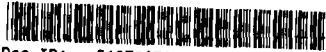


Workflow No. 1971841 **BB**



Doc ID: 016738760009 Type: CRP
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Fee Amt: \$38.00 Page 1 of 9
Workflow# 1971841
Buncombe County, NC
Otto W. DeBruhl Register of Deeds

BK **4136** PG **203-211**

Prepared by and Return to: Cogburn, Goosmann, Brazil & Rose, P.A. (Box 81) **(TAN)**

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**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF VANCE GAP FOREST**

This Declaration of Covenants, Conditions and Restrictions for Vance Gap Forest, made and entered into this 2nd day of ~~November~~ 2005, by and between Peter M. Brower, individually and Peter M. Brower as Trustee of the Peter M. Brower Profit Sharing Plan dated January 1, 1974 and amended January 1, 1989, (collectively the "Developer") and Prospective Purchasers of Lots in Vance Gap Forest ("Owners").

WITNESSETH:

THAT WHEREAS, Developer is the owner of all of that tract of real property located in the City of Asheville, Buncombe County, North Carolina, and being more particularly shown and described on that certain map or plat entitled **Vance Gap Forest Estates** recorded in **Plat Book 94, at Page 176**, Buncombe County Registry (the "Plat") reference to which is hereby made for a more particular description; and,

WHEREAS, Developer proposes to sell and convey certain Lots shown on the Plat to be used for residential purposes and to develop said Lots, and other additional adjacent property which may be owned by or acquired by Developer, and,

WHEREAS, Developer, prior to selling and conveying such residential Lots, desires to impose upon such Lots certain mutual and beneficial restrictions, covenants, conditions and charges (hereinafter collectively the "Restrictions") for the benefit and complement of all of such Lots in the subdivision in order to promote the best interests and protect the investments of Developer and Owners.

NOW THEREFORE, Developer hereby declares that all numbered Lots shown on the Plat and any additional adjacent property designated "Future Development" on the Plat as may by subsequent amendment be added to and subjected to the Restrictions, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the Declaration and to the Restrictions. The Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration.

I. DEFINITIONS: As used herein:

- A. "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
- B. "Articles" means the Articles of the Incorporation of Vance Gap Forest Homeowners Association, Inc.
- C. "By-laws" means the By-laws of Corporation.
- D. "Community Use Property" means the roads, signs, and street lights and other lighting located within the reserved rights of way within the Subdivision. If and when the primary roads or streets in the Subdivision shall be accepted for maintenance and taken over by the North Carolina Department of Transportation ("DOT"), no permission or agreement

shall be required of Developer or any Lot Owners, it being understood that Developer and the Lot Owners, for themselves and their heirs, successors and assigns, agree that such road or street shall become part of the State Road System at such time as the DOT assumes the responsibility of the maintenance and upkeep thereof. The Lot Owners and Developer agree to execute any documents that are necessary for said North Carolina Department of Transportation to accept the maintenance of the Subdivision road or street. At such time as the DOT assumes such maintenance, such roads shall cease to be Community Use Property.

- E. "Common Expenses" means and includes actual and estimated expenses of maintaining, improving and operating the Community Use Property and operating Corporation for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to the Declaration, the By-laws and the Articles.
- F. "Corporation" means Vance Gap Forest Homeowners Association, Inc., a North Carolina non-profit corporation. The "Board of Directors" shall be the elected body governing Corporation and managing the affairs of Corporation.
- G. "Dedication" means the act of committing a tract of land adjacent to the Subdivision as it then exists, to the purposes of the Declaration, by Developer, its successors or assigns. Developer may or may not dedicate any, all or none of the adjacent property now owned, or hereafter acquired by Developer, its successors or assigns.
- H. "Developer and/or Declarant" shall mean Peter M. Brower or his successors and/or assigns including any person which succeeds to any Special Declarant Rights as set forth herein and in the Act.
- I. "Lot" means a separately numbered tract of land lying within the Subdivision and which, according to the Plat may be conveyed by Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with the Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "Dedicated".
- J. "Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Declarant.
- K. "Subdivision" means Vance Gap Forest, as shown on the plat, and any additional adjacent property which has been Dedicated pursuant to this Declaration.

