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Register of Deeds WATAUGA COUNTY, NC
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NORTH CAROLINA

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR FIRETHORN**

WATAUGA COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this 12 day of October, 2005, by Roaring Thunder Partners, LLC of P. O. Box 1769, Blowing Rock, NC 28605 (hereinafter called "Declarant");

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property (hereinafter called "Property") described in this Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Covenants") and is desirous of subjecting a portion or portions of the Property as hereafter determined by Declarant to the protective covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, for the benefit of the parcels or tracts located thereon, whether now already or hereafter subdivided and platted (hereinafter called the "Tracts"), and for the benefit of each owner of the parcels or tracts which are now already or may hereafter be subdivided and platted within the Property (hereinafter called the "Property Owners) and shall apply to and bind the owners thereof, their heirs, successors and assigns; and

WHEREAS, the Property is subjected to these Covenants in order to insure the best

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use and the most appropriate development and improvement of the Property and the tracts located therein; to protect the owners thereof against such improper use of surrounding tracts as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to encourage and insure the highest and best development of the Property; to encourage and secure the building of attractive homes thereon, with appropriate locations thereof on the Property; to prevent haphazard and inharmonious improvement of the Property; to secure and maintain an aesthetically pleasing quality of development and improvement of the property, and thereby to enhance the values of the Property.

NOW, THEREFORE, Developer for itself, hereby declares that the Property is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and run with the land and any estates in the land herein referred to as the Property and these Covenants are intended to be Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property, whether by assignment, succession or inheritance or other method of conveyance.

ARTICLE I: PROPERTY DESCRIPTION

Section 1-1: The Property. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to these covenants for **Firethorn** is a 141.592 acre tract as described on a boundary survey of **Firethorn** prepared by Appalachian Land Services, P.A. dated January 2, 2005, Job No. 04233, less and except a 9.975 acre tract as described at Book of Records 1087 at Page 751 of the Watauga County Register of Deeds Office, and as described in deeds to Roaring Thunder Partners, L.L.C as recorded at Book of Records 1099 at Pages 57 and 63 of the Watauga County Register of Deeds Office.

ARTICLE II: GENERAL LAND USE RESTRICTIONS AND OBLIGATIONS

Section 2-1: Building and Use Requirements. The Property and the tracts located therein shall be used for single-family residential purposes exclusively. No structure except as may be hereinafter provided, shall be erected, altered, placed, or permitted to remain on any tract other than one (1) detached single-family dwelling, (except when a certain tract is

specifically restricted to one (1) story) above the basement and one small accessory building not to exceed two (2) stories in height which may include a detached private garage, provided the use of such dwelling or accessory building does not include any activity normally conducted as a business. A guest suite or like facility may be included as part of the main dwelling or accessory building. Such accessory building may not be constructed prior to the construction of the main dwelling.

All homes in **Firethorn** shall consist of a minimum of three thousand (3,000) square feet of finished, heated living area, not including garages, with a minimum of two thousand (2,000) square feet on the first floor, excluding garages. The roofing shingles on all residences and buildings shall be cedar shake or aesthetically comparable, as determined by Declarant. No asphalt shingles shall be allowed.

Section 2-2: Other Buildings and Vehicles. No structure of a temporary character shall be placed upon any tract at any time, provided, however, that this prohibition shall not apply to equipment shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the tract after completion of construction.

No mobile home, motor home, trailer, house trailer, prefabricated or modular home, barn, tree house or other similar out-building shall be placed on the Property at any time without prior approval from the Declarant; and such approvals shall normally be limited to temporary use of such structures reasonably essential to economical, orderly and efficient construction during the construction process only.

Section 2-3: Architectural and Site Plan Review of Specifications for New Construction or Additions, Reconstruction Alterations or Changes to Structures and Landscaping. No driveway, home, building, fence or other structure shall be constructed, erected, placed, or altered on any tract until the proposed building plans, specifications, exterior color and finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), landscaping plan and construction schedule shall have been approved in writing by the Declarant, its successors or assigns. Upon written request by Property Owners for approval of plans, the Declarant shall have thirty (30) days to approve or disapprove the plans. In the event of failure to approve or disapprove within the thirty (30) days, said approval will not be required, provided the design of the proposed building is in harmony with existing structures in the area. Garages must be constructed of the same or compatible materials as specified for the dwelling. Refusal of approval of plans, location or specifications may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant, shall be deemed sufficient. No

alterations in the exterior appearance of any building or structure shall be made, including paint color, without like approval by the Declarant. One copy of all plans and related data shall be furnished the Declarant for its records and shall be subject to a checklist reviewed and approved by Declarant with Property Owner before beginning construction. There is a \$1,000.00 impact fee due from Property Owner prior to beginning construction, payable either to the Declarant or the to the Firethorn Property Owners Association, Inc. This impact fee shall be adjusted from time to time by Declarant or the Firethorn Property Owners Association, Inc. to reflect cost of living increases and other factors which effect the cost of maintaining the road system within Firethorn.

