured four and one-half feet (4.5') from base, may be removed within the access corridor and grading or ground disturbance (which otherwise complies with the restrictions set forth herein) may be performed if reasonably necessary to provide access to the Lake for the purposes described above in this Section 8(b).
- c. Underbrush (defined as nuisance shrubs, vines and similar plant growth beneath the tree canopy, and generally growing less than six feet (6') in height) may be removed.
- d. Pruning and trimming of trees is permitted, provided that pruning is limited to tree branches beginning with the lowest to the ground and extending up the tree trunk no more than one-half of the total height of the tree. Trimming may also be performed on any limbs or branches that are diseased or naturally damaged.
- e. The use of rip-rap, bulkheading or other shoreline stabilization methods or materials may be initiated with the prior written approval by Duke Energy and any shoreline stabilization shall be performed in compliance with Duke Energy's Shoreline Management Guidelines which are in effect at the time such stabilization occurs. Generally, Duke Energy allows structural stabilization to extend only to a height five feet above the Contour Line of the Lake. If Duke Energy authorizes Grantee to perform certain shoreline stabilization, then at all points where shoreline stabilization occurs, the inner boundary line of the Buffer Area (i.e. the boundary line opposite the Contour Line of the Lake) shall be adjusted inward (i.e. away from the Contour Line of the Lake) by the same distance that the stabilization structures or improvements extend from the Contour Line of the Lake into the Property, provided however, that in no event shall the width of the undisturbed Buffer Area be reduced to less than sixty five (65) feet between any portion of the interior edge of the stabilization structures or improvements and any residence or other structure or improvement located on the Property (other than docks, boat ramps, or other water access structures which have been approved in writing by Duke Energy).

Section 9. Setbacks and Building Lines.**CRP 839 181**

(a) Setbacks. Each dwelling erected on any Lot shall be situated on such Lot no closer than forty feet (40') from the center of a street, fifteen feet (15') of any lot line or closer than allowed by the applicable requirements of the Lake James Protection Ordinance of McDowell County or other applicable governmental ordinances or regulations to which it is subject. In addition, no structure shall be closer than permitted by the setback lines as shown on the recorded Plat(s).

(b) Terraces and Detached Garages. For the purposes of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, wing-walls, and steps extending beyond the outside wall of a structure shall not be considered as a part of a detached garage or accessory out-building.

Section 10. Size and Subdivision of Lots.

(a) Size of Lots. The Property may not be subdivided in a manner that will result in any lot or parcel being created which is less than 21,780 square feet.

(b) Subdivision of Lots. No Lot referred to herein shall be subdivided or reduced in size; provided, however, that adjacent Lot Owners or purchasers may acquire an additional Lot or Lots, or some portion thereof. When a portion of an adjoining Lot is so acquired, it shall be added to the Lot or Lots already owned or purchased. In such case, the portion of said additional Lot shall become merged with and be an integral part of the Lot which is already owned or is purchased by the buyer of a Lot and a portion of an additional Lot. The combined Lot, consisting of a Lot and a portion of an additional Lot shall be subject to these covenants, conditions, restrictions and easements, as one Lot. When an adjacent Lot Owner acquires an additional Lot, or when a purchaser acquires more than one Lot, such Lots may be merged by the acquiring Owner or purchaser developing the Lots as one Lot, and in such event the Lots which are developed as one Lot shall be subject to these covenants, conditions, restrictions and easements, as one Lot, except with respect to the imposition of assessments and special assessments under Article IV.

Section 11. Delivery Receptacles and Property Identification Markers. The Review Board shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly-delivered materials, as well as property identification markers.

Section 12. Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot. No carport, unenclosed garage, trailer, mobile home, modular home, pre-fab home, manufactured home, camper, shack, tent, school bus, garage, barn or other structure of a similar nature shall be used as a Residence, either temporarily or permanently; provided, however, this paragraph shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

CRP 839 182

Section 13. Completion of Construction. The exterior of all houses and other structures shall be completed within one year after the date construction of the same shall have been commenced, except where such completion is impossible due to strike, fire, national emergency or national calamity. All such structures constructed on Lots, must be maintained in good repair and the Review Board has the authority to require all Property Owners to make necessary repairs and improvements. No partially completed building shall be allowed on the premises after a reasonable time for the completion of the construction thereon. If the Owner refuses to complete same or remove same, the Association shall have the authority and power to remove same at the Owner's expense and said expense shall be considered an assessment collectable under Article IV hereinafter.

Section 14. Livestock. No animals or livestock of any kind, including, but not limited to, horses, hogs, goats, cattle, or other such animals, shall be raised, bred or kept on any Lot. Dogs, cats, or other household pets may be kept provided that household pets are not kept, bred or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Such household pets shall be maintained upon the Owner's Lot, and it shall be considered a nuisance if such pets are allowed to go upon another Owner's Lot, or on the roads or other Common Areas unless under leash or carried by the Owner.

Section 15. Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot or Common Areas, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the Owners of the Lots in Sunset Point. There shall not be maintained any plants or animals, or device or thing of any sort, the normal activity of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other Property in the Community by the Owners thereof. Nothing shall be done or allowed, and no noises, conditions or situations shall be permitted, on any Lot which shall constitute, cause, or become a nuisance or otherwise detract from the desirability of the neighborhood as a residential section.

Section 16. Signs. No signs of any kind shall be displayed to the public view on any lot with the following exceptions which may not exceed five (5) square feet in size: (a) one sign advertising the lot "For Sale" or "For Rent"; and (b) temporary political signs located on the lot. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole; to signs for selling Lots and/or houses during the Development Period; or for directional and other property identification markers or signs erected by the Declarant or the Association.

Section 17. Aesthetics, Nature Growth, Screening, Underground Utility Service. Any trees to be removed by a Property Owner, unless retained on the same Lot, shall be first offered to the Declarant, who shall have the right, at its expense, to remove same with the absolute right to enjoy thereafter. Clotheslines, garbage cans, air-conditioning units, storage piles and similar items shall be screened from view of neighboring Lots and roads. All residential utility service and lines to Residences shall be underground. Solar collector panels in reasonable numbers on a residence may be permitted by specific permission of the Review Board, even though not screened.

Section 18. Fences. No fence shall be built on any Lot unless approved by the Review Board. The Review Board shall have the right to approve the location, size, design, and other particulars of

any fences or walls to be erected or placed on any Lot.

CRP 839 183

Section 19. Maintenance of Property. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition of buildings or grounds on the Owner's Lot, which tend to decrease substantially the beauty of the Community as a whole or of the specific area. If a Lot Owner allows a condition of any unclean, unsightly or unkempt condition of buildings or grounds, or both, on such Lot, said condition shall be corrected by the Lot Owner, at the Lot Owner's expense upon written request of the Declarant, the Association or the Review Board. Upon failure of the Lot Owner to correct the condition within twenty (20) days after written notice has been given by the Declarant, the Review Board or the Association, the Association shall have the right to correct such condition, and the expense of such correction shall be paid by the Lot Owner, with the expense being treated as an assessment pursuant to Article IV, hereinafter.

Section 20. Trailers, Trucks, School Buses, Motor Homes, Campers. No house trailers or mobile homes, trucks, school buses, motor homes, campers or other habitable motor vehicles of any kind over one (1) ton capacity shall be kept, stored or parked overnight either on any road or Lot, except within enclosed garages, or screened from the road as determined by the Association. No inoperative vehicle shall be permitted on the Property in excess of thirty (30) days.

Section 21. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If litter or other materials are found on any Lot, the same will be removed by the Owner of such Lot, at the Owner's expense, upon written request of the Association. Each Lot Owner shall provide receptacles for garbage in a screened area not generally visible from the road in accordance with reasonable standards established by Declarant or the Association.

Section 22. Changing Elevations. No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affects surface grade or surrounding Lots, unless approved in writing by the Review Board.

Section 23. Mining. There shall be no mining or drilling for mineral substances within Sunset Point.

Section 24. Underground Utilities. The following underground utilities will be provided to each Lot in Sunset Point:

Type of Service

Provided By

Electric Services
Water Services
Telephone

Duke Energy
Homeowners Association
BellSouth

CRP 839 184

The Association and the Review Board shall have the right to approve construction necessary for the installation and maintenance of additional utility facilities, including, but not limited to, sewerage systems and cable television.

Section 25. Vacant Lots. Lot Owners shall keep vacant Lots clean, mowed, and underbrush cut. Upon a Lot Owner's failure to do so, following written request of the Association, the Association shall have the authority to clean, mow or remove underbrush at the Owner's expense and said expense shall be considered an assessment collectable under Article IV hereinafter.

Section 26. Light Restrictions. It shall be the responsibility of each Lot Owner to insure that no direct lighting escapes the Owner's property boundaries and there shall be a prohibition against any lighting pollution interfering with the enjoyment of the subdivision by the Property Owners, their designees, or guests. The Association shall have the authority to administer, control and prohibit any and all security lights, exterior flood lights, yard lighting or street lighting. The Association shall also have the authority to require timers and limitations on use of any such lighting. Any exterior lighting which is installed must be shielded in such a manner as to minimize the impact on adjoining Lots. The Association or Lot Owners may enforce the provisions hereunder.