II. APPLICABILITY:

The Restrictions shall apply to all subdivided numbered Lots shown on the Plat, and additional plats or maps of subdivisions of Dedicated land, (a "Lot" or "Lots"), which Lots are for residential purposes only. The Restrictions shall not be applicable to any unnumbered lands or lands designated on the Plat as "Future Development" or other lands of Developer.

III. HOMEOWNER'S ASSOCIATION:

- A. Vance Gap Forest Homeowners Association, Inc. has been or will be formed pursuant to the rules and requirements of the North Carolina Nonprofit Corporation Act as an association of the Owners of Lots. Its purposes are to own the Community Use Property; to enforce the restrictions contained herein; and to make and enforce rules and regulations contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.
- B. Each Owner of each Lot within Subdivision shall be a member of Corporation. Declarant, by this Declaration, and the Owners of individual Lots by their acceptance of individual deeds thereto, covenant and agree with respect to Corporation:
 - A. That for so long as each is an Owner of a Lot within Subdivision, each will perform all acts necessary to remain in good and current standing as a member of Corporation;
 - B. That each shall be subject to the rules and regulations of Corporation with regard to ownership of a Lot; and

- C. Each membership in Corporation shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of the Lot.
- D. Corporation shall have one class of members who shall be all Owners. Each member shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

IV. MAINTENANCE ASSESSMENTS:

- A. The Corporation shall be responsible for the operation, maintenance and repair of the Community Use Property. Community Use Property currently consists of the street lights, retaining walls, landscaping and the entrance sign as located along Vance Gap Road, and the retaining walls associated with the Fire Truck Turn-around Right of Way shown on the aforementioned Plat. Corporation shall determine the assessment to be charged to each Lot to compensate Corporation for maintenance, repair and operation (including utilities, insurance and taxes) of the Community Use Properties. Corporation shall give notice of any change in the amount of the assessment (including the amount of the initial assessment) to each Lot Owner, at the address of such Owner as listed with the Buncombe County Tax Collector. Each Owner of each Lot within the Subdivision shall pay to Corporation such monthly assessments.
- B. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu therefor, 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.
- C. Any maintenance assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of eighteen percent (18%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. Corporation may file notice of the same with the Clerk of Superior Court of Buncombe County or file a suit to collect such delinquent assessments and charges. Corporation may file Notice of *Lis Pendens*, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

V. COMMUNITY EXPENSES: Community Expenses of Subdivision include:

- A. All amounts expended by Corporation in insuring Community Use Property; in legal fees, accounting fees; all similar fees which may be incurred by Corporation from time to time in performing the functions delegated to Corporation by this Declaration; and all amounts expended by Corporation in enforcing the Restrictions, the Articles or the By-laws.
- B. All amounts expended by Corporation in carrying out any duty or discretion as may be required or allowed by the Restrictions, the Articles or By-laws.
- C. All amounts declared to be Community Expenses in the By-laws or in this Declaration.
- D. All taxes and special assessments which may be levied from time to time by any governmental authority upon Community Use Property.
- E. Reasonable amounts set aside by Corporation as reserves for repairs and replacement of Community Use Property, determined in such amount so as to be able to repair and replace such Property without the need of special assessments.

VI. ANNUAL GENERAL ASSESSMENT:

- A. Declarant for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not expressed in such deed) is deemed to covenant and agrees to pay to Corporation annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the

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provisions of Paragraph E of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

- B. The Board of Directors shall fix the annual general assessment. Once the annual general assessment has been set, notice of the annual general assessment shall be given to all members. After the initial notice of the assessment, the assessment shall become due and payable as provided by the Board of Directors.
- C. The annual general assessments levied by Corporation shall be used exclusively to pay Community Expenses.
- D. Corporation shall, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer of Corporation setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of Corporation as to the status of assessments on a Lot is binding upon Corporation as of the date of its issuance.
- E. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage 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.

