

NORTH CAROLINA
COUNTY OF WATAUGA

(Deed 750/831, Watauga County)
DECLARATION OF RESTRICTIONS
FOR MYRIA FOREST SUBDIVISION

WHEREAS, Stephen M. Lambert, hereinafter referred to as "Declarant," is the owner, with the exception of Lots 1 and 2, of all of the real property as shown by the map or plat (the "Plat") recorded in Plat Book, 16 at Page 251 as filed in the Office of the Register of Deeds of Watauga County, to which Plat reference is hereby made for a more particular description, said map or plat containing those certain lots or tracts of land know as Myria Forest Subdivision (the "Subdivision") located in Watauga County, North Carolina; and William N. Barber and wife, Terry J. Barber, as the owners of Lot 1, and Kenneth M. Fairbanks and wife, Jane M. Fairbanks, as the owners of Lot 2, and hereinafter collectively referred to jointly with Declarant as "Owners", are all of the other owners of Lots within the Subdivision; and

WHEREAS, it is the desire of the Owners as all of the owners of this property to place and impose upon this property, as described above, mutually beneficial restrictions under a general plan or scheme of improvements for the benefit of all of the lands in the tract and all future owners of those lands, and it being the Owners' desire that these Restrictions run with and be a part of and apply to each and every lot or parcel of land in the Subdivision,

NOW, THEREFORE, in consideration of the above stated premises, the Owner, for themselves, their heirs and assigns, do hereby declare, that all of the property described above is held and shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, conditions, and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of the lands and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the lands and every part thereof. All of the limitations, restrictions, conditions, and covenants shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the above-referenced lands or any part, lot or parcel thereof.

1. All lots, and any dwellings located thereon, shall be used for single-family, residential purposes only, and no duplexes or apartment houses shall be constructed or placed on any lot. A smaller guest cottage or carriage house, used for guest or domestic servant's quarters, if separate from the main dwelling, may be permitted, if appropriate in Declarant's discretion, but must be constructed of the same or compatible materials as specified for the dwelling and must not be rented separately from, or occupied prior to, the main dwelling.
2. All single-family dwellings hereafter constructed on any lot shall have at least 1,600 square feet of heated floor space, exclusive of any and all basements, garages, balconies, and porches, and no single family dwelling shall be erected with less than the 1,600 square feet of said heated floor space. (The existing residence on Lot 2, which predated the filing of these restrictions, is exempt from this provision and is grandfathered as to the architectural approval for the existing dwelling, but not as to any future additions or alterations.)
3. All of said dwellings shall be of permanent construction (stick-built, approved modular, approved panelized or other approved construction) faced with stone, log, or wood siding. All of said dwellings shall have the exposed exterior surfaces stained, painted, or faced with stucco or stone (natural or cultured); and neither asbestos nor artificial or actual brick siding shall be used upon any of said exterior surfaces. Vinyl soffits and vinyl-clad windows may be allowed at the discretion of the Declarant, if in keeping with the overall aesthetic design for the improvements. Any and all masonry retaining walls shall either have their exterior exposed surfaces faced with stucco or stone (natural or

cultured) and be reinforced with cement, or else have other appropriate facing and certified structural engineering satisfactory to Declarant.

4. No lot or dwelling shall be used for business or commercial purposes, except that a non-retail office may be maintained within the dwelling so long as there is no external sign for, or other evidence of, the business activity.
5. No animals or fowl, except for household pets (dogs, cats, fish or birds only), shall be kept or allowed to remain on said property for any purpose, nor shall any of said household pets of any description that prove to be a nuisance or an annoyance to the community be allowed to remain on any said lot.
6. 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. Except where restricted to a greater degree by Declarant in the individual deeds to Property Owners, or unless waived through variances from both the Watauga County Planning Board and Declarant (or the POA as its successor) as a part of the site plan approval process, no building shall be located within forty (40) feet from the centerline of any private street right-of-way, forty-five (45) feet from the centerline of any State-maintained road, or fifteen (15) feet from any other adjoining property line.
7. No driveway, home, building, or other structures shall be constructed, erected, placed, or altered on any lot until the proposed building plans, specifications, exterior color or finish, plat 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 and assigns. Upon written request by the Property owner 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, if separate from the main dwelling, 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 unfettered discretion of the Declarant, shall seem sufficient. No alterations in the exterior appearance of any building or structure shall be made without like approval by the Declarant. One copy of all plans and related data shall be furnished to the Declarant for its records.
8. No large trees measuring twelve (12) inches or more in diameter at two feet (2') above ground level may be removed without the written approval of 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 lot until the owner shall be ready to begin construction, following submission of building plans and approval of the same.
9. No dwelling shall be left unfinished for a period in excess of six (6) months without the written permission of the Declarant. All residential construction, including site preparation, shall be finished within one (1) year from its inception. No basement or partially completed building shall be used as a residence for dwelling purposes, either permanently or temporarily.