Section 2-4: Siting. To assure that homes, buildings and other structures, if any, will be located so that desirable views and privacy will be available and maintained to the owners of tracts within the Property, and that buildings will be located with regard to the topography of each tract, taking into consideration the location of large trees, buildings previously built or approved pursuant to these Covenants for adjacent tracts and other aesthetic and environmental considerations, Declarant shall have the right to control and to decide the precise site and location of any buildings or other structures and driveway access within the Property. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. Unless where restricted to a greater degree by Declarant in the individual deeds to Property Owners, or unless waived by Declarant as a part of the site plan approval process, no building shall be located closer than forty (40) feet to the street right-of-way and not closer than twenty-five (25) feet to the adjoining property line.

Section 2-5: Tree and Bush Removal. No large trees measuring six (6) inches or more in diameter at ground level may be removed without the written approval of the Declarant, unless located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building. Unless Declarant gives prior written approval, no trees shall be removed from any tract until the owner shall be ready to begin construction, following submission of building plans and approval of the same. A violation of the restriction shall subject the owner for a fine and/or suspension of planned community privileges and services as provided by NCGS section 47F-3-107.1, as amended.

Section 2-6: Completion of Construction. The exterior of all buildings and other structures must be completed within eighteen (18) months after the construction of a particular building or structure shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to strikes, fires, national emergency or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. Substantially all of the landscaping shown in plans submitted to and approved by the

Declarant must be completed within three (3) month(s) of the initial occupancy.

Section 2-7: Minimizing Construction Disturbances. During the continuance of construction, the Property Owner shall require the contractor to maintain the site of the building in a reasonably clean and uncluttered condition, and construction may not commence before 7:00 a.m. or be continued after 7:00 p.m., nor may construction activities take place on any Sunday. Declarant may waive the time and day restrictions if Declarant deems no undue nuisance is caused to any other Property Owner in the area.

Section 2-8: Service Yards. All garbage receptacles, electric and gas meters, heat pumps and air-conditioning equipment, clotheslines, water pumps, fuel tanks, equipment and service yard contents on the Property must be placed or stored in safe landscaped, fenced or screened-in areas to conceal them from the view on the road and adjacent properties or installed within the main dwelling house, within an accessory building or buried underground.

Section 2-9: Lights, Signs and Advertising Devices. No "For Sale," commercial, promotional or advertising signs, lights, banners, flags or ornaments, whether mobile or fixed, may be erected or maintained on the Property by anyone except where approved in writing by the Declarant. Declarant reserves the right, after two (2) days' notice is given to the Property Owner, to enter upon the lands or premises of any Property Owner to remove any such non-conforming sign, light, banner, flag, ornament or advertising device at the expense of the owner thereof. No signs may be placed in right of ways and common areas.

Section 2-10: Antennas and Power Lines. No television or radio receiver or transmitter or other antennas which are visible from any Common Area, street or adjoining Lot will be permitted without written approval from Declarant. All telephone, electrical and other wires of all kinds running from the poles or transmission cables located within the utility easements reserved in this Declaration to any dwelling, building or other structure must be installed underground.

Section 2-11: Parking. Each Property Owner shall provide space for parking a minimum of two (2) automobiles off the street right-of-way prior to the occupancy of any dwelling constructed on said tract in accordance with reasonable standards established by Declarant.

Section 2-12: Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than household pets kept in any one house. Each

person who keeps a pet within a house shall abide by the following restrictions and affirmative obligations: (a) no pets may be kept, bred or maintained on the Property for any commercial purpose; (b) no pet shall be allowed to be kept if the pet causes undue disturbance or annoyance to other Property Owners; (c) no pets may be kept outside of the home at night.

Section 2-13: Unsightly Conditions. Each Property Owner shall prevent and remove the accumulation of litter, trash, or rubbish; prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds, either before, during or after construction; prevent and remove accumulations on his tract which tend to substantially decrease the beauty of the specific tract or the Property as a whole, as determined by Declarant. Each Property Owner shall be required to maintain the property, including mowing, to the margin of the paved hardtop of the road adjoining the property.

