

STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS, CONDITIONS  
REGISTERED AND RESTRICTIONS

COUNTY OF BUNCOMBE

'97 MAY 22 P2:53

Phase One, ViewPointe

THIS DECLARATION made on the 22<sup>d</sup> day of May, 1997 by AMERICAN LIFESTYLE COMMUNITIES, INC., a North Carolina corporation, of Buncombe County, North Carolina, hereinafter referred to as DECLARANT.

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property located in the City of Asheville, Buncombe County, North Carolina, which is more particularly described in a deed recorded in the Buncombe County Registry of Deeds recorded in Deed Book 1910, at Page 98; and

WHEREAS, Declarant intends to develop all or part of said property into a community known as ViewPointe and will conduct such development in separate phases; and

WHEREAS, Declarant has recorded a plat for Phase One of ViewPointe in the Buncombe County Registry of Deeds in Plat Book 66, at Page 143-144; and

WHEREAS, Declarant desires to create on such property a planned community for residential homes and will convey all lots subject to these protective covenants, conditions, and restrictions so as to provide for the preservation and enhancement of the property values of the community and for the maintenance of the property and improvements thereon; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the value and amenities to ViewPointe to create an association to which should be delegated and assigned the powers of owning, and administering the common properties and facilities and administering and enforcing the covenants and restrictions and the collecting and disbursing the assessments and charges hereinafter created and promoting the general welfare of the residents;

NOW, THEREFORE, Declarant does hereby declare all of Phase One of ViewPointe as shown on said plat to be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which shall run with the real property, shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof, and shall enure to the benefit of each owner thereof.

Prepared by and return to:  
Stephen L. Barden, III  
20 N. Spruce Street  
Asheville, N.C. 28801

ARTICLE I

DEFINITIONS

SECTION 1. ASSOCIATION shall mean and refer to ViewPointe Homeowners Association, Inc., a North Carolina non-profit corporation.

SECTION 2. OWNER shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of this or subsequent phases of ViewPointe, but excluding those having such interests merely as security for the performance of an obligation.

SECTION 3. PROPERTY shall mean and refer to that certain real property shown and described in the recorded plat referred to above, also known as ViewPointe.

SECTION 4. COMMON AREA shall mean all real property for the common use and enjoyment of Lot Owners and shown on the recorded plat referred to above.

SECTION 5. LOT shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the property, with the exception of the Common Areas.

SECTION 6. DECLARANT shall mean and refer to American Lifestyle Communities, Inc., and its successors and assigns.

SECTION 7. DWELLING UNIT shall mean and refer to a building situated upon a lot and intended for use and occupancy as a residence.

SECTION 8. MEMBER shall mean and refer to any person or entity who holds membership with voting rights in the Association, which membership shall be derived from ownership of any lot within the Property.

ARTICLE II

COMMON AREA OWNERSHIP AND MAINTENANCE

SECTION 1. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have the right of ingress to and egress from the Common Area, together with the right of enjoyment in and to the Common Area, which rights shall be appurtenant to and shall pass with the title to every Lot.

SECTION 2. DELEGATION OF USE. Any Owner may delegate his rights of enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the Lot, or his guests. A Lot Owner who has delegated rights to the Common Area to his tenant shall not in addition to his tenant have rights to the Common Area.

SECTION 3. RULES AND REGULATIONS. The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Common Area on behalf of the Association and available to the members for inspection during normal business hours, or at the designated office of the Association, if there is no property manager.

SECTION 4. LEASING COMMON AREA FACILITIES. Subject to the ordinances of the City of Asheville, the Board shall have the power to lease the use of any recreational facility for functions or special events, and may charge reasonable admission or other fees for such use.

SECTION 5. OPERATING COMMON AREA FACILITIES. The Board of Directors of the Association shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the facilities or the peace and tranquility of adjoining residents with regard to the recreational facilities located on the Common Area.

SECTION 6. DECLARANT'S CONVEYANCE OF TITLE TO COMMON AREA. At such time as it deems appropriate but not later than at such time that 85 percent (85%) of the lots of all phases of ViewPointe have been sold, Declarant shall convey fee simple title to the Common Area to the Association. The Association shall accept the conveyance of all such Common Area pursuant to this section.

SECTION 7. MORTGAGING COMMON AREA. The Association shall have the power to borrow money for the purpose of improving the Common Area, and pursuant thereto, to subject the Common Area or any portion thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same approval of the membership which is required for special assessments for capital improvements.