VII. SPECIAL ASSESSMENTS:

Special assessments may be levied against Lots for such reasons as are provided in this Declaration, the Articles or the By-laws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for extraordinary expenses. In the event the Owner of a Lot fails to comply with the provisions of the Restrictions, Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

VIII. LIEN FOR ASSESSMENTS:

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the rate of eighteen percent (18%) per annum, costs of collection, court costs, and reasonable attorneys' fees shall constitute a lien against the Lot upon which such assessment is levied. Corporation may file notice of the same with the Clerk of Superior Court of Buncombe County or file a suit to collect such delinquent assessments and charges. Corporation may file Notice of *Lis Pendens*, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

IX. COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BY-LAWS OF CORPORATION:

In the case of failure of a Lot Owner to comply with the Restrictions, the Articles or the By-laws, the following relief shall be available:

- A. Corporation, aggrieved Owner or Owners of Lots on behalf of Corporation, or any Lot Owner on behalf of all Lot Owners shall have and recover sums due, damages, injunctive relief; and/or such other and further relief as may be just and appropriate.
- B. Corporation shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.
- C. If the violation is the nonpayment of any general or special assessment, Corporation shall have the right to suspend the offending Owner's voting rights for any period during which

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an assessment against the Lot remains unpaid.

- D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.
- E. The failure of Corporation or any Person to enforce any restriction contained in these Restrictions, the Articles or the By-laws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

Prior to availing itself of the relief specified herein, Corporation shall follow the hearing procedures as set forth in the By-laws.

X. PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, SHARED DRIVES, AND EXCEPTIONS AND RESERVATIONS BY DECLARANT:

- A. Developer shall have the right, at its election, at any time and from time to time, without the consent of any Lot Owner, to bring within the coverage and operation of these Restrictions any or all additional properties adjacent to the Subdivision as it then exists, now owned or hereafter acquired by Developer, its successors or assigns. The addition to property authorized hereby shall be made by filing in the Buncombe County Registry, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property.
- B. Easements and rights-of-way over and upon each Lot for drainage and the installation and maintenance of utilities and services are reserved exclusively to Developer for such purposes as Developer may deem incident and appropriate to its overall development plan, such easements and rights-of-way being shown or noted on the Plat, which is incorporated by reference and made a part hereof for a more particular description of such easements and rights-of-way. The easements and right-of-way areas reserved by Developer on each Lot pursuant hereto or pursuant to a Supplementary Declaration shall be maintained continuously by the Owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements within such areas also shall be maintained by the Owner except those for which a public authority or utility company is responsible.
- C. Shared Drive easements and rights-of-way over and upon Lots 1A and 1 and Lots 6, 7, 8 and 9 for ingress, egress and regress for such Lots are reserved exclusively to Developer and subsequent Owners of said Lots. The Shared Drive easements and rights-of-way areas shall be granted by Developer pursuant to a Shared Drive Easement and Maintenance Agreements to be recorded. Such Shared Drives shall be maintained continuously by the applicable Lot Owners and such maintenance shall include retaining walls, structures, plantings, lighting or other material incident to and/or part of the Shared Drive described in such Agreement.
- D. Notwithstanding anything to the contrary elsewhere contained herein, Developer reserves the right to utilize the roads within the Subdivision and portions of a Lot or Lots to provide access to additional properties now owned or hereafter acquired which Developer, its successors or assigns may develop; provided such additional properties shall be restricted to residential use; further provided, that any instrument referencing this provision to provide such access shall also provide a requirement and a method of calculation whereby the property owners in the additional property bear a reasonable proportionate share of the cost of any roadways so utilized within the subdivision which are not being state maintained.

XI. BUILDING PREREQUISITES:

Prior to commencement of construction of any improvements, all plans, including elevations, specifications, driveway surfacing and landscape plans, shall be submitted as an application to the Developer, its agent or its successors or assigns, for approval as to quality of materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. The Developer reserves the right, in its sole and absolute discretion to either approve or not approve of any plans and specifications for any reason whatsoever. Further, all

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such plans must comply with the Hillside Development Standards set forth in §70-68 of the Buncombe County Code of Ordinances. The Developer shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an original amount of two hundred fifty and no/100 Dollars (\$250.00). The Developer reserves the right to modify, waive or increase such application fee. Construction shall thereafter be completed in strict conformity with such approved plans and specifications and the Developer shall be entitled to stop any construction which is in violation of these restrictions. The transfer of the last Lot then owned by Developer (in the absence of a simultaneous explicit transfer of the approval rights of Developer contained in this Article) shall constitute the transfer of the approval right of Developer contained in this Article to the Board of Directors.

