

DECLARATION OF CONDOMINIUM

FOR

THE LODGE AT BLUE MOUNTAIN, A CONDOMINIUM

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NORTH CAROLINA
YANCEY COUNTY

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THIS DECLARATION is made this 25 day of JULY, 1994, by NORTH CAROLINA PROPERTIES, INC., a North Carolina corporation, hereinafter referred to as "Declarant", who makes the following declarations.

1. INTRODUCTION AND SUBMISSION

1.1 Submission Statement.

Declarant hereby submits to the condominium form of ownership and use the land described in Exhibit A hereof, the improvements now and hereafter situated thereon, and the easements and rights appurtenant thereto (the "Condominium Property"), pursuant to Chapter 47C, General Statutes of North Carolina, 1989, as amended to the date hereof (the "Condominium Act").

1.2 Name.

The name by which this condominium is to be identified is THE LODGE AT BLUE MOUNTAIN, A CONDOMINIUM, sometimes herein called the "Condominium."

1.3 The Land.

The land submitted to Condominium is situated in Yancey County, North Carolina, and is described in Exhibit "A" attached hereto and made a part hereof, and consists of a parcel of real property (the "Land") upon which are situated residential improvements ("Condominium Buildings") and Common Elements which are submitted hereby to condominium ownership excluding therefrom all portions of the Land and pipes, lines or conduits installed thereupon reserved by Declarant for itself, its successors or assigns for the installation of utilities and/or cable television. A survey and site plan of the Land with improvements depicted thereon is set forth in that certain plat recorded contemporaneously herewith in the public registry of Yancey County, North Carolina in Condominium Book 1, pages 28 - 31 ("Plat").

2. DEFINITIONS

2.1 "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner.

2.2 "Association" or "Condominium Association" means THE LODGE AT BLUE MOUNTAIN CONDOMINIUM ASSOCIATION, INC., a North Carolina not for profit corporation, organized under N.C. G. S. 47-C-2-107 the entity responsible for the operation of the Condominium.

2.3 "Board" or "Board of Directors" means the Board of Directors of the Association appointed or elected pursuant to the Articles and Bylaws thereof, designated to act on behalf of the Association.

2.4 "Building" means the structure or structures situate on the Condominium Property in which the Units are located, regardless of the number thereof.

2.5 "Bylaws" mean the Bylaws of the Association.

2.6 "Common Element" means all portions of the Condominium other than Units, as more fully described in Section 3.4.

2.7 "Common Expenses" mean all expenditures made by or financial liabilities of the Association, together with all allocations for reserves.

2.8 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Condominium, including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.

2.9 "Condominium Parcel" means a Unit together with the undivided share in the Common Elements or a designated portion of the Common Elements which are appurtenant to said Unit; and when the context permits, the term includes all other appurtenances to the Unit.

2.10 "Condominium Property" means the Land and personal property that are subjected to condominium ownership under this Declaration, all Improvements on the Land, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

2.11 "County" means the County of Yancey, State of North Carolina.

2.12 "Declaration" or "Declaration of Condominium" means this instrument, as it may be amended from time to time and any instruments which create a condominium.

2.13 "Improvements" mean all structures and artificial changes to the natural environment (exclusive of landscaping) located on the Condominium Property.

2.14 "Limited Common Elements" means those Common Elements the use of which are reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. Reference herein to Common Elements shall include also all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.

2.15 "Mortgagee" or "Institutional Mortgagee" means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), the Administrator of the Veterans Administration or Federal Housing Administration and other similar insurers and guarantors of mortgages or deeds of trust, or any other lender generally recognized as an institutional-type lender, or the Declarant, holding deeds of trust on a Unit or Units, or on the Land in connection with the construction or development of the Land.

2.16 "Special Assessment" means any Assessment levied against Unit Owners other than an Assessment required by the budget adopted annually.

2.17 "Unit" means a physical portion of the Condominium Property which designated for separate ownership or occupancy, the boundaries of which are described herein and in the Plat.

2.18 "Unit Owner" or "Owner of a Unit" or "Owner" means the record owner of a Condominium Parcel.

3. DESCRIPTION OF CONDOMINIUM PROPERTY

3.1 Number and Identification of Units.

The Plat of the Condominium, which is recorded contemporaneously herewith includes a graphic description of the Improvements comprising part of the Condominium Property. The Improvements consist of twelve (12) Units each separately identified by unit numbers in one (1) two-story building. Each "Unit" is identified (as defined in the Condominium Act and herein) by number.

