

Ashley Honeycutt

From: Cathy Barr <cathy.barr@ashecountygov.com>
Sent: Tuesday, August 10, 2021 9:54 AM
To: Ashley Honeycutt
Subject: Ashe Industrial Park Update - Commissioner's Meeting

Hi Ashley,

Could you add me to the agenda of the next commissioner's meeting to provide an Industrial Park update?

Thanks,
Cathy

From: Adam Stumb
Sent: Tuesday, August 10, 2021 9:49 AM
To: Cathy Barr <cathy.barr@ashecountygov.com>
Subject: RE: Revised Restrictive Covenants [IWOV-NPRAL1.FID405553]

Will you do an update at the next Commissioners meeting? It might be good to touch on these covenants and also the plans.

Adam

From: Cathy Barr
Sent: Monday, August 9, 2021 3:41 PM
To: 'Pearson, Ernest C.' <EPearson@nexsenpruet.com>
Cc: Adam Stumb <adam.stumb@ashecountygov.com>
Subject: RE: Revised Restrictive Covenants [IWOV-NPRAL1.FID405553]

Hi,

Thanks for sending. I will review and touch base with Adam.

Best,
Cathy

Cathy P. Barr, MBA, NCCED
Director Economic Development
Phone: 336-846-5535
cathy.barr@ashecountygov.com



From: Leahy, Tara L. [<mailto:TLeahy@nexsenpruet.com>] On Behalf Of Pearson, Ernest C.
Sent: Monday, August 9, 2021 3:04 PM
To: Adam Stumb <adam.stumb@ashecountygov.com>; Cathy Barr <cathy.barr@ashecountygov.com>
Cc: Pearson, Ernest C. <EPearson@nexsenpruet.com>
Subject: FW: Revised Restrictive Covenants [IWOV-NPRAL1.FID405553]

⚠ External Email: Do not click links or attachments unless you recognize the sender and know the content is safe.

Attached is a redraft of the restrictive covenants that I sent to you previously. All of the changes are shown in a red lined format for your ease of review. Also, we have attached a clean version with all of these changes saved into the document.

What I have added are:

- All of the additional terms we discussed in our call last week.
- Some miscellaneous provisions at the end of the covenants which I thought should also be included.

My notes from our call indicate that you were going to review the setback provisions in these covenants and compare them with any setback requirements in the West Jefferson zoning ordinances to determine if any changes are needed in the document I prepared for you. Also, you were going to review the restricted uses in Section 2.03 of the attached and make any changes that may be needed.

I think you now have a very good set of restrictive covenants. I will hold off any additional work unless I hear from you.

When this document is finalized and filed, please return a copy of that final document to me. That will round out my file and let me know that it can be moved to our inactive files.

I will wait to hear from you on anything else about this matter. Thank you for allowing me to be of assistance.

Ernest C. Pearson
Member
Nexsen Pruet, LLC
4141 Parklake Avenue, Suite 200
Raleigh, NC 27612
T: 919.755.1800, F: 919.890.4554
EPearson@nexsenpruet.com

www.nexsenpruet.com



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Ashley Honeycutt

From: Cathy Barr <cathy.barr@ashecountygov.com>
Sent: Thursday, August 26, 2021 11:36 AM
To: Ashley Honeycutt
Subject: September 7th - Board Package Inclusions
Attachments: Declaration of Restrictive Covenants_Final.DOC; September - Ashe Industrial Park Economic Development Update.pptx

Hi Ashley,

I have attached the "Declaration of Restrictive Covenants" and an "Ashe Industrial Park Economic Development Update" that needs to be included in the September 7th Board package.