Section 24. Entrance Gate. There is reserved unto the Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Community. Neither the Declarant nor the Association shall be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Community in accordance with the foregoing.

Article IV

Sunset Point Homeowners' Association

A property owners association has been created, named Sunset Point Homeowners' Association, Inc. The Association will be operated in accordance with the By-Laws of the Association attached hereto as Exhibit B and incorporated herein by reference. The Association shall establish necessary rules and regulations and said rules and regulations and By-Laws shall constitute covenants, conditions and restrictions in the Community.

Section 1. Duties and Responsibilities of Association.

(a) By-Laws and Rules and Regulations. Adopt and amend By-Laws and Rules and Regulations;

(b) Budgets. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot owners;

(c) Agents and Employees Hire and terminate managing agents and other employees, agents and independent contractors;

CRP 839 185

(d) Litigation. Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the subdivision;

(e) Contracts. Make contacts and incur liabilities;

(f) Regulate Common Areas. Regulate the use, maintenance, repair, replacement, and modification of Common Areas and facilities;

(g) Improve Common Areas. Cause additional improvements to be made as a part of the Common Areas;

(h) Own and Sell Property. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property provided that common elements may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least fifty percent (50%) of the votes in the Association including said fifty percent (50%) of the votes allocated to Lots not owned by Declarant or the Association; provided, however, the streets are subject only to non-exclusive easements of the Lot Owners.

(i) Transfer Interest in Common Property. Grant easements, leases, licenses, and concessions through or over the Common Areas;

(j) Fees and Charges. Impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Areas and facilities and for services provided for Lot Owners;

(k) Late Payments. Impose charges for late payment of assessments and after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Fifty Dollars (\$150.00) for violations of the Declaration, By-Laws and Rules and Regulations of the Association;

(l) Charges for Transfers and Amendments. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration, resale, certificates or statements of unpaid assessments;

(m) Indemnification and Insurance. Provide for the indemnification of and maintain liability insurance for its Officers, Executive Board, Directors, Employees and Agents;

(n) Assign Income. Assign its right to future income, including the right to receive common expense assessments;

(o) Review Board. To appoint members to the Review Board, after the Development Period, or prior thereto if Declarant relinquishes its right to appoint members to the Review Board and hear appeals from the decisions of the Review Board and render final decisions.

(p) General Authority. Exercise all other powers that may be exercised in the State of North Carolina by legal entities of the same types as the Association; and

CRP 839 186

(q) Necessary and Property Action. Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 2. Use of Common Property Subject to Rules of Association. The use of Common Areas and facilities, by the Owner or Owners of all Lots, and all other parties authorized to use the same, shall be at all times subject to reasonable Rules and Regulations as may be prescribed and established governing such use or which may be hereafter prescribed and established by the Association.

Section 3. Assessments: Liability, Lien and Enforcement. The Association is given the authority to administer the operation and management of the subdivision, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Lots. To administer property in the operation and management of the subdivision, the Association will incur for the mutual benefit of all of the Owners of Lots, costs and expenses which are sometimes herein referred to as "common expense". To provide the funds necessary for such proper operation, management, and capital improvement, the Association is granted the right to make, levy and collect assessments against the Lot Owners and the Lots. In furtherance of this grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation, management of capital improvements to the subdivisions shall be operative and binding upon the Owners of all Lots.

(a) Assessments Equal. Unless specifically otherwise provided for in this Declaration, all assessments made by the Association shall be in amounts so that any assessment levied against a Lot Owner and his Lot shall be equal to the assessment against all other Lot Owners and other Lots; provided, however, that assessments for enforcement of restrictive covenants or penalties shall apply to the Lot Owner and Lot against which the assessment or penalty was made. If a Lot is combined with a portion, or all of another Lot, as provided in Section 10, paragraph (b) of Article III, the dues and assessments for portions of a combined Lot shall be added to the prorata amount payable by the Owner of the Lot to which it was added.

(b) Payment of Assessments. Assessments provided for herein shall be payable in monthly installments, or other periodic intervals, as determined by the Board of Directors of the Association. Such assessments shall commence for each Lot on the first day of the first month following recording the deed to the Lot.

(c) Special Assessments. In addition to the annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Lot Owners owning two-thirds (2/3) of the Common Areas and facilities who are voting in person or by proxy at a meeting duly called for such purposes.

(d) Annual Budget. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year, which shall correspond to the calendar year. Such Budget shall project all expenses for the coming year which may be required for the proper operation,

CRP 839 187

management and maintenance of the subdivision including a reasonable allowance for contingencies and reserves, and the Budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph (e) hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Lot Owner of a Lot and the assessment for said year shall be established based upon such Budget, although the failure to deliver a copy of said Budget to each Lot Owner shall not affect the liability of any Owner for such assessment.

(e) Reserve Fund. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Subdivision, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to construct improvements, to replace structural elements and mechanical equipment constituting a part of the Common Areas and facilities, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvements Funds may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance.

(f) Administration of Collections. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the subdivision, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for assessments are paid to the Association by Lot Owners, the same may be commingled with monies paid to the Association by all Owners of Lots. Although all funds and common surplus, including other assets of the Association, and any increment's thereto or profits derived therefrom or from the lease or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein. When the Owner of a Lot ceases to be a Member of the Association by reason of his divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Subdivision.

(g) Interest on Default. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to Association shall bear interest at the lesser of, eighteen percent (18%) or the highest rate allowed by law, until such delinquent assessment or installment thereof, and all interest due

CRP 839 188

thereon, has been paid in full to the Association. All monies owed to the Association shall be due and payable at the main office of the Association in the State of North Carolina.

(h) Owner's Liability. The Owner or Owners of Lots shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Lots while such party or parties are Owner or Owners of a Lot. In the event that any Lot Owner or Lots are in default of any assessment or installment thereof owed to the Association, such Lot Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as provided, and for all costs of collecting such assessment or installment thereof and interest thereof, including a reasonable attorney's fee, whether suit be brought or not.

(i) No Liability Exemptions. No Owner of a Lot may exempt himself from liability for any assessment levied against him or his Lot by waiver of the use of enjoyment of any of the Common Areas or facilities or by abandonment of the Lot or in any other way.

(j) Liens. Recognizing that proper operation and management of the Subdivision requires continuing payment of costs and expenses therefor, and that such proper operation and management results in benefit to all of the Owners of Lots, and that the payment of such common expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Lot Owner, the Association is hereby granted a lien upon each Lot, which lien shall secure and does secure monies due for all assessments now or hereafter levied against the Owner of each Lot, which lien shall also secure interest, in any, which may be due on the amount of any delinquent assessments owing to the Association, in which it shall also secure all costs and expenses, late charges, fines, and reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Lot. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust or a mortgage on real estate under power of sale under Article 29(A) of Chapter 45 of the General Statutes.

(k) Lien: Filing and Priority. The lien herein granted to the Association shall be enforceable from and after the recording of claim of lien in the public records of McDowell County, North Carolina, which claim shall state the description of the Lot encumbered thereby, the name of the record Lot Owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, late charges, fines, attorney's fees, advances to pay taxes, and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an Officer or Agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. The lien under this section is prior to all other liens and encumbrances upon a Lot except (i) liens and encumbrances (specifically included, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. The

CRP 839 189

priorities of the lien does not affect the priority of mechanics' or materialmen's liens.

(l) Transfers Effect on Lien. Whenever any Lot may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Lot Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Lot. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

In the event a Lot is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Lot and such Lot due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds shall be applied by the lessee or purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase to the Owner of any Lot who is responsible for payment of such delinquent assessment.

Upon the voluntary conveyance of a Lot, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amount paid by Purchaser therefore.

Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sums then remaining owing to the Association.

Section 4. "Common Surplus". "Common Surplus," meaning all funds and other assets of the Association (including but not limited to assessments, rents, profits, and revenues from whatever source) over the amount of Common Expense, shall be held by the Association in the manner prescribed in, and subject to, the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution upon termination of the subdivision, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Lots equally.

Section 5. Right of Declarant to Vote as Member of Association During the Development Period, but no longer than three (3) years from the date this Declaration is recorded, the Declarant shall have one vote for each Lot owned by the Declarant.

In the event of dissolution of Declarant or the transfer or sale by Declarant of its interest in Sunset Point, during the Development Period at a time when Declarant has the voting rights as set forth in the preceding paragraph, then the voting rights of the Declarant shall pass to and may be

exercised by its successors or assigns.

CRP 839 190

Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be provided in the By-Laws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Declarant need not be a resident of the Subdivision. However, Declarant shall be responsible for the payment of any assessments which may be levied by the Association against any Lot or Lots owned by said Declarant, and for complying with the remaining terms and provisions hereof in the same manner of any other Owner of a Lot or Lots.

Section 6. Relinquishment of Control. Upon the expiration of three (3) years from the date of recording this Declaration, Declarant continue to have one vote for each Lot owned by Declarant.