Section 2-14: Sound Devices. No exterior speaker, horn, whistle, bell or other sound device, except devices intended for use and used exclusively (and with reasonable regard to neighbors) for safety or security purposes, shall be located, used or placed upon any part of the Property without prior permission from Declarant.

Section 2-15: Offensive Activity. No offensive or noxious activity shall be carried on upon the Property. "Offensive or noxious" activity or behavior shall include but not be limited to a public nuisance per se and shall also include any behavior which is inconsistent with both the reasonable pleasurable use of the Property by Property Owners and their reasonable expectations of vacationing, year-round living, studying, or working free of excessively noisy behavior disrespecting the rights of others, flashing or excessively bright lights, racing or loud vehicles, significantly loud electronic music distractions, or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the Property by others who are not participating in such offensive or noxious activity.

Section 2-16: Subdivision of Property. No tract shall be subdivided other than by Declarant except by means of a written and recorded instrument indicating that such subdivision has been approved by Declarant.

Section 2-17: Prohibition of Motorcycles. No motorcycles or motor-powered bicycles shall be permitted within the Property for recreational purposes; however, licensed motorcycles or motorpowered bicycles may drive on roads within the Property to and from specific tracts only.

Section 2-18: Willful Destruction of Fish and Wildlife. No hunting shall be allowed within the Property. Fishing may be allowed under controlled conditions approved by Declarant.

Section 2-19: Drainage. The Declarant may establish reasonable regulations and restrictions pertaining to drainage and siltation, originating on construction sites and parking lots, porosity of pavement materials used on roadways and parking lots, and similar provisions relating to hydrological factors on the Property.

Section 2-20: Duty to Insure.

- (a) Property Owners. Each Property Owner shall insure his buildings for their replacement value against loss by fire or other hazards, and if Declarant has outstanding deed of trust against said property, then he shall be named also as "loss payee" on insurance policy.
- (b) Repair or Replacement of Damaged or Destroyed Property. In the event of damage or destruction by fire or other casualty to any building, the owner of such building shall within thirty (30) days of the receipt of the insurance proceeds paid pursuant to an insurance policy covering such building but in no event later than six (6) months from the date of such damage or destruction either (i) commence reconstruction of the damaged or destroyed building; or (ii) clear the tract upon which the damaged or destroyed building is located of all debris and reseed the entire tract. In the event: (i) restoration of the building is commenced but is terminated before completion of the building and such termination continues for a period of at least thirty (30) days; or (ii) the tract is not cleared of debris within thirty (30) days after commencement of clearance of the tract; or (iii) restoration or commencement of clearance of the tract does not occur within said three (3) month period, Declarant shall have the right to clear the tract of debris and reseed the tract. The cost of such repairs shall be an expense attributable to the tract collectible in the same manner as any assessment.

In the event a tract shall be cleared and reseeded, then it shall be the obligation of the owner of such tract to continue to maintain the tract.

Section 2-21: Duty of Property Owners to Inform Declarant of Current Address. Each Property Owner shall have the affirmative duty and obligation to inform Declarant in writing of any change of ownership of the Property, the Property Owner's current address, and of any

known failure of the Property Owner to receive any information from the Declarant at the correct address of the Property Owner. No Property Owner may be excused from his obligations established in these Covenants if the Declarant mailed notice of such obligation, assessment, bill, statement, or other notice to the last address of said Property Owner which is recorded on the books of Declarant and for which Declarant has not received the Property Owner's current address or notice of change of ownership from the Property Owner.

Section 2-22: Sanitary Septic System. All homes constructed upon a tract shall be connected to a properly designed, installed and approved sanitary septic system required by the appropriate governmental authorities.

ARTICLE III: RIGHTS RESERVED BY DECLARANT, ITS SUCCESSORS AND ASSIGNS

Section 3-1: Other Rights and Reservations. The omission of any right or reservation in this Article shall not limit any other right or reservation by Declarant which is expressly stated in or implied from any other provision in these Covenants.

Section 3-2: No Affirmative Obligation Unless Stated. Any reservation or right of Declarant which is stated in or implied from these Covenants shall not give rise to any affirmative obligation or duty on the part of Declarant unless expressly stated in these Covenants.