XII. RESTRICTIONS ON USE AND OCCUPANCY:

- A. Lots 1A, 1, 2, 3, 4 and 5 as shown on the Plat shall be referred to herein as the "Forest Lots". Lots 6, 7, 8 and 9 as shown on the Plat shall be referred to as the "Estate Lots".
- B. Lots shall be used for single family residential purposes with the exception of Lot 1A which shall be used for a residential building conforming with the zoning classification for such Lot. No structure shall be erected, placed or permitted to remain on less than a numbered Lot (excepting Lot 1A) other than one (1) detached, single family residence dwelling, one (1) guest cottage, and such outbuildings as are usually accessory to a single family residence dwelling. Lot 1A is zoned to allow for a single-family and/or multi family residences. No modular, mobile or manufactured home or trailer shall be placed on any Forest Lot; provided that good quality off frame modular homes may be permitted at Developer's sole discretion. No modular, mobile or manufactured home or trailer shall be placed on any Estate Lot
- C. Any dwelling constructed on Forest Lots 1, 2, 3, 4 and 5 shall contain not less than one thousand (1,800) square feet. Dwellings constructed on Estate Lots 6, 7, 8 and 9 shall contain not less than two thousand (2,500) square feet. Dwellings constructed on Lot 1A must be reviewed and approved by the Developer so as to comply with the overall size, scope and style of the Development. All computations of square footage shall exclude basements (whether daylight or underground), guest cottages, open porches and garages. No floor or level of any residence which is wholly or partially below the natural grade of the front elevation of the residence constructed on the Lot shall be included in the computation of the required square footage unless approved by the Architectural Design Review Committee to use such basement space in the total square footage computation.
- D. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except within the minimum building setback lines as follows: thirty-five (35) feet from the closest road right of way margin, ten (10) feet from the Lot side line, and twenty-five (25) feet from the Lot rear line, excepting however Lots 2, 3, 4 and 5 whose minimum setback line from the closest road right of way is eighteen (18) feet; however, such setback restrictions must further comply with the Buncombe County Hillside Development Standards, which said Hillside Development Standards may supercede any stated setback requirements.
- E. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to a sewer system approved by the appropriate governmental authorities. No outside toilet shall be constructed as herein expressly provided.
- F. The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:
 - 1. Once construction of a dwelling or other improvements is started on any Forest Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement. Once construction of a dwelling or other improvements is started on any Estate Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within a reasonable time period commensurate with the scale and scope of the construction project for such Lot.
 - 2. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanship manner and quality. No used structures shall be relocated or placed on any Lot. Any permitted outbuilding shall be of the

same material, quality, general appearance and workmanship as the dwelling on the Lot.

3. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.
4. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot or other area in the Subdivision.
5. Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.
6. No stripped, partially wrecked, or junked motor vehicle, or part thereof shall be permitted to be parked or kept on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.
7. All fuel storage tanks shall be buried below the surface of the ground and all outdoor receptacles for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible to the occupants of other Lots or the users of any street or recreation area.
8. No sign (excluding typical "For Sale" and builder identification signs or similar signs), billboard or other advertising structure of any kind maybe erected or maintained upon any Lot; provided, however, that construction identification signs showing the Lot number and name of the builder may be exhibited upon the Lot during the period of construction.
9. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets in a reasonable number may be kept provided they are not kept, bred or maintained for any commercial purpose, and provided, further, that such pets do not constitute a danger or nuisance to other Lot Owners or to the neighborhood.
10. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other Lot Owners or the neighborhood.
11. The exterior appearance and location of all improvements on a Lot must be approved in writing by Developer. However, if the Developer fails to respond to plans for improvements within 30 days from receipt of such plans, the plans shall be deemed approved.
12. Developer may require prior to the commencement of construction of improvements on a Lot, the deposit of a One Thousand Dollar (\$1,000.00) bond to pay the cost of clean-up of any construction debris or mud on the roads, community use property, or property adjacent to the Lot on which construction is occurring. Following completion of such construction, any portion of such deposit not expended in cleanup shall be refunded to the Lot Owner.