Article V

Sunset Point Review Board

Section 1. Appointment of Review Board. There is hereby created the Sunset Point Review Board. The Review Board is to be composed of three (3) members of the Sunset Point Homeowners' Association, Inc. appointed by the Board of Directors of the Association; provided, however, the initial Sunset Point Review Board shall be appointed by the Declarant, which shall have a continuing right to appoint the members of the Review Board until the end of the Development Period, or until Declarant has relinquished in writing its right to appoint the members of the Review Board to the Association, whichever is the first to occur. At the end of the Development Period or when Declarant has relinquished its right to appoint the members of the Review Board, the Review Board members shall be appointed by the Board of Directors of the Association in accordance with the By-Laws of the Association as set forth therein, which are incorporated herein as if re-stated.

Section 2. Appeals. During the period the Review Board is appointed by the Declarant, the decision of the Review Board shall be final and there shall be no appeal therefrom. Once the Review Board members are appointed by the Board of Directors of the Association, there shall exist appeals from the Review Board to the Board of Directors of the Association where decisions shall be final and binding.

Section 3. Consideration of Plans. Within twenty (20) days of Owner's submission of a site plan, building plans which include exterior finishes and elevations of all proposed structures, and landscape plans, the Review Board shall have the right to approve or disapprove the site plan, the exterior design and finishes, building plans, and other particulars of any dwelling or improvements on any Lot prior to commencement of construction. The Review Board may also recommend modifications of the same. In the event the Review Board does not take action within twenty (20) days of the date the foregoing plans are received by the Review Board, such plans shall be deemed approved.

CRP 839 191

In making its decision, factors to be considered by the Review Board shall include, but not be limited to, the following:

- (a) Preservation of the natural environment.
- (b) Harmony of design and size with the locale and with existing structures, so as to avoid devaluation of surrounding properties.
- (c) The desirability of minimizing intrusions on the view and privacy of surrounding properties.
- (d) Design and location of driveway entrances and utility service equipment so as to protect the private drive from damage or erosion.
- (e) Compliance with the covenants, restrictions and conditions of this Declaration and any amendments thereto, or such other covenants and restrictions as may be recorded with respect to the Lot or Property in question.
- (f) Hardship or unusual circumstances pertaining to the submittal in question.
- (g) Lighting systems and security systems to be designed to preclude intrusion on adjacent Property Owners or other Lots within the subdivision.
- (h) Drainage of silt from the construction area onto Common Areas or the Golf Course, which may result in the Owner being required to construct a silt fence to control such erosion.

Section 4. Modification of Restrictions. The Review Board or the Association shall have the right to waive or modify the provisions of Article III, Sections 9, 12, 16, 18 and 26 of the Declaration of Covenants, Restrictions and Easements of Sunset Point.

Article VI
Property Rights

Section 1. Use of Common Areas. Subject to the other provisions in this Article, the Lot Owners shall have a right to a non-exclusive easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title of every Lot.

Section 2. Owner's Easement of Enjoyment. Every Owner shall take title subject to the following easements, assessments, and provisions, which shall be appurtenant to and shall pass with the title to each Lot.

- (a) The right of the Association to charge reasonable assessments for repairs and maintenance of Common Areas, to establish reserves for major repairs or improvements and assessment for any Common Areas that may be granted to or purchased by the Association, and to charge penalty assessments pursuant to Article IV of this Declaration.

CRP 839 192

(b) The right of the Association to suspend the voting rights and assess fines or penalties against an Owner for any period during which an assessment against an Owner's Lot remains unpaid.

(c) Prior to the end of the Development Period, the right of the Declarant or the Association to dedicate or transfer all or any part of the Common Areas to any Person, public or private group, corporation, agency, authority, or utility for such purposes and subject to such conditions as may be approved by the Association, so long as such dedication or transfer is in compliance with all applicable zoning regulations.

(d) After the end of the Development Period, the right of the Association to dedicate or transfer all or any part of the Common Areas to any Person, public or private group, corporation, agency, authority, or utility for such purposes and subject to such conditions as may be approved by the Association, so long as such dedication or transfer is in compliance with all applicable zoning regulations. After the Development Period, no such dedication or transfer shall be effective unless approved in writing in an instrument signed by two-thirds ($\frac{2}{3}$) of the Members of the Association.

(e) The right of the Declarant and its successors and assigns, to retain legal title to the Common Areas until such time as, in the opinion of the Declarant, the Association is able to maintain the same. Notwithstanding any provisions herein, the Declarant hereby covenants for itself, its successors and assigns, that it will convey the Common Areas to the Association prior to, or immediately following, the end of the Development Period.

(f) The right of the members, employees, invitees, guests, and agents of Sunset Point to use the roads and other Common Areas.

Section 3. Delegation of Use. Any Owner may delegate in accordance with the By-Laws and rules and regulations adopted by the Association, the Owner's right of enjoyment to the Common Areas and facilities to the members of the Owner's immediate family, tenants, or contract purchasers who reside in the residence on the Owner's Lot, but to no other party. The property rights and uses delegated hereunder shall run with the ownership of the Lot.

Section 4. Assignment. Declarant and its successors and assigns, shall have the right to assign to any one or more Persons (as defined hereinabove in Definitions) any and all rights, powers, title, easements and estates reserved to the said Declarant, including, but not limited to, its rights, powers, easements and right to use all roads within the subdivision and all easements of ingress and egress within the subdivision.

Article VII

DEDICATION OF ROADS AND EASEMENTS

Section 1. Public Ownership. In the event the Association desires to dedicate the roads, drainage easements, water system or any other asset of the Association to a public body, and the public body requires as a condition for acceptance of such assets, that the Asset to be accepted must meet all of the then requirements of said public body, which may include but not be limited to, bringing the roads and drainage easements up to the standards required by said public body. The

CRP 839 193

Association may then assess each Lot Owner a prorata share of the cost that will be required to bring the assets, including but not limited to, the roads and drainage easements, to the then current existing applicable governmental standards for roads and subdivision regulations. If the Association has dissolved or become defunct and said assets, including the roads and drainage easements, have reverted to a public body responsible for any reason, then each Owner will be assessed a prorata share of the cost that will be required to bring the assets, including but not limited to, the roads and drainage easements, to the then current existing applicable governmental standards for roads and subdivision regulations, and the public body or such entity as is then responsible for said assets, including the road and drainage easements, shall have authority to make such Assessments.

Article VIII
EASEMENT AND UTILITY PROVISIONS

Section 1. Utility and Drainage Easements. Lots subjected to this Declaration shall be subject to those easements, if any, shown as set forth on recorded Plats thereof. Also, easements for installation and maintenance of utilities and drainage facilities are hereby reserved unto the Declarant, its successors and assigns and to the Association, over ten (10) feet of each front Lot line, ten (10) feet of each side Lot line, and ten (10) feet of each rear Lot line, for the purposes of utility installations and rights-of-way and the operation and maintenance thereof. The front of the Lot shall be defined as the part of the Lot abutting the roadway. No fence or other structure shall be erected thereon which shall interfere with such use. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. The easement area of each Lot, except the ingress and egress easement shown on the Plats, and all improvements within it, shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 2. Sewerage Disposal and Maintenance. Sewerage disposal shall be by septic tank, or other sewerage disposal system, approved and constructed consistent with applicable rules and regulations of the governmental department or agency having jurisdiction. The Association shall be responsible for the maintenance and operation of the common disposal system, if any.

Article IX
General Provisions

Section 1. Enforcement The Declarant, Association, or any Owner shall strictly comply with and have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, easements, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, Association, or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of a violation or breach or threatened violation or breach of any of the same, the Declarant, the Association, or any aggrieved Lot Owner, jointly and severally, shall have the right to proceed at law or in equity for the recovery of damages or for injunctive relief, or both.

CRP 839 194

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. This Declaration may be amended by an instrument signed by the Declarant or by an instrument signed by two-thirds ($\frac{2}{3}$) of the Members of the Association as defined in the By-Laws of the Association attached hereto. Declarant reserves the right, and shall have the authority, to amend this instrument at any time in order to comply with any requirements of the Veterans Administration, Federal Housing Administration, Federal Home Loan Bank Board, Department of Housing and Urban Development, Federal National Mortgage Association, County of McDowell, or any other governmental body having authority over such matters. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any Mortgage encumbering any Lot. No amendment shall become effective until the instrument evidencing such change has been filed for record in the Office of the Register of Deeds for McDowell County, North Carolina. Every purchaser or grantee of any interest in Property now or hereafter subjected to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

Section 4. Interpretation This Declaration shall be interpreted in the spirit of reasonableness, and, in the absence of authoritative court decisions, the interpretations thereof by the Declarant shall prevail until the end of the Development Period.

Section 5. Appurtenant to the Land. These restrictive covenants shall be appurtenant to and run with the land and shall be binding on all present Owners or successor Owners of any Lots thereunder.

IN WITNESS WHEREOF, two-thirds ($\frac{2}{3}$'s) of the Members, have consented to amendments to the Declaration, effective May 9, 2005, as restated above, and are directing the President of Sunset Point Homeowners Association, Inc. to execute the Declaration effective upon recording in the office of the Register of Deeds of McDowell County.

Sunset Point Homeowners' Association, Inc.