Section 3-3: Utility Easements. Declarant reserves unto itself, its successors and assigns, a perpetual, alienable, and releasable easement over, on, across, and under each tract for the crection, maintenance, installation, and use of electrical and telephone poles, wires, cables, conduits, and other suitable equipment for the conveyance and use of electricity, telephone equipment, or other public conveniences or utilities and Declarant may further cut drainways for surface water wherever and whenever such action may appear to Declarant to be necessary in order to maintain reasonable standards of health, safety, and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by licensee of Declarant to provide or maintain any such utility or service. In exercising the rights of this easement all necessary work shall be located in an area not more than fifteen (15) feet from the property line of each tract. This reservation shall not be considered an obligation of Declarant to provide and maintain any such utility or service.

Section 3-4: Compliance. In the event that any Owner fails to comply with any of the restrictions set forth in this Article or the rules and regulations subsequently promulgated by the Declarant, or its successors or assigns, the Declarant and its successors or assigns, or the authorized agents of Declarant and its successors or assigns, shall have the right, but not the obligation, to enter any Lot or Unit and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Declarant or its successors and assigns or their authorized agents in curing such default shall be charged to the defaulting Owner and shall be payable by such Owner to the Declarant or its successors and assigns immediately upon demand. Declarant, its successors or assigns and their authorized agents shall not be liable for any damage which may result from such entry unless such damage results from the willful misconduct of Declarant, its successors or assigns or their authorized agents.

Section 3-5: Subdivision and Replatting of Property. No tract shall be subdivided, or its boundary line changed, except with the written consent of Declarant. Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat any tract shown on the plat of any said subdivision prior to its sale in order to create a modified building tract or tracts. The Covenants herein shall apply to any of said modified tracts resulting from said subdivision as if the resulting tracts had been originally platted in such manner. No tract shall be used as access to other property not a part of Firethorn, except as approved by Declarant. Declarant, however, retains the right to add additional] property to the development provided such additional property be subject to these Covenants.

ARTICLE IV: MEMBERSHIP, NOTICE, VOTING RIGHTS AND CERTAIN OBLIGATIONS OF MEMBERS OF THE FIRETHORN PROPERTY OWNERS' ASSOCIATION, INC.

Section 4-1: General. Every Property Owner and Declarant shall be a member of the Firethorn Property Owners' Association, a non-profit corporation to be organized and to exist under the laws of the State of North Carolina (hereinafter called the "POA"). The purpose of said non-profit corporation shall be to promote the welfare of the Property Owners and the Property, to enforce these Covenants, to maintain the common properties and roads within Firethorn, to fix, levy and collect payment of charges and assessments, to pay expenses in connection with the POA, and such other purposes as may be set forth in the Articles of Incorporation and By-Laws of the POA. As soon as ten (10) tracts have been sold and conveyed, Declarant may cause the POA to be activated by the issuance of Membership Certificates to the Property Owners. The POA may not be activated prior to the sale and conveyance of ten (10) tracts unless agreed to by Declarant and by a majority vote of the Property Owners. Upon activation as aforesaid, the POA shall then assume management of the affairs of the Association. The POA shall have two classes of voting membership:

Class A: Class A members shall be all owners, with the exception of the Declarant. Each Class A member shall be entitled to one vote for each tract owned within Firethorn.

Class B: Class B member(s) shall be the Declarant, or any successor of the Declarant who takes title to all or part of the Property for the purpose of development and sale and who is designated as a successor declarant in a recorded instrument executed by the Declarant. Class B members shall be entitled to three votes for each tract owned within Firethorn. At such time as the POA becomes active, a meeting shall be called of all Property Owners, the purpose of which shall be the adoption of By-Laws and election of the Board of Directors, all by majority vote of the Property Owners, voting in person or by proxy. Until the POA has become active and assumes the affairs of the Association, Declarant shall manage the affairs and make all decisions.

ARTICLE V: COMMON PROPERTIES

Section 5-1: General. Title to all Common Property within Firethorn shall be held by the Firethorn Property Owners' Association (the "POA"). All Common Property shall be devoted to and intended for the common use and enjoyment of the Property Owners, Declarant, their guests and invitees. Common Property may be deeded to the POA by Declarant as soon as ten (10) tracts have been sold or conveyed, and thereafter as determined by Declarant.

Section 5-2: Extent of Members' Easements in Common Property. Every member of the POA shall have a right and easement of access, use and enjoyment in all Common Property and such easement shall be appurtenant to and shall pass with the title to every tract within the Property; provided, however, that the rights and benefits created hereby shall be subject to the rights and functions of Declarant and the POA as set forth in these Covenants and subject to such Rules and Regulations, as may from time to time be established by Declarant and/or the POA.