Thank you,
Cathy

Cathy P. Barr, MBA, NCCED
Director Economic Development
Phone: 336-846-5535
cathy.barr@ashecountygov.com



Ashe Industrial Park Economic Development Update September 7, 2021

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Ashe Industrial Park

- ❖ Funding Sources
- ❖ Declaration of Restrictive Covenants
- ❖ Timeline

2

Industrial Park Funding Sources

Grants

- ❖ Industrial Development Fund: \$587,000.00
- ❖ Golden Leaf Foundation: \$500,000.00
- ❖ Appalachian Regional Commission: \$300,000.00
\$1,387,000.00

Loan

- ❖ Blue Ridge Energy Rural Economic Development
Loan/Grant (*0% for 10 Years*) \$1,360,000.00

3

Ashe Industrial Park Restrictive Covenants

- ❖ Industrial Park Guidelines
 - ❑ Outlines Permitted Uses
 - ❑ Outlines Restricted Uses
- ❖ Development Standards
 - ❑ Grading
 - ❑ Storm Drainage
 - ❑ Materials
 - ❑ Utility Connections
 - ❑ Setbacks
- ❖ Standards
 - ❑ Parking
 - ❑ Signs
 - ❑ Landscaping

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Ashe Industrial Park Development Timeline

- ❖ Recently - USDA Bid Package Approved with Revisions
- ❖ In Progress - Obtaining Permits for Road, Water, Sewer, and Erosion Control (*60 Day Approval Process*)
- ❖ November - Bid Package Distributed
- ❖ December - Bids Returned
- ❖ February - Local Government Commission Review
- ❖ Spring - Break Ground

This instrument prepared by,
and mail after recordation to:

**NORTH CAROLINA
ASHE COUNTY**

**DECLARATION OF RESTRICTIVE COVENANTS
FOR ASHE INDUSTRIAL PARK**

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR ASHE INDUSTRIAL PARK (hereinafter referred to as the "Declaration") is made effective the __ day of August, 2021, by Ashe County, a political subdivision of the State of North Carolina (hereinafter "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain parcel of real property described as 41.877 acres off of Ray Taylor Road recorded in Book of Maps 00515, Page 1787 in the Register of Deeds, Ashe County, North Carolina (hereinafter referred to, together with any property added hereto pursuant to Section 2.03 hereof, as the "Property"); and

WHEREAS, Declarant proposes to develop, sell and convey the Property together with any other property subjected by the Declarant to these restrictive covenants, as an industrial and business park; and

WHEREAS, in order (a) to provide for a uniform scheme of development for the Property and the Improvements to be placed thereon; and (b) to provide a method for the enforcement of this Declaration, Declarant desires to subject the Property to this Declaration.

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby declares that the Property is held, and shall be held, transferred, sold, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following conditions, covenants and restrictions, all of which are established to protect and enhance the value, desirability and attractiveness of the Property, and

which shall run with the Property and be binding on all persons having or acquiring any right, title or interest in any part or all of the Property, shall be for the benefit of each person who owns any portion of the Property, and shall inure to the benefit of and be binding upon such persons and their heirs, successors and assigns.

ARTICLE I **DEFINITIONS**

“Ashe Industrial Park” or the **“Property”** means the mixed-use office and industrial development consisting of 41.877 acres, more or less located off of Ray Taylor Road adjacent to and south of 180 Chattyrob Lane, West Jefferson, NC, and as described above.

“County” shall mean Ashe County, North Carolina, a political subdivision of the State of North Carolina.

“Building Site” means any parcel or parcels or a portion thereof conveyed or leased by the County and shown on any plat of the Property approved by the County and recorded in the Office of the Register of Deeds, Ashe County, North Carolina, as modified or amended from time to time.

“Improvements” shall mean any betterments, construction, enhancement, and/or development of any Building Site, or portion thereof, and shall include without limitation all changes in site topography, underground utilities, buildings, outbuildings, parking areas, loading areas, fences, wall hedges, landscaping, mass plantings, poles, signs, monuments, sculptures, driveways, lawns, drives, trees, and shrubs, any structure of any type or kind.

“Office Park” shall mean that portion of the Ashe Industrial Park that may be designated by Declarant as a Planned Office Park (POP) at the time of the filing of these Restrictive Covenants.

“Owner” shall mean any party and its successors, assigns, heirs, and legal representatives, owning a fee simple interest of a Building Site or portion thereof. To the extent that the County meets the criteria for ownership set forth herein, it shall be deemed an Owner in addition to possession of the rights, powers, privileges, obligations, and duties hereby specifically imposed upon are granted to the County as the Declarant. All restrictions and obligations set forth herein are binding on an Owner shall also be binding on Lessees, licensees, and occupants of the Property to the extent appropriate.