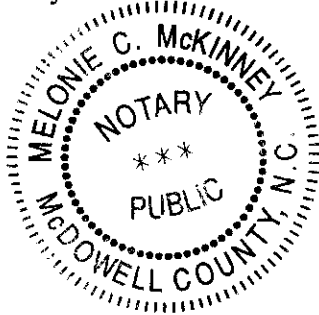
By: 
David Zimmerman, President

North Carolina

McDowell County**CRP 839 195**

I, Melonie C. McKinney, Notary Public for said county and state, hereby certify that David Zimmerman, personally appeared before me and acknowledged that effective May 9, 2005, two-thirds (2/3's) of the Members of Sunset Point Homeowners' Association approved changes to the Declaration, and authorized him to execute the foregoing Declaration, as amended and restated on its behalf.

Witness my hand and notarial stamp or seal, this 13th day of ~~August~~ ^{September}, 2005.



Melonie C. McKinney
Notary Public

My Commission Expires: 02-24-07

EXHIBIT "A"



NORTH CAROLINA

Department of The Secretary of State

CRP 839 196

To all whom these presents shall come, Greetings:

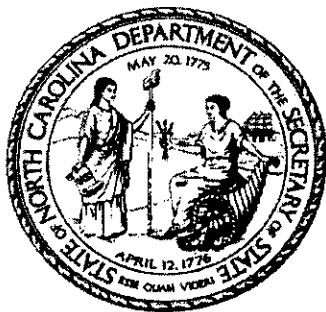
I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

SUNSET POINT HOMEOWNERS' ASSOCIATION, INC.

the original of which was filed in this office on the 27th day of November, 2001.



IN WITNESS WHEREOF, I have hereunto
set my hand and affixed my official seal at the
City of Raleigh, this 27th day of November, 2001

Elaine F. Marshall
Secretary of State

SOSID: 611191
 Date Filed: 11/27/2001 10:26 AM
 Elaine F. Marshall
 North Carolina Secretary of State

ARTICLES OF INCORPORATION

21 330 5262

OF

CRP 839 197

SUNSET POINT HOMEOWNERS' ASSOCIATION, INC.

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned do hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. Name. The name of the corporation is: Sunset Point Homeowners' Association, Inc.
2. Purpose. The corporation is formed to:
 - (a) promote and develop the common good and social welfare of residents of Sunset Point, a residential subdivision, in McDowell County, North Carolina; and
 - (b) engage in all lawful activities permitted for non-profit corporations existing under the laws of the State of North Carolina.
3. Registered And ^{and Principal office} Mailing Addresses. The street address and county of the initial registered office of the corporation is located in Burke County at: 301 East Meeting Street, Morganton, North Carolina 28655.

 The mailing address of the initial registered office is: P. O. Drawer 1269, Morganton, North Carolina 28680.
4. Incorporator. The name and address of the Incorporator is as follows:

 John W. Ervin, Jr.
 301 East Meeting Street
 Morganton, NC 28655
5. Registered Agent. The name of the initial registered agent is: John W. Ervin, Jr.
6. Members. The corporation will have members who are individuals who own a lot or lots in the subdivision, Sunset Point, and the qualifications, rights and obligations of members shall be as provided in the bylaws of the corporation.
7. Distribution of Assets. No part of the net earnings of the corporation shall enure to the benefit of, or be distributable to its members, directors or officers, except that the corporation shall be authorized and empowered to pay reasonable amounts to its members, directors and officers for services rendered or other value received and may confer benefits upon its members in conformity with its purposes.

Upon dissolution assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or

CRP 839 198

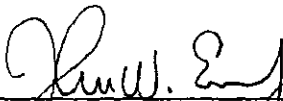
conveyed in accordance with such requirements. Other assets, not held by the corporation on condition, shall be distributed consistent with the requirements of Article 14, of Chapter 55A of the North Carolina General Statutes, as then amended, or subsequent law in replacement thereof.

8. Initial Board of Directors. The names and addresses of the members of the initial Board of Directors are:

NONE

9. Effective Date. These articles will be effective upon filing.

This the 14th day of November, 2001.



John W. Ervin, Jr. , Incorporator

EXHIBIT "B"

BYLAWS

OF

CRP 839 199

SUNSET POINT HOMEOWNERS' ASSOCIATION, INC

ARTICLE I

Offices

Section 1. Principal Office. The principal office of the Association shall be located at 301 East Meeting Street, Morganton, North Carolina 28655.

Section 2. Registered Office. The registered office of the Association, which by law is required to be maintained within the State of North Carolina, shall be located in Burke County, at 301 East Meeting Street, Morganton, North Carolina 28655, or at such other place within the State of North Carolina as may, from time to time, be fixed and determined by the Board of Directors.

Section 3. Other Offices. The Association may have offices at such places, either within or outside the State of North Carolina, as the Board of Directors may from time to time determine.

ARTICLE II

Definitions

Section 1. "Association" shall mean and refer to Sunset Point Homeowners' Association, Inc.

Section 2. "Common Area" shall mean and refer to those areas of land designated as such on any recorded subdivision Plat of Sunset Point (herein the "Property") intended to be devoted to the use and enjoyment of the purchasers of Lots. "Common Area" shall mean all real property owned by the Association and/or easements for the common use and enjoyment of the Owners, including, but not limited to, ingress and egress easements, pedestrian access easements, and other easements shown on the Plats; provided, however, Declarant reserves unto itself and its mortgagees, Common Area for (1) construction vehicles and crews, (2) maintenance and service vehicles, including, but not limited to, fire, police, public works, refuse collections, electric company, cable television company, telephone company, (3) any and all delivery vehicles and necessary service companies needing access to the Lots within Sunset Point, and (4) any successor or assign as designated by Declarant in writing. The Declarant retains the full authority and power to assign to any third party the use of the Common Area as defined herein. The streets within Sunset Point are private roads owned by Declarant over which Lot Owners and the Association have a non-exclusive easement for ingress, egress and regress. The streets are, therefore, a part of the "Common Area". Declarant has retained the right, in its sole discretion, to determine whether the streets will become part of the North Carolina Highway system and Declarant will be responsible to repair and maintain the streets, however, maintenance of the right of way not actually used for the paved or graveled portion of the streets shall be "Common Area" maintained by the Association.

Section 3. "Community" shall mean the Property as presently described and any additions thereto by the Declarant.

Section 4. "Declarant" shall mean and refer to Sunset Point, LLC, its successors and assigns or any successors-in-title to Sunset Point, or to all or some portion of the Property then subject to

CRP 839 200

this Declaration; provided that, if in the instrument of conveyance to any such successor-in-title, such successor-in-title is expressly designated as the "Declarant" by the grantor of such conveyance, such grantor shall be the "Declarant" hereunder at the time of such conveyance.

Section 5. "Declaration" shall mean and refer to the Declaration of Restrictive Covenants, Conditions and Restrictions of Sunset Point, as the same may be amended, renewed or extended from time to time in the manner herein prescribed.

Section 6. "Development Period" shall mean the time period during which the Declarant is developing Sunset Point which is anticipated to be when seventy-five percent (75%) of the Lots to be developed have been sold, or three years from the date of this Declaration, whichever is the last to occur.

Section 7. "Lot" shall mean and refer to any numbered plot of land or numbered tract shown on a Plat for a portion of Sunset Point recorded in the Office of the Register of Deeds of McDowell County, North Carolina, now or hereafter, made subject to this Declaration, to include the present configurations or any subdivision of these Lots or any additions of surrounding properties added to these Lots in areas contiguous with and included in a recorded subdivision map of plots of land constituting a part of Sunset Point.

Section 8. "Member" shall mean and refer to all individuals who are Members of the Association. Each Lot Owner shall be a Member of the Association. If more than one person owns an interest in a Lot either as a joint owner, or through a corporation, partnership or limited liability company, such joint owners, corporation, partnership or limited liability company shall designate an individual to act as the Member on behalf of such Owner.

Section 9. "Mortgage" shall mean and refer to bills of sale to secure debt, deeds to secure debt, deeds of trust and any and all other similar instruments given to secure the payment of an indebtedness.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of a fee simple title to any Lot as per a recorded Plat which is a part of the Property, or any additional lots added hereto by Declarant, specifically including, but not having such interest merely as security for the performance of any obligation.

Section 11. "Person" shall mean and refer to an individual, firm, corporation, partnership, trust, or any other legal entity.

Section 12. "Plat" shall mean and refer to the Plat subjected to this Declaration, including amendments to the Declaration, located on McDowell County, North Carolina, recorded in the Office of the Register of Deeds of McDowell County, North Carolina.

Section 13. "Property" shall mean and refer to that certain real property included within the Plats, and any additional Property which Declarant may subject to this Declaration, including amendments to this Declaration.

CRP 839 201

Section 14. "Reserved" shall mean and refer to those areas designated as "Reserved" on Plats of Sunset Point, which the Declarant retains the right, in its sole discretion, to determine the uses to which such areas may be subjected.

Section 15. "Residence" shall mean and refer to the building located upon a Lot designated and intended for use and occupancy as a residence by a single family.