ARTICLE VI: ASSESSMENTS AND OTHER CHARGES

Section 6-1: Collection and Use of Assessments and Other Charges. The assessments, fees, charges and liquidated damages described in these Covenants or hereafter established by the Firethorn Property Owners' Association, Inc. (the "POA") shall be collected by Declarant until activation of the POA as herein provided, and thereafter by the POA, and used exclusively for carrying out the functions described in these Covenants and the ByLaws and/or the Rules and Regulations of the POA. The POA shall establish the various types, classes and categories of assessments applicable to the tracts within the Property and the

Board of Directors of the POA shall annually establish a budget and fix the amount of the assessment against each Property Owner and give notice of assessments to every Property Owner subject thereto. Declarant shall not be subject to any assessments set forth herein or hereafter established for any property or tracts owned by Declarant. Until the POA assumes responsibility for the maintenance of the road system within Firethorn, the Declarant shall be shall be responsible for maintaining the road system within Firethorn, and shall use the assessments collected for doing so.

Section 6-2: Standard Assessment. Each Property Owner shall pay a quarterly assessment of Two Hundred Fifty and 00/100 Dollars (\$250.00), per tract owned until such time as Declarant activates the POA as herein provided, after which the POA shall establish the amount or type of the Standard Assessment.

Section 6-3: Time and Method of payment of Assessments. Any assessment year shall run from July 1st to June 30th. For any assessment year, each Property Owner shall pay in advance, either annually or periodically, all quarterly assessments due on said property.

Section 6-4: Effect of Non-Payment of Assessments and Other Charges. The following actions may be taken by the Declarant until activation of the POA as herein provided and thereafter by the POA in the event a Property Owner fails to make payment of any assessments set forth above or other charges and obligations when due:

- (a) Interest on Late Payment. An interest charge at an ANNUAL PERCENTAGE RATE OF EIGHTEEN PERCENT (18%) will be charged on all late payment of assessments.
- (b) Personal Liability. If the assessment or charge is not paid within thirty (30) days after the past due date, the POA may bring an action at law or in equity against the Property Owner personally, and there shall be added to the amount of such assessment the cost of preparing and filing the legal documents in such action, and in the event a judgment order against the Property Owner is obtained, such judgment shall include interest on the assessment as provided in (a) above, reasonable attorney's fees and expenses to be fixed by the court and the costs of the action.
- (c) Execution on Lien. Subject to Section 7-2 relating to subordination of the lien to mortgages and other encumbrances, the POA may execute its lien upon the subject property according to procedures prescribed by the laws of North Carolina.

- (d) Other Rights. In addition to the above, the POA shall reserve the rights it may have under and according to applicable law to attach and execute against any personal assets of a Property Owner in order to receive assessments due.

ARTICLE VII: DURATION, OBLIGATION AND APPURTENANCY OF RIGHTS AND OBLIGATIONS CREATED HEREIN

Section 7-1: Duration. These Covenants shall be in effect, shall run with and bind the land, and shall insure to the benefit of and be enforceable by and against Declarant, the POA, any Property Owner, their respective legal representatives, heirs, successors and assigns for a period of twenty-five (25) years from the date this Declaration is recorded. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of 10-year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional 10-year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty-five (25) year period or during the last year of any subsequent ten (10) year renewal period, seventy-five percent (75%) of the members vote in favor of terminating this Declaration at the end of its then existing term.

Section 7-2: Protection of Mortgagees and Other Encumbrancers. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision or to prevent a violation shall effect, defeat or render invalid or impair the lien of any mortgage, deed of trust or other lien on any property if such lien or deed of trust is taken in good faith and for value and is recorded prior to the time and instrument describing such property and listing the name or names of the owners of fee simple title to the property and giving notice of a claimed violation, breach or failure to comply with the provisions of this Declaration as recorded. Any such violation, breach or failure to comply shall not affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien, nor shall the former owner's violation, breach or failure to comply result in any liability, personal or otherwise, of any mortgage holder or new owner resulting from foreclosure. Any such new owner on foreclosure shall, however, take subject to this Declaration with the exception of the former owner's violations hereof or failures to comply herewith with respect to such new owner, his heirs, personal representatives, successors or assigns; provided, however, that any action of the new owner, after taking title to, or possession of, such property, which constitutes a violation shall cause such new owner to be subject to all assessments, charges,

restraints, restrictions, burdens and obligations under these Covenants.