“Parcel” shall mean any lot or area, excluding publicly owned greenways and roads, within the Ashe Industrial Park.

ARTICLE II USES

Section 2.01. General. No owner nor any other Person may use any portion of the Property other than in strict accordance with the terms of this Declaration and any violations may be abated or removed from the Property by the Declarant at the expense of the owner upon whose lot the violation occurs, said expense being treated as a Special Assessment which shall become a lien upon the lot.

Section 2.02. Permitted Uses. Owners, after first obtaining the express written consent of Declarant, which consent shall not be unreasonably withheld, may use the lots for industrial and business uses as permitted by Section 508 of the West Jefferson Zoning Ordinance for the zoning category M-1, Industrial District, and any use is also subject to the approval of the Declarant. No lot may be used for any purpose without Declarant's prior written consent. Notwithstanding the foregoing, the prior written consent of Declarant shall not be required for any use commencing after December 31, 2040.

Section 2.03. Restricted Uses.

(a) Specifically Prohibited Uses. In addition to uses prohibited by applicable zoning requirements, the following operations and uses shall not be permitted on any portion of the Property: (1) trailer courts/mobile homes; (2) junk yards; (3) commercial excavation of building or construction materials; (4) distillation of bones (except in connection with a research use approved by the Declarant); (5) dumping, disposal, incineration, rendering or reduction of garbage, sewerage, offal, dead animals, or refuse (except in connection with a research use approved by the Declarant or the normal course of business of otherwise permitted uses); (6) fat rendering; (7) stockyard or slaughter of animals; (8) refining of petroleum or of its products; (9) smelting of iron, tin, zinc or other ores; (10) cemeteries (public and private); (11) commercial poultry, livestock and swine production; (12) cattle feeder lots or fur bearing animal rearing or breeding facilities; (13) storage or processing of scrap metal, glass, paper or rags (except in connection with the normal course of business or otherwise permitted uses); (14) storage or processing of wrecked or junked motor vehicles and/or their parts; (15) quarries; (16) sanitary landfills or garbage disposal areas; (17) nuclear and hazardous waste handling, storage or processing (except in connection with a research use approved by the Declarant); (18) massage parlors, adult video, book, or novelty stores, adult entertainment, topless nightclubs or similar business operations; (19) any noxious, offensive or illegal activity or any nuisance; (20) temporary structures, except as otherwise approved by the Declarant; (21) mining or drilling for and/or removal of minerals, oil, gas, rock/gravel, or other hydrocarbon substances; (22) communications, microwave relay, cellular telephone or any other tower or structure, except when used in connection with a permitted use, (23) boat and trailer works and sales; (24) building materials storage and sales yard; (25) feed and seed stores, hatcheries, and fertilizer sales; (26) food stores, fruit stands, and produce markets; (27) landscaping and horticultural supplies and equipment sales and service; (28) monument works and sales; (29) outdoor recreation uses (e.g. miniature golf, go carts, amusement rides, riding stables) (30) plumbing, heating and refrigeration service shops and businesses; (31) propane gas storage and sales facilities; (32) public works and utilities facilities; (33) automobile service stations or truck stops; (34) private recreation clubs; (35) church facilities; (36) mixed use facilities for both business and residential uses; (37)

recreation parks and spaces; (38) mini-warehouses/self-storage facilities; (39) food truck storage or service facilities; (40) saw mills or planing mills; (41) building contractor offices and facilities; (42) major manufacture and sales facilities for pottery, ceramic and figurines; or (43) cabinet and furniture repair and refurbishment shops.

(b) This section will not be read to require the Declarant or the Town of West Jefferson to permit a use which is illegal or unauthorized under Federal, State, or local law, rules, ordinances, or regulations.

Section 2.04. Declarant Uses. Declarant hereby reserves the right to conduct construction activities related to its development of the Property, its administrative activities and its marketing program for the Property from any location within the Property (other than a lot owned by a person other than the Declarant), whether from permanent or temporary facilities.