ARTICLE III

LAND USE

SECTION 1. RESTRICTIONS. All Dwelling Units or Lots and the Common Area shall be subject to both the restrictions herein.

SECTION 2. RESIDENTIAL USE. All lots shall be used for, improved for, and devoted exclusively to residential use.

SECTION 3. COMMON AREA CONSTRUCTION or ALTERATION. No alteration or construction of the external area of any improvements on any lot or in or upon any portion of the Common Area shall be undertaken or allowed except at the direction of and with the express written consent of the Association.

SECTION 4. OFFENSIVE OR ANNOYING ACTIVITY OR NUISANCE. No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within the Property. In the use of the Property, all applicable governmental regulations shall be observed.

SECTION 5. FENCES, MAILBOXES AND ANTENNAS. The Association may regulate or prohibit the erection of antennas, ham radio towers, fences (chainlink, stockade-type or otherwise) on any lot. All mailboxes on the property shall be of a standard size and style to be determined by the Association. No satellite dishes larger than 19 inches in diameter shall be allowed. No outside clothes lines are permitted.

SECTION 6. ANIMALS. Only dogs (a maximum of two), cats, (maximum of two), birds, and fish and such other animals as approved by the Association may be kept and maintained in the dwelling unit. When outside, all pets must be a leash, shall not be left unattended, and shall not become a nuisance. Pet owners are responsible for cleaning up their pet's solid waste.

SECTION 7. PARKING. No parking of unlicensed, uninspected or inoperable vehicles shall be allowed on the property. No overnight parking of any motor vehicles shall be allowed on streets within the Property. Campers and boats may be parked in driveways within twenty-four hours before and after such time they are used. Residents of dwelling units may wash motor vehicles in their driveways. In addition, no one shall store or keep a trailbike, motorcycle, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the Property, except one pick-up truck and one or more operational automobiles and except as provided in the rules and regulations enacted by the Association.

SECTION 8. MOTOR VEHICLES. All motor vehicles shall be maintained in proper operating condition and in a condition so as not to be a nuisance by noise, exhaust emissions or otherwise.

SECTION 9. TRASH RECEPTACLES. Storage, collection and disposal of trash shall be in compliance with rules set by the Association.

SECTION 10. SIGNS. No signs of any kind shall be displayed in public view on any lot.

SECTION 11. TRADE OR BUSINESS. No trade or business shall be carried on upon any lot or tract, but this restriction shall not prohibit a home occupation which does not cause any noxious or offensive activity and which does not significantly increase traffic within the property.

SECTION 12. RENTALS. No dwelling unit shall be rented for a period of less than twelve (12) months. Any owner who rents a dwelling unit has an affirmative obligation to immediately report such rental, the period of the rental and the names of the tenants to the Association. A copy of any lease shall also be provided to the Association.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

SECTION 2. The Association shall have two (2) classes of voting membership:

A. Class A: Class A members shall be all owners, with the exception of Declarant, who shall be entitled to one (1) vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members; the vote for such lot shall be exercised as the owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. If multiple owners owning any lot are unable to agree on their vote, their vote shall not be counted.

B. Class B: The Class B member shall be Declarant and Declarant shall be entitled to three (3) votes for each lot Declarant owns within Phase One of ViewPointe. The Class B membership shall cease and be converted to Class A membership upon the happening of the following events, whichever occurs first:

- (1) When the total votes outstanding in the Class A membership equal the total votes outstanding the Class B membership; or
- (2) January 1, 2003.

ARTICLE V

ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The Declarant, for each Lot owned, hereby covenants, and every other Owner of any Lot subject to this Declaration, by acceptance of a deed therefor, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association:

(a) Annual assessments or charges, as determined by the Board of Directors of the Association (hereinafter referred to as the Board);

(b) Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Lot together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in North Carolina General Statutes Sec. 6-21.2) incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot.