Contemporaneously with the recording of this Declaration, the Plat in the public registry of Yancey County, North Carolina, there shall be attached hereto a certificate of completion executed by a architect or engineer certifying that all structural components and mechanical systems of all Buildings containing or comprising any Units are substantially completed in accordance with plans.

3.2 Other Improvements.

In addition to the Condominium Buildings situated thereon, the Land also includes improvements, consisting of, but not limited to driveways, walks, entrance areas, landscaping, and all underground structures and improvements which are not part of or located within the Building, and which are not elsewhere herein reserved to and/or retained by Declarant, such as wires, cables, drains, pipes, ducts, conduits, valves and fittings and the Common Elements more fully described in Section E3.4.

3.3 Units.

The term "Units" as used herein, shall mean and comprise the twelve (12) condominium Units which are located and individually described the Plat.

Each Unit shall include that part of the Building containing such Unit that lies within the following boundaries:

(a) Upper and lower boundaries.

The upper and lower boundaries of a Unit shall be the boundary of the horizontal plane of the unfinished ceiling surface extended to an intersection with the perimetrical boundaries as the upper boundary and the boundary of the horizontal plane of the unfinished surface of the floor extended to an intersection with the perimetrical boundary as the lower boundary.

(b) Perimetrical Boundary.

The perimetrical boundary of each Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries:

(i) Exterior Building Walls:

The intersecting vertical planes adjacent to and which include the unfinished surface of the interior of the outside walls of the Condominium Building bounding a Unit.

(ii) Interior Building Walls:

The vertical planes of the interior unfinished surface of the walls bounding a Unit (excluding interior partitions within Units) extended to intersections with other perimetrical boundaries.

(c) Specifications.

(i) All lath, furring, wallboard, plasterboard plaster, paneling, sills, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit; and all other portions of such walls, floors or ceilings are a part of the Common Elements.

(ii) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated exclusively to that Unit and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

(iii) Subject to the provisions of subsection (ii) all spaces, interior partitions and other fixtures and improvements within the boundaries of the Unit are a part of the Unit.

(d) Apertures.

Any shutters, awnings, window boxes, doorsteps, stoops, decks, patios, and all exterior doors and windows or other fixtures designated to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit.

(e) Mechanical Equipment.

All air conditioning compressors, water heaters, heat pumps and other mechanical equipment serving only one Unit shall be deemed to be Limited Common Elements.

3.4 Common Elements.

The term "Common Elements", as used herein, shall mean and comprise all of the real property and improvements of the Condominium, except Units, including, without limitation: (a) easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services, heating and cooling and/or ventilation to Units and Common Elements; and (b) easements of support in every portion of a Unit which contribute to the support of other Units and/or Common Elements; and (c) installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation; provided that the ownership is not elsewhere reserved by the Declarant or its designee and (d) the property and installations in connection therewith required for the furnishing of services to more than one Unit or to the Common Elements; and (e) fixtures owned or held for the common use, benefit and enjoyment of all owners of Units in the Condominium; (f) easements for ingress and egress over the Condominium Property for ingress and egress to the Units; (g) all open areas contained within the Land; (h) all driveways, walks, entrance areas and landscaping located on the Land; and (i) all other improvements owned or held for common use, benefit and enjoyment of all Unit Owners.

3.5 Limited Common Elements.

"Limited Common Elements," as the term is used herein, shall mean and comprise the Common Elements which are reserved herein, or assigned, or granted separately herefrom, for the use of a certain Unit or Units to the exclusion of other Units, consisting of those improvements described in Section 3.3, 3.3(d) and the two porches which are accessible only from the Unit;

A Limited Common Element may be reallocated by an amendment to the Declaration executed by all Owners between or among those Units the reallocation is made. The Owners executing the amendment shall provide a copy thereof to the Association, which shall record it.

4. APPURTENANCES TO UNITS

There shall be appurtenant, and pass with title, to each Unit, the rights, shares, and interests provided by the Condominium Act which shall be deemed to include, without limitation, the following:

4.1 Use of Common Elements.

(a) An undivided share in the Common Elements and in the Common Surplus. The undivided share in the Common Elements and the Common Surplus of the Condominium appurtenant to each Unit is that proportion of the total set forth, as a fraction, in the schedule which is annexed hereto and made a part hereof as Exhibit "A".