ARTICLE III

DEVELOPMENT STANDARDS

Section 3.01. General. A relatively wide variety of architectural designs and materials shall be allowed. The general design context must reflect a high-quality corporate image. There should be a basic harmony of architecture within the industrial park to ensure that no Improvement detracts from the appearance of the overall development. Building plans must be prepared and submitted for approval by the Declarant and/or the Architectural Review Board, if such Board is established by the Declarant.

Section 3.02. Approval of Plans and Specifications. No Improvements shall be constructed, erected, placed, altered, maintained, or permitted on any Building Site until plans and specifications have been approved by the Declarant and/or the Architectural Review Board, if such Board is established by the Declarant.

Before beginning construction on a Building Site including site grading, a pre-construction meeting must be conducted. The meeting must include the Declarant or its representative, the Owner or Owner's representative, and the contractor, including the site-grading Contractor.

Declarant shall have the right to control construction traffic during construction as well as access to a Building Site.

After the beginning of construction on a Building Site, the Owner shall diligently prosecute the work so that the Improvements do not remain in a partially finished condition within three (3) years from the date of the Owner's acquisition of the Building Site. But provided however that this three (3) year period may be extended based on unusual or unforeseen circumstances that delayed construction, in the sole discretion of the Declarant and/or Architectural Review Board, if such Board is established by the Declarant. During construction, the Owner must keep the Building Site reasonably neat and orderly, preventing the accumulation of trash and preventing runoff of surface water from the Building Site onto adjacent property or roads. The Owner must implement plans subject to Declarant's approval to contain all sediment, including washed, windblown, and gravity,

within the boundaries of the Building Site and ensure that areas of the Building Site exposed longer than (30) days will be grassed.

Section 3.03. Grading. No grading shall be made on any Building Site except in connection with the construction of Improvements. Upon completion of the Improvements, cut slopes and fill slopes should have rounded edges, and the surface should be varied and modulated to emulate the existing terrain, so blending of the slope into its natural surroundings minimizes an artificial look. Tree plantings and other landscaping should be used to further obscure the visual impact of the slope.

Section 3.04. Storm Drainage. Storm drainage will be handled on a site-by-site basis. Each Owner shall provide detail of the proposed storm drainage system to the Declarant and/or the Architectural Review Board, if such Board is established by the Declarant, for approval. Each Site must have a comprehensive storm drainage and storm water management plan. These plans and specifications must be compliant with the Town of West Jefferson's ordinance for Storm Water Management Improvements as outlined in Article XII Section 1207(B)(4) with the exception that the plan shall also include the provision to limit the post-development peak rate of runoff for the 25-year 24-hour storm to that of the pre-development peak rate of runoff for the 25-year 24-hour storm. This provision is not intended to alleviate or alter any other storm water protection requirements as outlined in the Town of West Jefferson code of ordinance or any other applicable requirements of the North Carolina Department of Environmental Quality.

Section 3.05. Materials. The exterior walls of all buildings shall be of a material, design, and color as may be approved in writing by the Declarant and/or Architectural Review Board, if such Board is established by the Declarant. Exterior walls may be of metal or faced (e.g., stuccoed) concrete masonry unit only if the side(s) of the building seen when entering the parcel or from Ray Taylor Road are faced with stone, brick, concrete (reinforced, pre-cast, poured in place, or tilt-up), equivalent masonry construction, glass, Exterior Insulation Finish System (EIFS), vinyl or a combination of thereof. Otherwise, the exterior construction of buildings within the Property shall be stone, brick, architectural block, glass, EIFS, vinyl, or a combination of these materials.

Section 3.06. All Materials, Etc. to be Consistent. On each Building Site, colors, materials, finishes, and building forms for all buildings shall be coordinated consistently on all elevations, facades, and sides.

Section 3.07. Equipment. All roof-mounted stationary equipment, roof structures, and the like must be screened. The size, height, and design of such screening must be sufficient to keep all such items from being viewed from Ray Taylor Road or any publicly maintained roadway.