Section 16. "Restrictive Covenants" and "Restrictions" as used in the By-Laws shall refer to the restrictive covenants, conditions and restrictions governing and controlling certain Lots and Common Areas in Sunset Point.

Section 17. "Review Board" shall mean and refer to that Board containing three (3) members for the review of certain matters as recited in the Declaration and as recited in these By-Laws. During the Development Period, Declarant reserves the right to appoint the persons to serve as the Review Board and approve all plans and specifications as provided in the Declaration or in these By-Laws. At the end of the Development Period, the Declarant's right to appoint the members of the Review Board ceases and the Association shall exercise such right. The Declarant has reserved the right, but shall not be obligated, to assign its right for architectural control to the Association prior to end of the Development Period.

Section 18. "Sunset Point" as used herein shall mean and refer to only that portion of the residential Community known as Sunset Point which is located on a portion of the Property included within a recorded Plat, being developed as a part of Sunset Point on the Property being acquired by Sunset Point, LLC, together with such additions thereto as may from time to time be designated by Declarant. Sunset Point may be referred to herein as "subdivision," "community," or "development" and such words shall be taken interchangeably to mean the Property described in detail hereinabove.

ARTICLE III

Members

Section 1. Members. Every Owner of a Lot shall be a Member of the Association. If two or more persons, a corporation, partnership or limited liability company own a Lot, an individual shall be designated, in writing, to act on behalf of such owners, corporation, partnership or limited liability company. Such individual designee shall be the person to act as the Member on behalf of such Owner and shall be so listed on the books and records of the Association. The Association may rely on such individual's actions and the parties designating the individual shall be bound by the designee's actions, until such time as the Owner gives notice to the Association, designating another individual as such Owner's designee.

Section 2. Membership Privileges. If two or more persons jointly own, or have an ownership interest through a corporation, partnership or limited liability company, in a Lot or Lots in Sunset Point, as provided in Section 1, above, only two of such individuals shall be entitled to the privileges of a Member. Only the individual designated by such an Owner, shall be entitled to one vote for each Lot owned.

Section 3. Voting Members. Only an individual, who is a Lot Owner, or the individual designated to act on behalf of a Lot Owner, shall be entitled to vote.

CRP 839 202

Section 4. Membership Termination. When a Member ceases to own an interest in a Lot or to own an interest in a corporation, partnership or limited liability company which owns a Lot; or the corporation, partnership or limited liability company through which the Member owns an interest, ceases to own an interest in a Lot, such Member's membership in the Association terminates.

Section 5. Membership Rights. A Member shall have no vested right, interest, or privilege of, in, or to, the assets, functions, affairs, or franchises of the Association. A Member shall have no right, interest, or privilege which may be transferable or inheritable, or which shall continue after his membership ceases, or when he is not in good standing.

Section 6. Rights and Obligations. Members are eligible to be considered for membership on the Board of Directors and to serve as members of the committees established by the Association. Members shall receive information generated and distributed by the Association and its committees and shall be given the opportunity to participate in activities and programs to further the purposes of the Association. Members are required to pay assessments and special assessments, when due, and to abide by the Declaration and of Restrictive Covenants, Conditions and Restrictions and the Rules and Regulations of the Association.

Section 7. Suspension. A Member's right to vote and otherwise participate as a Member of the Association may be suspended for a period, or terminated for cause, such as violation of the By-Laws or Rules of the Association, or for conduct prejudicial to the best interests of the Association. Suspension or expulsion shall be by a two-thirds (2/3) vote of the membership of the Board of Directors, provided that a statement of the charges shall have been mailed by registered mail to the member under charges at his last recorded address at least fifteen (15) days before final action is taken thereon; this statement shall be accompanied by a notice of the time when and location where the Board of Directors is to take action on the suspension or expulsion of the member. The member shall be given an opportunity to present a defense at the time and location mentioned in such notice; however, the action of the Board of Directors shall be conclusive and binding.

Section 8. Membership List. The Association shall maintain records containing the names, alphabetically arranged, of all members of the Association, showing their place of residence, the time when they became members and, if applicable, the date of termination of their membership. If two or more individuals are Members as a result of joint ownership of a Lot, or joint ownership in a corporation, partnership or limited liability company which owns a Lot, the address of the person authorized to receive notices and act on behalf of such Members shall be designated by the joint owners or corporation, partnership, or limited liability company, and the address of the designated person shall be maintained as well as the beginning date of membership, and, if applicable, the date of termination of membership of such persons, company or entity.

ARTICLE IV
Meetings Of Members

Section 1. Annual Meetings. The annual meeting of the Members for the transaction of such business as may properly come before the meeting shall be held at 5:00 o'clock p.m., on the fourth Thursday in March in each year, if not a legal holiday, and if a legal holiday, then on the next secular day following.

CRP 839 203

Section 2. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by these By-Laws, a substitute annual meeting shall be designated and shall be treated, for all purposes, as the annual meeting.

Section 3. Special Meetings. Special meetings of the Members may be called at any time by the Board of Directors, the President, any two Officers, or by the Members, pursuant to the written request of ten percent (10%) of the Members.

Section 4. Place of Meetings. All meetings of Members shall be held at the principal office of the Association or at such other place, within or outside the State of North Carolina, as may be designated in the notice of such meeting.

Section 5. Notice of Meetings. Written or printed notice stating the time and place of a meeting of Members shall be delivered personally or by mail, at the direction of the President, the Secretary or other person authorized to call such meeting, to each Member of the Association. Notice of such meetings shall be given, not less than ten or more than fifty days prior to the date of such meeting. If mailed, such notice shall be directed to each Member at the address of such Member as set forth on the records of the Association, except that if any Member shall have filed with the Secretary a written request that notices intended for such Member be mailed to some other address, then notice to such Member shall be mailed to the address set forth in the written request. A statement of the business to be transacted at an annual or substitute annual meeting of Members need not be set forth in the notice of such meeting, except if any matter is to be considered or acted upon, on which the vote of Members is required, then a specific statement thereof shall be set forth in such notice. In the case of a special meeting, the notice shall set forth the nature of the business to be transacted. If a meeting shall be adjourned for more than thirty days, notice of such adjourned meeting shall be given as in the case of an original meeting and if the adjournment shall be for less than thirty days, no notice thereof need be given except that such adjournment shall be announced at the meeting at which the adjournment is taken. Notice of a meeting need not be given if each Member entitled to notice thereof shall, in person, or by attorney thereunto duly authorized, waive notice thereof in writing, either before or after such meeting.

Section 6. Voting Lists. At least ten days before each meeting of Members, the Secretary of the Association shall prepare an alphabetical list of the Members, and designees of Members, entitled to vote at such meeting, with the address of each. Such list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. The aforementioned list shall be subject to inspection by any Member during the whole time of the meeting.

Section 7. Quorum. Except as otherwise provided by the charter of the Association, or by these By-Laws, the presence in person or by proxy of more than one-half (1/2) of the Members entitled to vote at the meeting shall be necessary to constitute a quorum for the transaction of business. In the absence of a quorum, a majority in interest of the Members entitled to vote, present in person or by proxy, may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called if a quorum had been there present. The Members

CRP 839 204

present in person or by proxy at a meeting at which a quorum is present may continue to do business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum.

Section 8. Voting. At each meeting of Members, every Member shall be entitled to one vote for each Lot owned by such Member. If a Lot is jointly owned, by individuals or through some type of legal entity, the designee of such joint Owners or other legal entity shall be entitled to one vote for each Lot owned. All questions, except as otherwise provided by statute, or by the charter of the Association, or by these By-Laws, shall be determined by a majority of the votes so cast. Any Member, or the designee of any Member, entitled to vote may vote by proxy provided that the instrument authorizing such proxy to act shall have been executed in writing by the Member, the Member's designee, or his duly authorized attorney. No proxy shall be valid after the expiration of eleven months from the date of its execution, unless the person executing it shall have specified therein the length of time it is to continue in force or limits its use to a particular meeting and, in any event, no proxy shall be valid after ten years from the date of its execution. Each instrument designating a proxy shall be exhibited to the Secretary of the meeting and shall be filed with the records of the Association. Voting on all matters shall be by voice vote or by a show of hands, unless, if prior to voting on any particular matter, demand for a vote by ballot shall be made by or on behalf of not less than ten percent (10%) of the Members present or represented at such meeting, then the vote shall be taken by ballot.

Section 9. Informal Action By Members. Any action which may be taken by the Members at a meeting thereof may be taken without a meeting if consent in writing, setting forth the action taken, shall be signed by the persons who would be entitled to vote a majority of the votes, upon such action, at a meeting. Such written action shall be filed with the Secretary of the Association. Any consent so filed with the Secretary of the Association shall be filed in the corporate minute book in like manner as minutes of a meeting. Any such consent shall have the same force and effect as action of the Members.

ARTICLE V

Board Of Directors

Section 1. General Powers. The business and affairs of the Association shall be managed by its Board of Directors.