(b) The right to use exclusively, or in common with certain other Units where so specified, those portions of the Common Elements designated and/or reserved herein and/or granted elsewhere to a certain Unit or Units as Limited Common Elements; and

(c) A Common Element, not previously allocated as a Limited Common Element, may not be so allocated except by unanimous consent. All such allocations shall be made by amendments to the Declaration.

(d) The Common Elements are not subject to partition. Any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an individual interest in the Common Elements, made without the Unit to which they are appurtenant is void.

4.2 Easements.

(a) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time (as shown on the Plat) and as it may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is permanently vacated from time to time; and

(b) Non-exclusive easements, to be used and enjoyed in common with the owners of all Units in the Condominium, their guests, invitees, and lessces, for use of those Common Elements not designated elsewhere herein as Limited Common Elements, including, without limitation, easements for:

(i) The furnishing and maintenance of private or public utility services to all parts of the Condominium over, across, in and through the Land, the Condominium Building and other improvements, as the fixtures and equipment therefor now exist and/or may be modified or relocated; and

(ii) Vehicular and pedestrian access over, across, upon, in and through the drives, sidewalks, entries, gates, walks, grounds, and other portions, if any, of the Common Elements as are intended and/or provided for pedestrian and vehicular traffic through the Condominium and for access to the public access.

(c) An exclusive easement for the encroachment by any Unit upon any other Unit or Common Element, or vice versa, for any reason, including, without limitation, encroachments caused by or resulting from the original construction of improvements, which exclusive easement shall exist at all times during the continuance of such encroachment, as an easement appurtenant to the encroaching Unit or other improvement, to the extent of such encroachment; and

(d) An exclusive easement for the use of the area of Land and air space occupied by the appurtenant mechanical equipment, e.g. air conditioning compressor, heat pump, air handler and the equipment and fixtures appurtenant thereto, situated in and/or on Common Elements of the Condominium but exclusively serving a particular Unit, as the same exist in and on the Land, which exclusive easement shall be terminated automatically in any air space which is permanently vacated by such air conditioning compressor, heat pump, air handler and the equipment and fixtures appurtenant thereto, provided, that the removal of the same for repair and/or replacement shall not be construed to be a permanent vacation of the air space which it occupies.

(e) The foregoing easements shall not prohibit or limit the Association's right to grant permits, licenses or easements over the Common Elements for utilities, roads and other purposes necessary for the proper operation of the Condominium.

4.3 Membership.

The right to membership in the Association with full voting rights appertaining thereto upon the terms and conditions set forth elsewhere herein.

5. THE ASSOCIATION

5.1 Name of Association.

The entity responsible for the operation of the Condominium shall be THE LODGE AT BLUE MOUNTAIN CONDOMINIUM ASSOCIATION, INC., a North Carolina not for profit corporation (the "Association"), a copy of the Articles of Incorporation is attached hereto and made a part hereof as Exhibit "B." Subject to the rights reserved to Declarant herein, and in the Condominium Act to administer and manage the Condominium Property, the Association shall administer and manage the Condominium Property; provided, that the Association may, to the extent permitted by the Condominium Act, by contract, delegate its maintenance, management and operational duties and obligations to a management agent.

5.2 By-laws of Association.

A copy of the Bylaws of the Association is attached hereto and made a part hereof as Exhibit "C".

5.3 Voting Rights of Unit Owners.

The Unit Owner(s) shall become a member or members of the Association automatically upon and simultaneously with delivery of a deed of conveyance of fee title thereto from Declarant or, in a conveyance by a grantee or a remote grantee of Declarant. There shall be appurtenant and pass with title to each Unit, one vote as a member of the Association, which may be exercised by the Unit Owner(s), or the duly constituted proxy of the Unit Owner(s), from time to time, at all meetings of members and in connection with all matters upon which all members of the Association are entitled to vote. The qualification of members of and manner of admission to membership in the Association, the termination of such membership and voting by members shall be as provided for in the Articles of Incorporation and Bylaws of the Association.

5.4 Owner and Mortgagee Inspection of Documents.

The Association shall have current copies of this Declaration, Articles, Bylaws and rules and regulations as well as its books, records and financial statements available for inspection by Owners or Mortgagees, which documents shall be available during normal business hours or other reasonable circumstances and may be copied by Owners or Mortgagees at their expense.

5.5 Merger or Consolidation of Condominium Associations.