Transformers or similar above-ground equipment, dumpsters, recycling equipment, and containers, compactors, bailers, and other waste management equipment and waste containers shall be located on grade at the rear of the building whenever possible, or if not possible, screened by attractive fencing.

Section 3.08. Roofs. All roofing surfaces on a particular parcel must be of a consistent design and material of the rest of the building.

Section 3.09. Outdoor Storage. Accumulation of excessive unusable equipment, material for recycling, raw materials, damaged finished materials and products, and any other materials, substances, machinery, and parts will not be permitted.

Outdoor storage shall be screened from parking areas, primary roads, and the entrance of neighboring buildings. Screening must be made of durable materials used on the building façade or a dense planting of vegetation that blocks views year-round.

Section 3.10. Maintenance. Each Owner, tenant, or occupant of any parcel must maintain the buildings, grounds, and Improvements in a safe, neat, clean, and maintained condition and shall comply in all respects with all governmental statutes, ordinances, regulations, health codes, and police and fire requirements. Rubbish, trash, garbage, or other waste must be kept only in sanitary containers. Rubbish and trash may not be disposed of on the premises by burning. Owners or tenants shall remove rubbish or trash which may accumulate on their parcel at their own expense.

Section 3.11. Loading Areas. Loading and receiving areas shall not be permitted in the front yard (defined as the land area between the principal street or roadway on the Property and the building or buildings on a Building Site) of any Building Site; provided, the Declarant in its sole discretion may waive this restriction based upon unusual needs or requirements of the Owner of a Building Site. In all events landscaped visual barriers shall be erected so as to screen loading and receiving areas from all streets and roads.

Section 3.12. Utility Connections. All utility connections including all electrical and telephone connections and installation of wires to Improvements shall be made underground from the nearest available power or utility source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole or hung on the outside of any building or other Improvement, but the same shall be placed at or below ground level, and when placed at ground level, shall be adequately screened. All such installations shall be subject to the prior written approval of the Declarant. Notwithstanding the foregoing portions of this section overhead electrical connections shall be permitted during the construction period Improvements.

Section 3.13. Fences. No fence, wall, hedge or mass planting shall be erected, installed, or permitted to remain without prior written approval of the Declarant.

Section 3.14. Setbacks. All Improvements to Building Sites shall be in compliance with the following setback requirements:

- a. Improvements shall be at least fifty (50) feet from the front boundary line of a Building Site or the street right of way, whichever is greater.
- b. Improvements shall be at least twenty (20) feet from the side boundary lines of a Building Site, but provided however that if a Building Site is a corner lot

the side boundary line of the Building Site facing a street shall be at a setback distance as defined in Section 3.14.a. above.

- c. Improvements shall be at least twenty (20) feet from the rear boundary line of a Building Site.

ARTICLE IV **PARKING STANDARDS**

Section 4.01. General. There shall not be parking on any road or any place other than on the paved parking spaces provided.

No parking will be allowed within dedicated easement areas.

All parking areas and drives shall be paved with a hard surface (asphalt or concrete).

All parking areas located between the building and a public road shall be suitably landscaped with landscaping treatments, which may include a ground cover.

Each Owner shall provide adequate off-road parking for employees, tenants, occupants, customers, and visitors. The location, number, and size of parking spaces shall be subject to review and approval by the County and/or Architectural Review Board and shall comply with any applicable building and zoning laws, ordinances, and regulations.

ARTICLE V **SIGN STANDARDS**

Section 5.01. General. Consistent business signage throughout the Park is needed for ease of wayfinding and visual continuity. Only signs for building identification and wayfinding should be permitted. Signs should complement the colors and materials of the building architecture and have a good relationship with the surrounding landscaping. Signs should also visually relate to the signage vocabulary established with the entrance monument signs for the Park.

Guidelines

- a. Low monument signs are recommended.
- b. One wall-mounted sign is allowed.
- c. No pole-mounted signs shall be permitted.
- d. Neon and flashing signs are prohibited.

ARTICLE VI

LANDSCAPING STANDARDS

Section 6.01. General. The Park is intended to have a park-like setting with a strong emphasis on the landscaped environment. This emphasis will provide an overall visual continuity throughout the Park. During the individual parcel development stage, the Owner must give careful consideration to surrounding site components such as Site context, open space, views, vistas, and the protection of existing vegetation.