10. No house trailer or mobile home of any description shall be placed on any lot, nor shall any tent, shack, garage, barn or other outbuilding, or temporary structure, not conforming to the specifications stated herein, be placed, constructed or erected on any lot.
11. None of said buildings shall exceed two stories in height above a one-story basement.
12. No outside toilets shall be placed, erected, or constructed on any lot except for temporary facilities during the construction of the residence, which facilities shall be removed immediately upon completion of the residence.
13. No commercial signs, including "For Rent," "For Sale," and other similar signs shall be erected or maintained on any lot without the written permission of Declarant or except as may be required by legal proceedings, it being understood that Declarant will not grant permission for said signs unless their erection is reasonably necessary to avert serious hardship to the Property Owner. Property identification and like signs exceeding a combined total of more than three (3) square feet may not be erected without the written permission of the Declarant.
14. All sewage from the residence erected on any lot shall be disposed of in a septic tank of a size, location, and standard approved by the North Carolina Board of Health and/or other appropriate governmental authority, or through an established sewage disposal and treatment service.
15. All fuel tanks shall be buried or otherwise hidden front sight and no unsightly or storage facilities may be exposed to view. All garbage and trash cans must be placed in enclosed areas so that they are not exposed to view.
16. While lots may be maintained in a natural state, no unsightly weeds, underbrush, refuse piles, or unsightly growths shall be permitted to grow or remain upon the premises. In the event that the residence owners of any lot or lots fail or refuse to keep the premises free of unsightly weeds, underbrush refuse piles, or unsightly growths, then the Declarant, their successors and assigns, may enter upon said lot or lots and remove such refuse or mow or cut such weeds, underbrush, or unsightly growths and charge the owner of said lot or lots for the work performed. In the event a Property Owner elects to have a garden plot, the garden plot shall be properly maintained and kept free of any underbrush, weeds, or obstructions which would tend to substantially decrease the beauty of either the neighborhood as a whole or the specific garden area. The rights of Declarant to enter upon a lot or lots to remove unsightly weeds, underbrush, or unsightly growth shall specifically apply to garden plots.
17. No junked or non-roadworthy vehicles shall be parked or allowed to remain on any lot. Each Property Owner shall provide adequate space for parking a minimum of two (2) automobiles off the street right-of-way prior to occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Owner. No off-road motorcycles, all terrain vehicles, or other non-registered vehicles shall be used on subdivision roadways or within any Lot or parked overnight except in enclosed garages. Recreational vehicles (RV's) belonging to guests of any Owners, may be parked overnight within the interior of Lots for a maximum of seven (7) days, and thereafter only in approved enclosed garages, and all mowers, tractors, boats, landscaping equipment, and other tools or equipment shall likewise be stored in approved garages, sheds, or enclosed basements. Declarant, or the POA as Declarant's successor in interest, shall have the right to establish, post, and enforce appropriate speed limits and other traffic regulations for the subdivision roadways.
18. No television antenna, satellite dish, radio receiver or transmitter or other similar device for receipt or transmission of infrared, microwave, television or electromagnetic signals may be erected on the

Property, or the exterior portion of any structure located on any lot. Provided, that Property Owner shall be entitled to erect a satellite dish not to exceed eighteen (18) inches in diameter, provided that Declarant shall approve the location of said satellite dish. Any exceptions will be at the discretion of the Declarant.

Any facility with mechanical or other equipment that creates unreasonable noise, odors, glare, vibrations or electrical disturbances beyond the property lines of the owner of such facility is prohibited.

19. Duty to Insure

- (a) Property Owner. Each Property Owner shall insure his buildings for their replacement value against loss by fire or other hazards.
- (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 ninety (90) 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 six (6) 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 and shall become an immediately due and payable special assessment against the tract collectible in the same manner as any other 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.