SECTION 2. PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used for the following purposes:

(a) for the promotion of the recreation and welfare of the residents of the Property;

(b) for the payment of ad valorem taxes and public assessments levied on the Common Area, if any;

(c) for the maintenance and operation of any utility systems owned by the Association;

(d) for the maintenance of private streets, roads, walkways, fences, and retaining walls within the Property, as well as all signs and lighting located thereon and adjacent thereto;

(e) for the maintenance of the Common Area and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Common Area, including the clubhouse and furnishings therein;

(f) for the exterior maintenance of all improvements on each lot within the Property, including painting, repairing, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces or locks. In the event that the need for maintenance or repair of a lot or improvements thereon is caused by the wilful or negligent acts of the owner of any lot or through the wilful or negligent act of any family member, guest, or invitees of the owner of any lot needing such maintenance or repair, the cost of such exterior maintenance shall be added and become part of the assessment to which such lot is subject. The Association, in its sole discretion, determines what maintenance is required;

(g) for landscape and yard work maintenance, including mowing of grass for all property within the Property;

(h) for snow removal regarding all streets and sidewalks within the Property;

(i) for maintenance of the controlled-access gate; provided, that it is understood that such gate is not to be construed as any representation or guaranty of security to residents of the Property;

(j) for the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws and the regulations of the Federal National Mortgage Association, such liability insurance to insure the Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Association requires;

(k) for garbage removal;

(l) for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Association when necessary;

(m) to maintain a reasonable reserve for the foregoing purposes.

SECTION 3. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of Class A and Class B members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

SECTION 4. ANNUAL ASSESSMENTS. Annual assessments shall be fixed by the Board of Directors of the Association. At least thirty (30) days in advance of each annual assessment, the Board of Directors of the Association shall fix the amount of the annual assessment against each lot and send written notice of such assessment to every owner subject thereto. The due dates of such assessments shall be established by the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Board. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due. Assessments shall begin as to any lot owner a purchase of the lot from Declarant the month following closing. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating forth whether the assessment for a specified lot have been paid.

SECTION 5. UNIFORM RATE OF ASSESSMENTS. Both annual and special assessments must be fixed at a uniform rate for all lots.

SECTION 6. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within sixty (60) days of the due date, the assessment shall bear interest from the date of delinquency at the rate of 18%. Additionally, a late fee of Twenty-five and no/100ths (\$25.00) shall be assessed after ten (10) days from the due date of any assessment. The Board may, at its sole discretion, waive the imposition of interest to any delinquent assessment. The Association may bring an action in law against the owner personally obligated to pay the assessment and interest or foreclose the lien created therein in the same manner as described by the laws of the State of North Carolina for foreclosure of deeds of trust. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area,

or abandonment of his dwelling unit or lot. In the event that an action at law results in a judgment being entered against the owner of any lot and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed property manager.

SECTION 7. ANNUAL BUDGET. By majority vote of the Directors, the Board shall adopt an annual budget for the each year of operation which shall provide for the allocation of expenses in such a manner that the obligations imposed by this declaration and any and all amendments hereto shall be met.

SECTION 8. OMISSION OF ASSESSMENTS. The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any owner from the obligations to pay any assessments.

SECTION 9. SUBORDINATION OF LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to any mortgage which is a first lien on a lot within ViewPointe. Sale or transfer of any lot shall not affect the assessment line. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a property owner. Declarant or Association shall notify by registered mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an owner prior to taking any action against such owner which would affect the mortgagee.

#### ARTICLE VI

##### INSURANCE

All owners of lots on which dwelling units are located are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost thereof. In the event of damage to or destruction of any dwelling unit which would be covered by a standard fire and extended coverage insurance policy, the owner of such dwelling unit shall have the affirmative responsibility of reconstructing or repairing it notwithstanding the provisions of Section 2(f) of Article V, regardless of whether such owner has such a standard fire and extended coverage insurance policy. In the event of the owner's failure to repair or

reconstruct such dwelling unit, the Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the assessment against the lot upon which said dwelling unit is located, and collect such assessments pursuant to the provisions of Article V.

ARTICLE VII

EASEMENTS

SECTION 1. EASEMENTS ESTABLISHED. All lots and common areas within the Property shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television and electric power lines and ingress and egress and for other purposes as shall be established by the Association.

SECTION 2. ENCROACHMENTS AND DECLARANT'S EASEMENT TO CORRECT DRAINAGE. All dwelling Units or Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a phase, the Declarant reserves a blanket easement on, over and under the ground within that phase to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance, expressly including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant. Nothing in this section shall be deemed to impose an obligation upon Declarant to maintain and correct drainage and surface water conditions.

SECTION 3. EASEMENTS TO CITY OF ASHEVILLE AND BUNCOMBE COUNTY. A perpetual easement is hereby established for municipal, state or public or private utilities serving the area, their agents and employees over all Common Area hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and

welfare, including, without limitation, police and fire protection.