All steep banks or slopes shall be maintained with suitable grasses, trees, and shrubs to prevent erosion, exposure of dirt and clay, and an unsightly appearance. The grass used to control erosion on a steep bank or slope should be maintained not to exceed a height of twelve (12") inches.

The use of plant species that are native to Ashe County is encouraged. All planted grasses, trees, shrubs, or other plantings shall consistently be maintained in a neat, orderly, and health condition. All plantings and grass shall be kept free of weeds and debris and shall be adequately fertilized and maintained. A maintenance program must be established and approved by the County and/or Architectural Review Board.

ARTICLE VII EXTERIOR LIGHTING

Section 7.01. General. All exterior lighting of any nature on any Building Site shall be designed, erected, altered, and maintained by plans and specifications approved by the Declarant and/or Architectural Review Board, if such Board is established by Declarant.

Section 7.02. Building and Sign Illumination. Exterior lighting on all Building Sites shall be limited to signs and security and safety illumination of driveways, parking lots, walks, building entrances, loading and service areas, and exterior lighting of overall building services.

ARTICLE VIII ENVIRONMENTAL PROTECTION

Section 8.01. General. All owners, tenants, and occupants shall use and manage their parcel and conduct their operations in a manner that ensures continuous compliance with all applicable and governing local, state, and federal environmental laws, ordinances, regulations, rules, policies, and procedures.

ARTICLE IX AMENITIES

Section 9.01. Greenways. All areas designated as greenways on the recorded subdivision plat of the Park shall be owned and maintained by the County. It is intended that these areas be

provided for the use and benefit of Park Owners, occupants, and tenants, and the general public. Uses to be permitted in the greenways shall be determined and regulated by the Declarant and/or the Architectural Review board, if such board is established by the Declarant.

Section 9.02. Conservation Easements. Property within conservation easements as designated on the recorded subdivision plat of the Park shall convey or be leased to Park Owners, occupants, and tenants. The easements will be reserved and their terms and conditions shall be enforced by the County. Uses and Improvements within conservation easements shall be restricted to the installation and maintenance of utilities.

ARTICLE X **ASSESSMENTS**

Section 10.01. Specific Assessments. The Declarant may levy specific assessments against individual owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of any monument, landscaping, or other thing maintained by the Declarant, which is occasioned by the acts of individual owners(s) and not the result of ordinary wear and tear; (ii) for the payment of fines, penalties or other charges imposed against an individual owner relative to such owner's failure to comply with the terms and provisions of this Declaration, or any rules or regulations promulgated hereunder; (iii) for the payment of fines, penalties or other charges imposed against the Declarant because of an act or omission of any owner; or (iv) for payment of any costs incurred by the Declarant pursuant to Sections 2.01. The act or omission of any relative, guest, tenant or agent of an owner is deemed to be the act or omission of the owner and may serve as the basis for a specific assessment against the owner. Failure of the Declarant to exercise its authority under this section shall not be grounds for any action against the Declarant and shall not constitute a waiver of the Declarant's right to exercise its authority under this section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this section, the Declarant shall send written notice of the amount and due date of such specific assessment to the affected owner or owners at least thirty (30) days prior to the date such specific assessment is due.

Section 10.02. Other Easements and Rights of Way. The building sites are subject to such rights of way and easements as are set forth on the Plat of the Property for purposes of ingress and egress, drainage, utilities, common use, construction, and related purposes. All such rights of way and easements may be utilized for the purposes expressed on the Plat and, in addition thereto, shall include the right of the Declarant to use such rights of way for reasonable purposes not inconsistent with the intended purposes as set forth on the Plat including, but not limited to, telephone communication lines within the roadway and sewer and water easements, construction of water and sewer lines within the areas reserved for ingress and egress, and similar mixed use of rights of way and easements. The Declarant shall have the unrestricted and sole right and power to alienate, convey, or release any such easements and rights of way. Any and all roadways, utility lines, and the rights of way and easements pertaining thereto may be dedicated to an appropriate governmental authority.