Section 2. Number, Term and Qualifications. The number of directors shall be not less than three (3) and no more than nine (9) members. The number of members of the Board of Directors shall be established at the time of the initial meeting of the Initial Board of Directors, and may be increased or decreased thereafter at the Annual Meeting or Substitute Annual Meeting of Board of Directors. At the first meeting of the initial Board of Directors, the Directors shall determine, in a mutually agreeable manner, which of the Directors shall serve for one, two or three year terms. After the election of the initial Board of Directors, each Director elected thereafter shall be elected for a term of three years and shall continue in office until his death, resignation, disqualification or until his successor shall have been elected and qualified or until he shall have been removed in the manner herein provided. Directors need not be residents of the State of North Carolina but must be Members of the Association.

CRP 839 205

Section 3. Election of Directors. The Members of the Association, at the annual meeting, shall elect a sufficient number Directors to fill all vacancies on the Board of Directors. The persons receiving the highest number of votes shall be elected. If, prior to voting for the election of directors, demand shall be made therefor, the election of directors shall be made by ballot.

Section 4. Removal of Directors. Any member of the Board of Directors may be removed from office, with or without cause, by a vote of a majority of the Directors then in office, or by a majority of the Members of the Association; provided, however, in no event shall all of the members of the Board of Directors be removed. If any Directors are so removed, new Directors may be elected at the same meeting. If a Director is removed by the Directors, the vacancy created by the removal may be filled by a majority of remaining Directors, or the Directors may have the Secretary give notice of a meeting of Members to fill such vacancy. If a Director is removed by a majority of the Members, the vacancy created by the removal shall be filled by majority of the Members.

Section 5. Vacancies. A vacancy in the Board of Directors created by an increase in the authorized number of Directors, or for any other reason, shall be filled by a majority of the remaining Directors then in office, though less than a quorum, or by the sole remaining Director. In the event of the resignation of a Director to take effect at a future date, the Board of Directors, at any time after tender of such resignation, may elect a successor to such Director to take office as of the effective date of such resignation. In lieu of filling such vacancy, or vacancies, the Directors may have the Secretary give notice of a meeting of Members to fill such vacancy.

Section 6. Compensation of Directors. The Board of Directors may cause the Association to pay reasonable amounts to its Directors and members for services rendered or other value received and may provide for the payment by the Association of expenses incurred by Directors in attending regular and special meetings of the Board.

Section 7. Executive Committee. Annually, as provided in Article VIII, Section 1, below, the Board of Directors shall designate two Members of the Association, who may or may not be members of the Board of Directors, to serve with the President, Vice-President and Secretary, as an Executive Committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Association.

ARTICLE VI

Meetings Of Directors

Section 1. Regular Meetings. A regular annual meeting of the Board of Directors may be held immediately after the annual meeting of members and if not then held, shall be held within a reasonable time thereafter.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman, President or any two Directors.

Section 3. Place of Meetings. All meetings of the Board of Directors shall be held at the principal office of the Association or at such other place, within or outside the State of North Carolina, as provided in the notice of such meeting, at a place determined by informal action of a majority of the Directors then in office.

CRP 839 206

Section 4. Notice of Meetings. Regular meetings of the Board of Directors may be held without notice. Special meetings may be called and shall be held following no less than two days prior notice. Notice of a special meeting need not state the purpose thereof and such notice, if mailed, shall be directed to each Director at the address of such Director as set forth on the records of the Association, except that if any Director shall have filed with the Secretary a written request that notices intended for such Director be mailed to some other address, then notice to such member shall be mailed to the address set forth in the written request. Notice may be sent by mail, cable, telegram or by personal delivery. The presence of a Director at a meeting shall constitute a waiver of notice of that meeting except when such Director attends the meeting solely for the purpose of objecting to the transaction of any business, on the ground that the meeting has not been lawfully called, and does not otherwise participate in such meeting.

Section 5. Quorum and Manner of Acting. Unless otherwise provided, a majority of the Directors fixed by these By-Laws as the number of Directors of the Association shall constitute a quorum for the transaction of any business at any meeting of the Board of Directors. Except as otherwise expressly provided in the By-Laws, the act of a majority of the Directors present at a meeting, at which a quorum is present, shall be the act of the Board of Directors. The vote of a majority of the number of Directors, fixed pursuant to these By-Laws as the number of Directors of the Association, shall be required to adopt, amend or repeal a By-Law, with or without the Members' approval or consent. The vote of a two-thirds (2/3) majority of the number of Directors, fixed pursuant to these By-Laws as the number of Directors of the Association, shall be required to dissolve the Association pursuant to the provisions of the North Carolina Nonprofit Corporation Act, with the Members' approval or consent.

Section 6. Informal Action of Directors. Consent to action taken by a majority of Directors without a meeting shall constitute action of the Board of Directors if written consent to the action in question is signed by a majority of the Directors and filed with the minutes of the proceedings of the Board of Directors, whether such consent is before or after the action so taken.

Section 7. Resignations. Any Director may resign at any time by giving written notice to the President or the Secretary of the Association. Such resignation shall take effect at any time specified therein, or if no time is specified therein, at the time such resignation is received by the President or Secretary of the Association unless it shall be necessary to accept such resignation before it becomes effective, in which event the resignation shall take effect upon its acceptance by the Board of Directors. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

ARTICLE VII

Duties and Responsibilities of Board of Directors

Section 1. Duties and Responsibilities. The duties and responsibilities of the Board of Directors shall include, but not be limited to the following:

(a) Budgets. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot owners;

CRP 839 207

(b) Agents and Employees. Hire and terminate managing agents and other employees, agents and independent contractors;

(c) Litigation. Institute, defend, or intervene in the Association's name, in litigation or administrative proceedings on matters affecting the subdivision;

(d) Contracts. Make contracts and incur liabilities;

(e) Regulate Common Areas. Regulate the use, maintenance, repair, replacement, and modification of Common Areas and facilities;

(f) Improve Common Areas. Cause additional improvements to be made as a part of the Common Areas and facilities;

(g) Own and Sell Property. Acquire, hold, encumber, and convey in the Association's name, any right, title, or interest in real or personal property provided that common areas may be conveyed or subjected to a security interest by the Association only with approval of sixty-six and two-thirds percent (66 2/3%) of the members of the Board of Directors and Members of the Association; provided, however, the streets are subject only to non-exclusive easements of the Lot Owners and the Declarant, only, may transfer or convey the fee interest in the street, during or after the Development Period.

(h) Transfer Interests in Common Property. Notwithstanding the provisions in subparagraph (g) above, to grant easements, leases, licenses, and concessions through or over the Common Areas;

(i) Fees and Charges. Impose and collect payments, fees, or charges for the use, rental, or operation of the Common Areas and facilities and for services provided for Lot Owners;

(j) Late Payments. Impose charges for late payment of assessments and after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Fifty Dollars (\$150.00) for violations of the Declaration, By-Laws and Rules and Regulations of the Association;

(k) Charges for Transfers and Amendments. Impose reasonable charges for the preparation and recordation of Amendments to the Declaration, resale certificates of statements of unpaid assessments;

(l) Indemnification and Insurance. Provide for the indemnification of, and maintain liability insurance for, its Officers, Executive Board, Directors, Employees and Agents;

(m) Assign Income. Assign its right to future income, including the right to receive common expense assessments;

(n) Review Board. To appoint members to the Review Board, after the Development Period, or prior thereto if Declarant relinquishes its right to appoint members to the Review Board and hear appeals from the decisions of the Review Board and render final decisions.

CRP 839 208

(o) General Authority. Exercise all other powers that may be exercised in the State of North Carolina by legal entities of the same types as the Association; and

(p) Necessary and Property Action. Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 2. Rules and Regulations of Association. To Prescribe Rules and Regulations for the use of Common Areas and facilities, by the Members, and all other parties authorized to use the same.

Section 3. Assessments: Liability, Lien and Enforcement. To administer property in the operation and management of the subdivision, and incur for the mutual benefit of all of the Owners of Lots, costs and expenses which are sometimes herein referred to as "common expense". To make, levy and collect assessments against the Lot Owners and the Lots. In furtherance of this grant of authority, to make, levy and collect assessments to pay the costs and expenses for the operation, management of capital improvements to the subdivision.

(a) Assessments Equal. Unless specifically otherwise provided for in the Declaration, or in these By-Laws, all assessments shall be in amounts so that any assessment levied against a Lot Owner and his Lot shall be equal to the assessment against all other Lot Owners and other Lots.

(b) Payment of Assessments. To determine the time for payment of the assessments provided for herein, such assessments shall commence for each Lot on the first day of the first month following the recordation of the deed to the Lot.

(c) Special Assessments. In addition to the annual assessment authorized above, to levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of Lot Owners owning two-thirds (2/3) of the Common Areas and facilities who are voting in person or by proxy at a meeting duly called for such purposes.

(d) Annual Budget. To establish an Annual Budget in advance for each fiscal year, which shall correspond to the calendar year. Such Budget shall project all expenses for the coming year which may be required for the proper operation, management and maintenance of the, subdivision including a reasonable allowance for contingencies and reserves, and the Budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. To keep separate, in accordance with Paragraph (e) hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget, copies of said Budget shall be delivered to each Lot Owner of a Lot and the assessment for said year shall be established based upon such Budget.