Section 7-3: Owner's Rights and Obligations Appurtenant. All rights, easements, restrictions and obligations of a Property Owner under this Declaration and all rights of a Property Owner with respect to memberships in the POA under this Declaration are hereby declared to be and shall be appurtenant to the title held by the Property Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the title held by the Property Owner. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of the title held by a Property Owner shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations.

ARTICLE VIII: EFFECT OF COVENANTS AND ENFORCEMENT

Section 8-1: Effect of Provisions of These Covenants. Each Property Owner, his heirs, successors and assigns, and all others who take an interest in land or realty within the Property do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

- (a) shall be considered incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by a Property Owner (i) be deemed accepted, ratified, adopted and declared as a personal covenant of the Property Owner; and (ii) be deemed a personal covenant to, with and for the benefit of Declarant, the POA, and any other Property Owner;
- (c) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running in each case, as both burdens and benefits with and upon the title to each tract of real property within the Property and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within the Property and for the benefit of any and all other real property within the Property; and
- (d) shall be deemed a covenant, obligation and restriction secured by a lien

binding, burdening and encumbering the title to each parcel of real property within the Property which lien, with respect to any respective unit of real property within the Property, shall be deemed a lien in favor of the Declarant and the POA, jointly and severally.

Section 8-2: Who May Enforce. The benefits and burdens of these Covenants run with the land and in equity and Declarant, its successors and assigns, the POA, its successors and assigns, or any Property Owner, his heirs, representatives, administrators, successors and assigns with respect to the Property, shall have the right to proceed against a party to compel compliance with the terms hereof or to prevent the violation or breach in any event.

Section 8-3: Enforcement Remedies. In the event that any residential dwelling or other structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any land use is in violation of these Covenants, Declarant, the POA or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity: (a) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (b) to restrain, correct or abate such violation or breach of these Covenants; (c) to prevent the occupancy of said residential dwelling, structure or land; (d) to prevent any act, conduct, business or use which is in breach of these Covenants; or (e) to compel any affirmative act which, pursuant to these Covenants "shall" be performed. Violators shall be personally obligated for reimbursement in full for all direct and indirect costs or damages resulting from the violation or breach, including but not limited to legal fees and expenses incurred in maintaining compliance with this Declaration, and such obligation shall also constitute a lien upon the property of the violating Property Owner.

ARTICLE IX: INTERPRETATION AND CONSTRUCTION

Section 9-1: Severability. Should any Covenant or restriction herein contained, or any Article, Section, paragraph, sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matter and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Section 9-2: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and

which will preserve the Property as a situs for a high amenity, attractive, well maintained, privately-governed residential resort community.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern, economic land use planning and real estate finance and development principles, theories and practices. It is Declarant's intent, and all Property Owners who take subject to these Covenants to covenant and agree and are thereby estopped to deny, that any function of Declarant or the POA, and any other covenant, condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any subsequently adopted zoning ordinance which allows a less restricted use of the Property.

Section 9-3: Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 9-4: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 9-5: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 9-6: No Implied Liabilities or Duties. Any rules or regulations established pursuant to these Covenants shall not expressly or impliedly create any duty of care to any Property Owner.

IN WITNESS WHEREOF, **Roaring Thunder Partners, LLC**, Declarant, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

ROARTING THUNDER PARTNERS, LLC,

a North Carolina Limited Liability Company

James H. Lester
James H. Lester, Member/Manager

Phyllis C. Lester
Phyllis C. Lester, Member/Manager

James Robert Todd
James Robert Todd, Member/Manager

Joe William Todd
Joe William Todd, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

I, Shannon Taylor, a Notary Public of said County and State, do hereby certify that James H. Lester and Phyllis C. Lester, Member/Managers of Roaring Thunder Partners, LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of and as the act of the LLC.

WITNESS my hand and of official seal this the 12 day of October, 2005.

My commission expires: 2

Shannon Taylor
Notary Public

NOTARIAL SEAL:
STATE OF NORTH CAROLINA

COUNTY OF WATAUGA



I, Shannon Taylor, a Notary Public of said County and State, do hereby certify that James Robert Todd and Joe William Todd, Member/Managers of Roaring Thunder Partners, L.L.C., personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of and as the act of the LLC.

WITNESS my hand and of official seal this the 12 day of October, 2005.

My commission expires: 2-26-09

Shannon Taylor
Notary Public

NOTARIAL SEAL

W:\CORPORATE\ROARING THUNDER\Notary Seal File 10-14-05