Section 10.03. Expenses of Property Used in Common. Owners shall defray the total expenses of the Declarant for the construction, operation, maintenance, repairs, replacements and services for the above described Easements, Rights of Way, and Property Used in Common and all improvements thereto, including but not limited to, landscape maintenance, lighting, road resurfacing, trash removal, cleaning, insurance premiums, expenses of security guards or attendants, if any, and real property taxes.

Section 10.04. Assessments. Each Owner's share of the aforesaid expenses shall be a sum equal to the product of the amount of such total expenses multiplied by a fraction, the numerator of which shall be the acreage of the Owner's Building Site, and the denominator of which shall be the total acreage of all Building Sites as shown the plat of the Property, as amended or modified from time to time. Each Owner will be assessed its respective share of the aforesaid expenses not more frequently than quarterly, and payment of such as assessments shall be due within thirty (30) days after receipt of a bill therefore at the Building Site. Assessments not paid, when due, shall constitute a lien against the Building Site to which the assessment pertains from and after the due date of such assessment, and may be collected by the Declarant together with all costs of collection, from the nonpaying Owner by appropriate legal action.

ARTICLE XI

AMENDMENTS AND ENFORCEMENT

Section 11.01. Amendments. At any time prior to the first conveyance of a portion of the Property to a person other than the Declarant, this Declaration may be amended unilaterally by Declarant, provided that modification of Section 1.02 or deletion of any restrictions in Section 1.03 must be consistent with the Zoning Ordinances for the Town of West Jefferson. After Declarant conveys to other Owners 67% or more of the Property, this Declaration may be amended only by approval of Declarant, and a majority of the Owners of 67% or more of the Property. If any proposed amendment to this Declaration is approved, the Declarant shall execute an Addendum to this Declaration which shall set forth the amendment and the effective date of the amendment. Such Addendum shall be recorded in the Ashe County Registry prior to the effective date of the amendment.

Section 11.02. Correction of Errors. During the existence of this Declaration, the Declarant shall have full right, power and authority to correct errors in this Declaration which the Declarant determines in its reasonable discretion to be of a clerical or other non-substantive nature. Such corrections shall not be deemed an amendment hereto for purposes of the voting requirements of this Article II but shall, upon being made by Declarant, become binding on all owners from the date of the recording of the amendment in the Registry.

Section 11.03. Enforcement. This Declaration may be enforced by Declarant, its successors and assigns, and a majority in interest of any Owners in conjunction with the Declarant, any Owner, by proceedings at law or in equity against any person or entity violating or attempting to violate any provision contained herein, either to restrain the violation thereof, force compliance herewith, or to

recover damages together with reasonable attorneys fees and court costs. Every violation of any provision of this Declaration shall be deemed to constitute a nuisance, and every remedy allowed by law for abatement of a nuisance may be exercised by the foregoing parties against the owner of the lot on which such violation occurs and/or against the person violating or attempting to violate any provision of this Declaration.

Section 11.04. Abatement. In the event any owner violates any of the provisions of this Declaration and fails to cure the same within thirty (30) days after the Declarant gives written notice thereof, then the Declarant, in addition to the other rights and remedies provided for herein, shall have the express right, privilege and license to enter upon such owner's property to take any reasonable action to cure such violation. All reasonable costs thereof, including attorney fees, shall be at the expense of the owner of such lot.

Section 11.05. Failure to Enforce Not a Waiver of Rights. Any waiver or failure to enforce any provision of this Declaration in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the Property. The failure of Declarant or any owner to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision hereof.

Section 11.06. Right to Repurchase. If, after the expiration of one (1) year from the date of execution of the sale agreement for any Building Site within the Property, any Owner shall not have begun in good faith, the construction of acceptable and approved Improvements upon said Building Site, and diligently continue and complete the construction of such Improvements, in compliance and in all respects with the provisions hereof, the Declarant may at its option, require the Owner to re-convey to Declarant the Building Site, free and clear from all liens and encumbrances except this Declaration; and at such time, Declarant shall refund to the Owner the original purchase price, and enter into possession of said Building Site.