(e) Reserve Fund. To collect a sum as a part of the Annual Budget, as a reserve fund for replacement of capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to construct improvements, to replace structural elements and mechanical equipment constituting a part of the Common Areas and facilities, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established so as to collect and maintain a sum

CRP 839 209

reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account and used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvements Funds may, in the discretion of the Board of Directors, be expended for current operation and maintenance.

(f) Administration of Collections. All monies collected may shall be applied to the payment of any expense of operating and managing the subdivision, or to the proper undertaking of all acts and duties imposed upon it by virtue of the Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for assessments are paid to the Association by Lot Owners, the same may be commingled with monies paid to the Association by all Owners of Lots. Although all funds and common surplus, including other assets of the Association, and any increment's thereto or profits derived therefrom or from the lease or use of Common Property, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein. When the Owner of a Lot ceases to be a Member of the Association by reason of his divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Subdivision.

ARTICLE VIII

Officers, Election, Removal and Vacancies

Section 1. Number of Officers. The officers of the Association shall be a President, one or more Vice-Presidents, a Secretary and a Treasurer, and such other officers, as may be appointed in accordance with the provisions of Section 3 of this Article VIII. The officers of the Association may also include a Chairman of the Board of Directors. Any two offices, or more, may be held by one person except the offices of President and Secretary, but no officer shall sign or execute any document in more than one capacity.

Section 2. Election, Term of Office and Qualifications. Each officer, except such officers as may be appointed in accordance with the provisions of Section 3 of this Article VIII shall be chosen by the Board of Directors and shall hold office until the annual meeting of the Board of Directors held next after his election or until his successor shall have been duly chosen and qualified, or until his death, or until he shall resign, or shall have been disqualified, or shall have been removed from office.

Section 3. Subordinate Officer and Agents. The Board of Directors from time to time may appoint other officers or agents, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors from time to time may determine. The Board of Directors may delegate to any officer or agent the power to appoint any subordinate officer agent and to prescribe his respective authority and duties.

Section 4. Removal. An officer or officers specifically designated in Section 1 of this Article VIII may be removed, either with or without cause, by vote of a majority of the whole Board of Directors at a special meeting of the Board of Directors called for that purpose. The officers

CRP 839 210

appointed in accordance with the provisions of Section 3 of this Article VIII may be removed, either with or without cause, by the Board of Directors, by a majority vote of the Directors present at any meeting, or by any officer or agent upon whom such power of removal has been conferred by the Board of Directors. The removal of any person from office shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or the Secretary of the Association, or if he was appointed by an officer or agent in accordance with Section 3 of this Article VIII, by giving written notice to the officer or agent who appointed him. Any such resignation shall take effect upon its being accepted by the Board of Directors or by the officer or agent appointing the person so resigning.

Section 6. Vacancies. A vacancy in any office because of death, resignation, removal or disqualification, or any other cause, shall be filled for the unexpired portion of the term by the Board of Directors, or as otherwise prescribed in these By-Laws, for regular appointments or elections to such offices.

Section 7. Chairman. If elected and present, the Chairman shall preside at all meetings of the Board of Directors. Failing the election of a Chairman, or if the Chairman is not present, the President shall preside at meetings of the Board of Directors. The Chairman may also exercise such duties as customarily pertain to the office of the President and shall perform such other duties as may be prescribed from time to time by the Board of Directors or the By-Laws.

Section 8. President. The President shall be the chief executive officer of the Association and, subject to the instructions of the Board of Directors, shall have general charge of the business, affairs and property of the Association and control over its other officers, agents and employees. If no Chairman has been elected or is not present, the President shall preside at meetings of Members and of the Board of Directors at which he may be present. The President shall do and perform such other duties as from time to time may be assigned to him by the Board of Directors.

Section 9. Vice-President. At the request of the President, or in his absence or disability, the Vice-President designated by the Board of Directors, or in the absence of such designation, the Vice-President designated by the President, shall perform all the duties of the President and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice-President shall perform such other duties and have such authority as from time to time may be assigned to him by the Board of Directors.

Section 10. Secretary. The Secretary shall keep the minutes of the meetings of members and of the Board of Directors, and shall see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law. He shall be custodian of the records, books, reports, statements, certificates and other documents of the Association and of the seal of the Association, and see that the seal is affixed to all documents requiring such seal. In general, he shall perform all duties and possess all authority incident to the office of Secretary, and he shall perform such other duties and have such other authority as provided in these By-Laws, or which may from time to time may be assigned to him by the Board of Directors.

CRP 839 211

Section 11. Treasurer. The Treasurer shall have supervision over the funds, securities, receipts and disbursements of the Association. He shall keep full and accurate accounts of the finances of the Association in books specially provided for that purpose, and he shall cause a true statement of its assets and liabilities, as of the close of each fiscal year, and of the results of its operations and of changes in surplus for such fiscal year, all in reasonable detail, to be made and filed at the registered or principal office of the Association within four months after the end of such fiscal year. The statement so filed shall be kept available for inspection by any Member for a period of ten years and the Treasurer shall mail or otherwise deliver a copy of the latest such statement to any Member upon his written request for the same. He shall, in general, perform all duties and have all authority incident to the office of Treasurer and shall perform such other duties and have such other authority as from time to time may be assigned or granted to him by the Board of Directors. He may be required to give a bond for the faithful performance of his duties in such form and amount as the Board of Directors may determine.

Section 12. Duties of Officers May Be Delegated. In case of the absence of any officer of the Association, or for any other reason that the Board of Directors may deem sufficient, the Board of Directors may delegate the powers or duties of such officer to any other officer or to any Director for the time being, provided a majority of the entire Board of Directors concurs therein.

Section 13. Salaries of Officers. No officer of the Association shall be prevented from receiving a salary as such officer or from voting thereon by reason of the fact that he is also a Director of the Association. The salaries of the officers of the Association, including such officers as may be Directors of the Association, shall be fixed from time to time by the Board of Directors, except that the Board of Directors may delegate to any officer who has been given power to appoint subordinate officer or agents, as provided in Section 3 of this Article VIII, the authority to fix the salaries or other compensation of any such officers or agents appointed by him.

ARTICLE IX

Committees

Section 1. Executive Committee. There shall be elected annually by the Board of Directors, two Members of the Association, who, with the President, the Vice-Presidents and the Secretary, shall constitute an Executive Committee. The Executive Committee shall appoint such persons as may be necessary to conduct the business of the Association; unless restricted by a specific resolution of the Board of Directors, they may act on behalf of the Association on any matter when the Board of Directors is not in session. At each meeting of the Board of Directors information shall be provided on all matters considered, and action taken by the Executive Committee subsequent to the last meeting of the Board of Directors. Three members of the Executive Committee shall constitute a quorum for the transaction of business. Meetings may be called by the President or by three members.

Section 2. Committee on Nominations. During the month of December in each year, the Board of Directors shall appoint a Nominating Committee of five Members of the Association. This Nominating Committee shall have the duty to nominate candidates for membership to the Board of Directors to be elected at the next annual election. They shall notify the Secretary in writing, at least twenty (20) days before the date of the annual meeting of the Board of Directors, of the names of such candidates, and the Secretary, except as herein otherwise provided, shall mail a copy hereof to

CRP 839 212

the last recorded address of each member of the Board of Directors simultaneously with the notice of the meeting. Nominations for Directors may also be made, endorsed with the names of not less than ten Members of the Association, if forwarded to the Secretary at least five days prior to the annual meeting of the Board of Directors of the Association for immediate transmittal by him to the Board of Directors.

Section 3. Other Committees. The Board of Directors may establish other committees and prescribe the duties and responsibilities of such committees. The members of such committees shall be selected as provided in the resolution establishing such committees. A committee established as herein provided, shall at its first meeting, select a chair-person, a vice chair-person and a secretary.

ARTICLE X

Contracts, Loans, Banking and Proxies

Section 1. Contracts. Except as otherwise provided in these By-Laws, the Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or to execute or deliver any instrument on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans, guaranty, or other form of security shall be made or provided by the Association to or for the benefit of its Directors or officers, except that loans, guaranties, or other forms of security may be made to full-time employees of the Association who are also Directors or officers only by action of the Association's Board of Directors in accordance with North Carolina General Statute 55A-8-31(a)(1), or any successor law.

No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name, unless and except as authorized by the Board of Directors. Any officer or agent of the Association thereunto so authorized may effect loans or advances for the Association and for such loans and advances may make, execute and deliver promissory notes, bonds, or other evidences of indebtedness of the Association. Any such officer or agent, when thereunto so authorized, may mortgage, pledge, hypothecate or transfer as security for the payment of any and all loans, advances, indebtedness and liability of the Association, any real property and all stocks, bonds, or other securities and other personal property at any time held by the Association, and to that end may endorse, assign and deliver the same, and do every act and thing necessary or proper in connection therewith. Such authority may be general or confined to specific instances.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks or trust companies or with such bank or other depositories as the Board of Directors may select, or as may be selected by an officer or officers, agent or agents of the Association to whom such power may from time to time be given by the Board of Directors.