- 20. Unless approved in writing by Declarant in advance, no roadways, except for a private driveway leading to the residence, shall be constructed upon any lot, and, except as provided on the recorded plat for the Subdivision, no private driveway, whether leading to the residence or not, can provide for the access to any other adjoining property located outside, the property of the Myria Forest Subdivision.
- 21. No tract or lot 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. Declarant hereby expressly reserves to itself, its successors and assigns, the right to replat any tract or lot shown on the plat of any said subdivision prior to the 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.
- 22. Declarant reserves unto himself, his successors and assigns, a perpetual, alienable and releasable easement over, upon, across and under each lot for the erection, maintenance, installation and use of electrical and telephone poles, wires, cable conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, and other public conveyances or utilities, and the Declarant may further cut drainways for surface water wherever and whenever such action may appear to the Declarant to be necessary or desirable in order to maintain reasonable standards of health, safety, and appearances. These easements expressly include the right to cut any trees, bushes, or shrubbery, make gradings of the soil, or to take any other similar action reasonably necessary to accomplish any of the aforesaid. In exercising the

easement and rights reserved herein, no water, sewer, or power lines shall be located in an area more than ten (10) feet from a property line, All telephone, electric, cable television, or other wires of all kinds must be installed by the Property Owner from the poles or the transmission cables located within the utility easement reserved herein, to any building, dwelling, or other use connection. All utility lines must be installed underground.

23. It shall be the obligation of the Property Owner to provide, install, and maintain an adequate culvert and drainage pipe beneath his or her driveway as it crosses the ditch line at the back, front, or side of his or her lot so that the natural flow of drainage will not at anytime be blocked. The culvert or drainage pipe must be of sufficient size to accommodate the flow of surface water in the ditch and in no instance shall the drainage pipe be less than twelve (12) inches in diameter. No Property Owner shall interfere with or divert the natural flow of drainage of any creek, stream, or river. Provided, however, that Declarant reserves the right to approve construction and installation of pond sites in such cases as Declarant in his sole discretion may deem appropriate.
24. Every Property Owner and the Declarant shall be a member of the Myria Forest Property Owners Association (the "POA"), an unincorporated Association or Non-Profit Corporation to be organized and to exist under the laws of the State of North Carolina (hereinafter called the "POA"). The Purposes of the POA shall be: (a) to promote the welfare of the Property Owner and the Property; (b) to enforce these Covenants; (c) to maintain the common amenities (including any pathway(s) that may be designated by Declarant to allow access by members and their invitees to the Boone Fork Creek) and roads within Myria Forest Subdivision; (d) to fix, levy and collect payment of charges and assessments; (e) to pay legal, clerical, accounting, and other reasonable expenses in connection with the POA.; and (f) for such other purposes as may be set forth in the Articles of Incorporation if applicable, and By-Law of the POA. As soon as fifty percent (50%) of the lots in the subdivision have been conveyed by Declarant, Declarant shall cause the POA to be activated and shall issue membership certificates to property owners. Upon activation as aforesaid, the POA shall then assume management of the above-referenced affairs of the Subdivision. There shall be one membership for each tract owned in the development. At such time as the POA becomes active, a meeting shall be called of all property owners, the purpose of which shall be to adopt a set of By-Laws and elect a Board of Directors, all by majority vote of the property owners, voting in person or by proxy. One of the Board of Directors' responsibilities shall be to formulate an annual budget, to include the amount of the proposed annual assessment, for consideration, amendment or approval by the majority vote of those Property Owners constituting a quorum under the POA By-Laws and attending, in person or by proxy, the annual meeting of the POA. Declarant shall manage all such affairs and shall wield all decision-making authority until the POA has become active and assumes responsibility for the affairs of the Subdivision.
25. Declarant and the POA (upon its formation) shall have the power to levy and collect annual assessments and special assessments which shall be used for the following purposes:
 - (a) To maintain (including snow removal) and repair all roads constructed within the property to the standard of such roads at the time of their completion, to maintain all landscaping adjacent to such roads in a manner consistent with the overall appearance of the development, to maintain and repair any and all street lights installed along such roads, and to construct, repair, and maintain any entrance signs for the subdivision or any traffic control signs along Subdivision roadways;
 - (b) To provide such security services as may be deemed by Declarant and/or for the POA to be reasonably necessary for the protection of the property owners;

- (c) To pay all ad valorem taxes which may be levied against any common areas and any property owned by the POA;
- (d) To pay premiums on all hazard insurance carried by the owner of the common areas and all public liability insurance carried by the POA;
- (e) To pay for postage and other clerical expenses; and
- (f) To pay all legal, accounting, and other professional fees incurred by the POA and/or Declarant in carrying out the duties as set forth herein or in the By-Laws of the Association.