XIII. WAIVER:

No provision contained in these Restrictions, the Articles or the By-laws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

XIV. VARIANCES:

The Board of Directors in its discretion may allow reasonable variances and adjustments of this Declaration in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various Persons. To be effective, a variance thereunder shall be executed on behalf of corporation, recorded in the Buncombe County Registry and refer specifically to this Declaration.

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XV. DURATION, AMENDMENT, TERMINATION AND RESERVATION OF SPECIAL DEVELOPER RIGHTS:

- A. It is understood and agreed and subsequent grantees expressly agree by acceptance of a deed conveying title to any Lot within the Subdivision, that any portion of these Restrictions may be released, changed, modified, amended or varied without the consent or joinder of any Lot Owner solely by i) the Developer if prior to December 31, 2025 or upon the sale of the last Lot owned by Developer (other than to a related entity) as shown on the Plat or any subsequently recorded plat adding property as an additional Lot or phase to the Subdivision; whichever shall first occur (herein the "Control Period") or ii) if after expiration of the Control Period, then by a favorable vote by at least sixty-seven percent (67%) of the then Lot Owners of the Subdivision in accordance with the Act. After expiration of the Control Period, each Lot Owner shall have one vote for each and every Lot then owned by that Lot Owner in the Subdivision. The written and recorded modification of these restrictions, signed by either the Developer or after the Control Period by at least the required percentage of the Lot Owners in the Subdivision as the case may be, shall be sufficient to constitute an amendment to these Restrictions without further notification to any person or persons.
- B. Developer specifically reserves the right to amend or change any part or all of the restrictions, covenants and conditions herein set out by the filing in the office of the Register of Deeds of Buncombe County a Declaration of Amended Restrictive Covenants, which such amendments, modifications or additions to the Restrictions contained in this Declaration shall be made applicable to the conveyance of Lots made subsequent to the recording of such Declaration of Amended Restrictive Covenants.
- C. Invalidation of any one of these covenants or Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- D. Developer hereby reserves unto itself and its successors in interest as Special Declarant or Developer Rights, the following: (a) those Special Declarant or Developer Rights as set forth in the Act; (b) the right, during the Developer's Control period, to modify, amend, change, vary or release all or any part of these Restrictions; and (c) the right to redesignate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Developer.

XVI. INTERPRETATION:

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

XVII. ASSIGNABILITY OF RIGHTS AND LIABILITIES:

Developer shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of same in any manner.

XVIII. LIBERAL CONSTRUCTION:

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners' association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners. In all cases the Restrictions set forth or provided for in this Declaration, together with any supplements or amendments shall be construed together and shall be given that interpretation or construction which will best tend toward their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed the day and year first above written.

[Signature] (SEAL)
Peter M. Brower, individually

The Peter M. Brower Profit Sharing Plan
dated January 1, 1974 and amended January 1, 1989

[Signature] (SEAL)
BY: Peter M. Brower, Trustee

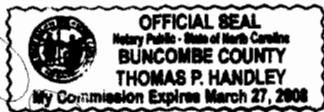
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of the State and County aforesaid, do hereby certify that **Peter M. Brower** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 2nd day of November, 2005.

My commission expires: 3/27/08

[Signature]
Notary Public



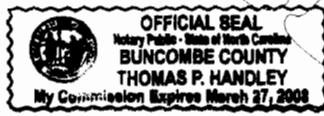
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that **Peter M. Brower** personally came before me this day and acknowledged that he is **Trustee of The Peter M. Brower Profit Sharing Plan dated January 1, 1974 and amended January 1, 1989**, and that by authority duly given, the foregoing instrument was signed in its name and attested by him as its Trustee.

Witness my hand and official stamp or seal, this the 2nd day of November, 2005.