Section 4. Checks, Drafts, etc. All notes, drafts, acceptances, checks and endorsements or other evidences of indebtedness shall be signed by the President or Vice-President and by the Secretary or the Treasurer, or in such other manner as the Board of Directors from time to time may determine. Endorsements for deposit to the credit of the Association in any of its duly authorized depositories will be made by the President or Treasurer or by any officer or agent who may be designated by resolution of the Board of Directors in such manner as such resolution may provide.

CRP 839 213

Section 5. Proxies. Any share or shares in any other corporation which may from time to time be held by the Association may be represented and voted at any meeting of members of such corporation by any person or persons thereunto authorized by the Board of Directors or if no one be so authorized, by the President or Vice-President or by any proxy appointed in writing by the President or a Vice-President.

ARTICLE XI**Elimination Of Certain Liability And Indemnification**

Section 1. Liability. No Director or officer of the Association shall be personally liable to the Association or any of its Members or otherwise for monetary damages for breach of duty as a Director, except with respect to (i) acts or omissions not made in good faith that the Director at the time of such breach knew or believed were clearly in conflict with the best interests of the Association, (ii) any liability under G.S. 55A-8-32 or G. S. 55A-8-33, (iii) any transaction from which the Director derived an improper personal financial benefit, or (iv) acts or omissions occurring prior to the date on which these provisions became effective. As used herein, the term "improper personal financial benefit" does not include a Director's reasonable compensation or other reasonable incidental benefit for or on account of his service as a Director, trustee, officer, employee, independent contractor, attorney, or consultant of the Association. If, after approval of these liability and indemnity provisions, the North Carolina General Statutes are amended to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Association shall be eliminated or limited to the fullest extent permitted by the North Carolina General Statutes, as so amended. No amendment or repeal of the provisions of these liability and indemnity provisions shall apply to or have any effect on the liability or alleged liability of any Director of the Association for or with respect to any act or failure to act on the part of such Director occurring prior to such amendment or repeal. The provisions of this Article shall not be deemed to limit or preclude indemnification of a Director by the Association for any liability which has not been eliminated by the provisions of this Article.

Section 2. Indemnity. Any person who at any time serves or has served as a Director, trustee, officer, employee, independent contractor, attorney, or consultant of the Association and any such person who serves or has served at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership joint venture, trust or other enterprise, or as a trustee or administrator under an employee benefit plan, shall have a right to be indemnified by the Association to the full extent allowed by applicable law against liability and litigation expense arising out of such status or activities in such capacity. "Liability and litigation expense" shall include costs and expenses of litigation (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement which are actually and reasonably incurred in connection with or as a consequence of any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, including appeals. In no circumstances, however, shall the Association indemnify any such person against any liability or litigation expense incurred on account of activities which were: (i) acts or omissions not made in good faith that the person at the time of such breach knew or believed were clearly in conflict with the best interests of the Association, (ii) included under G.S. 55A-8-32 or G. S. 55A-8-33, (iii) any transaction from which the person derived

CRP 839 214

an improper personal financial benefit (defined in Section 1, above), or (iv) acts or omissions occurring prior to the date on which these provision became effective.

Section 3. Determination of Right to Indemnity. Promptly after the final disposition or termination of any matter which involves liability or litigation expense as described in Section 2 or at such earlier time as it sees fit, the Association shall determine whether any person described in Section 2 is entitled to indemnification thereunder. Such determination shall be limited to the following issues: (i) whether the persons to be indemnified are persons described in Section 2, (ii) whether the liability or litigation expense incurred arose out of the status or activities of such persons as described in Section 2, (iii) whether liability was actually incurred and litigation expense was actually and reasonably incurred, and (iv) whether the liability and litigation expense were incurred on account of activities which were, at the time taken, known or believed by such person to be clearly in conflict with the best interests of the Association. Such determination shall be made by a majority vote of Directors who were not parties to the action, suit or proceeding (or, in connection with "threatened" actions, suits or proceedings, who were not "threatened parties"). If at least two such disinterested Directors are not obtainable, or, even in obtainable, if at least half of the number of disinterested Directors so direct, such determination shall be made by independent legal counsel in written opinion.

Section 4. Advance Expenses. Litigation expense incurred by a person described in Section 1 in connection with a matter described in Section 1 shall be paid by the Association in advance of the final disposition or termination of such matter, if the Association receives an undertaking, dated, in writing and signed by the person to be indemnified, to repay all such sums unless such person is ultimately determined as provided in Section 3 to be entitled to be indemnified by the Association. Requests for payments in advance of final disposition or termination shall be submitted in writing unless this requirement is waived by the Association. Before the first such payment is made, the Association shall have received the written undertaking referred to herein and notice of the request for advance payment shall have been given to the members of the Board of Directors.

Notwithstanding the foregoing, no advance payment shall be made as to any payment or portion of a payment for which the determination is made that the person requesting payment will not be entitled to indemnification. Such determination may be made only by a majority vote of disinterested Directors or by independent legal counsel as provided, herein. If there are not at least two disinterested Directors, then notice of all requests for advance payment shall be delivered for review to independent legal counsel for the Association. Such counsel shall have the authority to disapprove any advance payment or portion of a payment for which it plainly appears that the person requesting payment shall not be entitled to indemnification.

Section 5. Settlements. The Association shall not be obligated to indemnify persons described in Section 1 for any amounts paid in settlement unless the Association consents in writing to the settlement. The Association shall not unreasonably withhold its consent to proposed settlements. The Association's consent to a proposed settlement shall not constitute an agreement by the Association that any person is entitled to indemnification hereunder. The Association shall waive the requirement of this action for its written consent as fairness and equity may require.

Section 6. Application for Indemnity of Advances. A person described in Section 1 may apply to the Association in writing for indemnification or advance expenses. Such application shall

CRP 839 215

be addressed to the Secretary or, in the absence of the Secretary, to any officer of the Association. The Association shall respond in writing to such applications as follows: to a request for indemnity under Section 2, within ninety days after receipt of the application; to a request for advance of expenses under Section 4, within fifteen days after receipt of the application.

The right to indemnification or advance of expenses provided herein shall be enforceable in any court of competent jurisdiction. A legal action may be commenced if a claim for indemnity or advance of expenses is denied in whole or in part, or upon the expiration of the time periods provided in the preceding paragraph. In any such action, the claimant shall be entitled to prevail upon establishing that he or she is entitled to indemnification or advance of expenses but the Association shall have the burden of establishing, as a defense, that the liability or expense was incurred on account of activities which were, at the time taken, known or believed by the claimant to be clearly in conflict with the best interests of the Association. In any such action, if the claimant establishes the right to indemnification, he or she shall also have the right to be indemnified against the litigation expense (including a reasonable attorney's fee) for such action.

Section 7. Incidents of Right of Indemnification. The right to indemnification provided herein shall not be deemed exclusive of any other rights to which any persons seeking indemnity may be entitled apart from the provisions of this By-Law, (except there shall be no right to indemnification as to any liability or litigation expense for which such person is entitled to receive payment under any insurance policy other than a Director's and officer's liability insurance policy maintained by the Association). Such right shall inure to the benefit of the heirs and legal representatives of any persons entitled to such right. (Any person who at any time after the adoption of this By-Law serves or has served in any status or capacity described in Section 1, shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Any repeal or modification hereof shall not affect any rights or obligations then existing.) The right provided herein shall not apply as to persons serving companies which are hereafter merged into or combined with the Association, except after the effective date of such merger or combination and only as to status and activities after such date.

Section 8. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court or agency of competent jurisdiction, then the Association shall nevertheless indemnify each person described in Section 2 to the full extent permitted by the portion of this Article that is not invalidated and also to the full extent (not exceeding the benefits described herein) permitted or required by other applicable law.

ARTICLE XI

General Provisions

Section 1. Corporate Seal. The corporate seal shall be in such form as shall be approved from time to time by the Board of Directors.

Section 2. Fiscal Year. The fiscal year of the Association shall be established by resolution of the Board of Directors.

Section 3. Waiver of Notice. Whenever notice is required to be given to any Member or Director under the provisions of the North Carolina Nonprofit Corporation Act or under the

CRP 839 216

provisions of the charter of By-Laws of this Association, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 4. Amendment. Except as otherwise herein provided, these By-Laws may be amended or repealed and new By-Laws may be adopted by the affirmative vote of a majority of the Directors at any regular or special meeting of the Board of Directors. The Board of Directors shall not have power to adopt a bylaw: (1) requiring more than a majority of Directors for a quorum at a meeting of Directors or more than a majority of the votes cast to constitute action by the Directors, except where higher percentages are required by these By-Laws or by law, (2) providing for the management of the Association other than by the Board of Directors or its Executive Committee.

Patricia A. Reel
Register of Deeds

McDowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752

Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail preelmcdowell@titlesearcher.com



Filed For Registration: 09/14/2005 12:25:47 PM

Book: CRP 839 Page: 170-216

Document No.: 2005006499

DECLARATION 47 PGS 152.00

Recorder: LENA BAKER

State of North Carolina, County of McDowell

The foregoing certificates of MELONIE C MCKINNEY Notary(ies) Public is(are) certified to be correct this 14TH of SEPTEMBER 2005.

PATRICIA A. REEL, REGISTER OF DEEDS

Lena Baker

By: _____
DEPUTY

DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.