The owner of each platted lot hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay the annual assessments and such amounts necessary to pay for the services set forth in this paragraph (and its subsections) and charges and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, cost, and reasonable attorney's fees, shall be a charge and a continuing lien upon the lot against which such assessment charges are made. Each such assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to a Property Owner's successors in title unless expressly assumed by them. Annual assessments shall be fixed at a uniform rate for all lots accessed via the private subdivision road system and at forty percent (40%) of said uniform rate, reflective of the pro rata costs of the POA unrelated to maintenance of the private roadways, for all lots accessed directly from the public road. On or before August 1, 2003, or upon the sale of at least eight (8) lots within the Subdivision, whichever shall last occur, Declarant shall pave with asphalt Myria Road and Myria Road Extension, as said roads are shown on the Plat of the Subdivision, with the cost of such paving to be borne as a development expense by Declarant and not by the lot owners from the proceeds of lots sold. Thereafter, the costs of any future re-paving, if the basis for any special assessment, shall be payable solely by the owners of those lots accessed via the private subdivision roads as shown on the Plat of the Subdivision. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association or Declarant may bring an action at law against the delinquent lot owner or foreclose the lien against the lot by a special proceeding in like-manner to a mortgage foreclosure under power of sale. All interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by not using any Subdivision roadway or by abandoning his or her lot.

- 26. Until the POA assumes managerial responsibility for maintaining the subdivision roadways and amenities, the initial standard assessment, which each property owner shall pay to Declarant, shall be in the amount of \$200.00 per lot for those lots accessed by use of the subdivision road system, which assessments shall be used to pay for the services provided for in paragraph 25 above, and a lesser appropriate amount in Declarant's discretion for those lots accessed directly from the public road. Provided, that Declarant shall be entitled to increase said annual assessment(s) as reasonably necessary in an amount not to exceed ten percent (10%) per year.
- 27. In the event of a violation or breach of any of these Restrictive Covenants or any part thereof by any Property Owner, or agent of such owner, the owners of the remaining lots, either jointly or severally, shall have the right to proceed at law or in equity to compel the compliance of the breaching lot owner or to prevent the violation or breach of the terms contained herein. In addition to the aforesaid, the Declarant, his successors and assigns, shall have the right to enter upon any lot where any violation

of any of the terms and conditions contained herein exist and summarily abate or remove said violation at the expense of the Property Owner, if after thirty (30) day's written notice from the Declarant, his successors and assigns, to the Property Owner, said Property Owner has not corrected said violation. Any such entry and abatement or removal shall be privileged and shall not constitute a trespass. The failure to enforce any of the terms and conditions contained herein, regardless of how long the violation has continued, shall not be deemed a waiver of the right to enforce said terms and conditions thereafter and shall not act as a bar to the enforcement of any and all said terms and conditions.

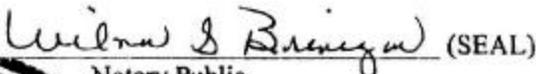
- 28. The invalidity of any of said terms, conditions and restrictions contained herein by any Court shall not affect the enforceability of the remaining terms, conditions, and restrictions and said remaining terms, conditions, and restrictions shall have full force and effect, it being the intent of the parties hereto to have the invalid term, condition, or restriction be severable from the remaining terms, conditions, and restrictions without affecting their validity or enforceability.
- 29. The covenants, restrictions and servitudes set forth herein shall run with the land. All owners affected by these restrictions, by accepting a deed to any portion of the property described herein, accepts the same subject to such covenants, restrictions, and servitudes, and agrees for himself, his heirs, successors and assigns, to be bound by each of said covenants, restrictions, and servitudes jointly, separately and severally, these covenants shall be in effect until August 1, 2022, and shall be automatically extended for successive periods of ten (10) years each unless the owners of not less than sixty-six percent (66%) of the lots agree to terminate or modify the same in writing, signed and recorded in Watauga County, North Carolina, Public Registry at anytime prior to the expiration of said term or any succeeding ten (10) year term.

IN WITNESS WHEREOF, the Owners have hereunto set their hands and seals, this the 28th day of August, 2002.

 (SEAL)
Stephen M. Lambert

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, Wilma S. Brinegar, a Notary Public of said County and State, do hereby certify that STEPHEN M. LAMBERT personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official seal this the 28 day of August, 2002.

My Commission Expires: 03-02-07
 (SEAL)
Notary Public