Section 11.07. Attorney's Fees. In any legal or equitable proceeding for the enforcement of this Declaration or any provision hereof, the Owner against whom a final order is issued shall pay the reasonable attorney's fees of the Declarant and/or the prevailing Owner or Owners in such amounts as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive of any other remedies.

Section 11.08. Assignment of Declarant's Rights and Duties. The rights, powers, privileges, obligations and duties hereby specifically granted to or imposed upon the Declarant (as opposed to those rights, powers, privileges, obligations and duties hereby granted to or imposed upon Owners) may be transferred to any successor or assignee of the Declarant which succeeds to the Declarant's interest in the Easements, Rights of Way, and Property Used in Common. The Declarant shall have the absolute right to make such a transfer, without any obligation to seek or obtain consent or approval of such a transfer from any Owner or Owners. Provided, however, that any such successor or assignee of the Declarant shall also either be an Owner of at least fifteen percent (15%) of the acreage of all Building Sites, or be an Owner's association comprised of the Owners of Building Sites (which owner's association shall be organized and governed according to rules, regulations, by-laws and procedures established by a majority vote of Owners, with each Owner having votes in an

amount equal to the Building Site acreage owned by such Owner). Provided further, that any such successor or assignee of the Declarant shall, in writing, in recordable form, expressly assume the obligations and duties of the Declarant hereunder. From and after the date of such written assumption, the Declarant shall be released and excused from further liability hereunder and from the exercise of all rights, powers, privileges, obligations and duties hereby granted to or imposed upon the Declarant (but not, however, those rights, powers, privileges, obligations and duties granted to or imposed hereby upon the Declarant as an Owner of any Building Site), and the successor or assignee of the Declarant shall possess and may exercise all rights, power and privileges (and shall be subject to all duties and obligations) formerly specifically granted to or imposed upon the Declarant. At such time as the Declarant owns less than fifteen percent (15%) or the acreage of all Building Sites, the Declarant shall assign, transfer and convey to an owners association all of the Declarant's title and interest in and to the Easements, Rights of Way, and Property used in Common; provided, however, the Declarant may, in its discretion assign, transfer and convey any portion of the property used in common to any governmental body having jurisdiction, or to an eleemosynary organization which will own, operate and maintain such property in accordance with this Declaration.

ARTICLE XII

Miscellaneous Provisions

Section 12.01. Constructive Notice and Acceptance. Every entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to and assumed every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such entity acquired an interest in the Property.

Section 12.02. Mutuality, Reciprocity, Runs with the Land. All restrictions, conditions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of the Property; shall create a mutual, equitable servitude upon each Building Site in favor of every other Building Site; shall create reciprocal rights and obligations between the respective Owners of all Building Sites; and shall, as to the Owner of each Site, its heirs, successors and assigns, operate as covenants running with the land, for the benefit of the rest of the Property.

Section 12.03. Inurement. This instrument shall bind and inure to the benefit of the Declarant and all Owners, and their respective successors, assigns, heirs and legal representatives.

Section 12.04. Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

Section 12.05. Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

Section 12.06. Notice. Any and all notices or other communications required or permitted by this Declaration or by law to be served on or given to any party subject to the terms and provisions hereof, shall be in writing and shall be deemed duly served and given when personally delivered to the person to whom it is addressed or in lieu of such personal delivery, when deposited in the United States mail, first class, certified or registered mail, postage prepaid.

Section 12.07. Approval of Declarant. In any section of this instrument where approval of the Declarant must be given, such approval must be in writing and signed by Declarant before it is effective and binding.

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed in its company name by its duly authorized Managers, and its seal to be hereunto affixed, the day and year first above written.

(SEAL)

ASHE COUNTY, NORTH CAROLINA

By: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

This _____ day of _____, 20____, personally came before me, _____, Notary Public for _____ County, North Carolina, _____, who, being by me duly sworn, says that he is _____ of Ashe County, N.C., and that the seal affixed to the foregoing instrument in writing is the official seal of said County, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said _____ acknowledged the said writing to be the act and deed of said County.

Witness my hand and official seal, this the _____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____