SECTION 4. EASEMENT FOR CONSTRUCTION PURPOSES.

Declarant shall have full rights of ingress and egress to and through, over and about the Common Areas in the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the property originally purchased by Declarant in Deed recorded in Deed Book 1910, at Page 98. Declarant shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No owner, his guests or invitees shall in any way interfere or hamper Declarant, its employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Declarant or its contractors or subcontractors, so far as practical, not interfere with the quiet enjoyment of lots within the Property.

SECTION 5. CAROLINA POWER AND LIGHT CONTRACT.

The Declarant reserves the right to subject the Property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Association.

ARTICLE VIII

PARTY WALLS

SECTION 1. GENERAL RULES OF LAW TO APPLY.

Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply therein.

SECTION 2. SHARING OF REPAIR AND MAINTENANCE.

The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of dwelling units adjoining such party wall.

SECTION 3. DESTRUCTION BY FIRE OR OTHER CASUALTY.

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall equally contribute to the cost of restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 4. WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 5. RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

SECTION 6. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX

STAGED DEVELOPMENTS

Additional land owned by Declarant and described in Deed Book 1910, at Page 98, Buncombe County Registry, may be annexed by the Declarant without the consent of members within ViewPointe Subdivision and such subsequent development shall be part of the greater ViewPointe Subdivision and shall become a part of and subject to a Declaration of covenants, conditions, and restrictions substantially similar to those provided herein.

ARTICLE X

OBLIGATIONS TO MORTGAGEES

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include deeds of Trust or other security instruments) encumbering any lots located within the Property:

(a) Declarant or Association shall be obligated to notify the holder of any first mortgage on a lot, upon request of such holder, of any default by the lot owner and the performance of any of such owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;

(b) First mortgagees of lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any of the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Area;

(c) No provision herein shall be construed to give a lot owner or any other party priority over any rights of first mortgagees of lots in ViewPointe pursuant to their mortgages in the case of a distribution to lot owners of insurance proceeds or condemnation awards for losses to or a taking of, common area property.

ARTICLE XI

AGE RESTRICTIONS

SECTION 1. MAXIMUM AGE. It is required that each and every lot within ViewPointe Subdivision shall be occupied by at least one person fifty-five (55) years of age or older.

SECTION 2. FACILITIES AND SERVICES. The Association shall provide those facilities and services for all such persons fifty-five (55) years or older occupying property within ViewPointe Subdivision as are required by all applicable local, State and Federal law.

SECTION 3. RESTRICTION ON CHILDREN. Pursuant to the Association's desire to promote an environment best suited for active adults, the occupancy of children is restricted to those descendants of residents of the Property over the age of eighteen (18) years of age. The occupancy of children or grandchildren of residents of the property under the age of 18 is allowed for a period up to thirty (30) consecutive days not to exceed ninety (90) days total per calendar year.

ARTICLE XII

GENERAL PROVISIONS

SECTION 1. DURATION. The covenants and restrictions contained in this Declaration shall run with and bind the properties which are made subject hereto for a period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, after which time, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless nullified by amendment passed pursuant to the following Section.

SECTION 2. AMENDMENT. This Declaration may be amended at any time by an instrument executed by the holders of seventy-five (75%) per cent of the votes described in Article IV hereof. The Declarant may amend this Declaration at any time to correct any obvious error or inconsistency in drafting, typing, or reproduction without action or consent of the members of the Association and such amendment shall be certified as an official act of the Board of Directors of the Association and recorded in the Office of the Register of Deeds for Buncombe County, North

Carolina.

SECTION 3. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

SECTION 4. CONSTRUCTION. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, Declarant has set its hand and seal this 22 day of May, 1997.

AMERICAN LIFESTYLE COMMUNITIES, INC.

BY: [Signature]  
President

[Signature]  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Dwain Alexander personally came before me this 22 day and acknowledged that (s)he is Secretary of AMERICAN LIFESTYLE COMMUNITIES, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with a corporate seal and attested by [Signature] as its Secretary.

Witness my hand and official stamp or seal, this 22 day of May, 1997.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
6.22.2001

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Stephen L. Barden, III

a notary or Notaries public of the State and County designated is hereby certified to be correct.

Filed for registration on this the 22nd day of May, 1997 at 2:53 P. M.

[Signature]  
OTTO W. DeBRUHL  
Register of Deeds, Buncombe County

[Signature]  
By: Asst./Deputy/Register of Deeds