My commission expires: 3/27/08

[Signature]
Notary Public



STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Each of this foregoing certificates, namely of _____ a Notary or Notaries public of the State and County designated is hereby certified to be correct. Filed for Registration this the _____ day of _____, 2005 at _____ m.

OTTO W. DeBRUHL
Register of Deeds, Buncombe County

By: Asst./Deputy/Register of Deeds

Doc ID: 019949320003 Type: CRP
 Recorded: 04/25/2007 at 03:29:26 PM
 Fee Amt: \$20.00 Page 1 of 3
 Workflow# 2363466
 Buncombe County, NC
 Otto W. DeBruhl Register of Deeds
 BK 4394 PG 1440-1442

**AMENDMENT TO
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 OF VANCE GAP FOREST**

This instrument prepared by and,
 after recording, mail to:
 LYMAN J. GREGORY, III (Box No. 77)
 MILLER MARSHALL ROTH, P.C.
 P.O. BOX 769
 ASHEVILLE, NC 28802

NORTH CAROLINA
 BUNCOMBE COUNTY

THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF VANCE GAP FOREST (the "Amendment") is made as of this 3rd day of April, 2007, by the undersigned Declarant pursuant to and under the provisions of the original Declaration of Covenants, Conditions and Restrictions of Vance Gap Forest recorded in Book 4136 at Page 203, Buncombe County Registry.

RECITALS

1. Peter M. Brower, individually, and Peter M. Brower as Trustee of the Peter M. Brower Profit Sharing Plan, dated January 1, 1974, as amended, (the "Declarant") entered into and recorded a certain Declaration of Covenants, Conditions and Restrictions of Vance Gap Forest, dated November 2, 2005, and recorded in Book 4136 at Page 203, Buncombe County Registry (the "Declaration").
2. Vance Gap Forest is a subdivision more particularly described on that plat recorded in Plat Book 94 at Page 176, Buncombe County Registry.
3. The undersigned Declarant desires to amend the Declaration to prohibit the placement of For Sale signs in Vance Gap Forest by any owner other than Declarant.
4. Pursuant to Paragraph A of Section XV of the Declaration, the undersigned Declarant has the authority to adopt this Amendment.

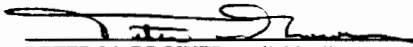
AMENDMENT

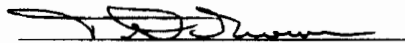
NOW, THEREFORE, the Declaration is amended as follows:

1. Subparagraph 8 of Paragraph F of Section XII of the Declaration shall be amended to read as follows:

- 8. No sign, billboard or other advertising structure of any kind, including "For Sale" signs, may be erected or maintained upon any Lot; provided, however, that construction identification signs showing the Lot number and name of the builder may be exhibited upon the Lot during the period of construction. Notwithstanding the foregoing prohibition, Declarant shall be permitted to display "For Sale" and marketing and advertising signs of any size, number, and design, in the sole discretion of Declarant, for any Lot or group of Lots in the Subdivision. Furthermore, the owner of any Lot upon which a residence has been constructed shall be permitted to display one industry-standard size "For Sale" sign for the sale of such owner's improved Lot.

IN WITNESS WHEREOF, Declarant has hereunto set his hand and seal the day and year first above written.

 (SEAL)
 PETER M. BROWER, Individually

 (SEAL)
 PETER M. BROWER, Trustee of the Peter M. Brower Profit Sharing Plan, dated January 1, 1974,

as

amended

Unofficial

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, NICK KIRJAS, a Notary Public for said County and State, do hereby certify that PETER M. BROWER personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 3 day of APRIL, 2007.



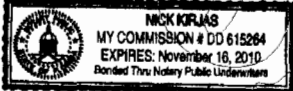
NICK KIRJAS
Printed Name:

My commission expires 11/16/2010.

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, NICK KIRJAS, a Notary Public for said County and State, do hereby certify that PETER M. BROWER, Trustee of the Peter M. Brower Profit Sharing Plan, dated January 1, 1974, as amended, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 3 day of APRIL, 2007.



NICK KIRJAS
Printed Name:

My commission expires 11/16/2010.

Official