

DECLARATION OF COVENANTS, RESTRICTIONS, EASEMENTS
RESERVATIONS, TERMS AND CONDITIONS GOVERNING
LAKEVIEW HEIGHTS SUBDIVISION
STATE OF NORTH CAROLINA
COUNTY OF CLAY

WHEREAS, the undersigned, **MARICH DEVELOPMENT, LLC, a North Carolina Limited Liability Company**, hereinafter referred to as the owner and developer of a certain tract of parcel of land in Hiwassee Township, Clay County, North Carolina, and said tract of land is more particularly described as follows:

All that tract of land denominated as **LOTS 1 AND PROPOSED WELL LOTS, of LAKEVIEW HEIGHTS SUBDIVISION** containing **1.0 acres**, more or less, more particularly described according to that plat of survey by **W W LAND SURVEYING, INC., dated April 24, 2007**, and recorded in **PLAT CABINET H, SLIDE 1076**, Clay County, North Carolina, Registry, reference to which is hereby made and incorporated as if fully set out herein for more particular description of the lands herein affected.

AND WHEREAS, it is the plan of the undersigned to devote said land exclusively for residential purposes and, as a part of the development plan of said properties, that the same shall be restricted according to the use and development herein intended by the Owner and Developer. NOW, THEREFORE, Marich Development, LLC declares that all of the property described above is held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following provisions, restrictions, conditions, easements, covenants, agreements, liens and charges, all of which are declared and agreed to be in furtherance of a plan for subdivision improvements and sale of said real property and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property and every part thereof, all of which shall run with the land, and be appurtenant thereto, and shall be binding on all parties having acquired any part thereof.

ARTICLE 1. DEFINITIONS. The following terms as used in this Declaration and all Supplemental Declaration of Restrictions are defined as follows:

- (a) "Articles" means or refers to the Articles of Incorporation of the LAKEVIEW HEIGHTS SUBDIVISION PROPERTY OWNERS ASSOCIATION, in the event the Association should incorporate
- (b) "Association" shall mean or refer to LAKEVIEW HEIGHTS SUBDIVISION PROPERTY OWNERS ASSOCIATION. Association shall also mean "Developers," until such time as the LAKEVIEW HEIGHTS SUBDIVISION PROPERTY OWNERES ASSOCIATION is recognized. LAKEVIEW HEIGHTS SUBDIVISION PROPERTY OWNERS ASSOCIATION shall hereafter be referred to as, "LHSPOA."
- (c) "Board" means the Board of Directors of the Association, if any, as subsequently adopted.
- (d) "By-Laws" means the By-Laws of the Association, if any, as subsequently adopted.
- (e) "Declarant" means Marich Development, LLC, its successors and/or assigns.
- (f) "Declaration" means this Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions governing LAKEVIEW HEIGHTS SUBDIVISION, and

any amendments thereto.

(g) "Developer" means Marich Development, LLC, its successors and/or assigns.

(h) "Development" means all real property situated in Hiwassee Township, Clay County, North Carolina, in the abovementioned recorded plat of survey, and all other property that may be annexed thereto as provided herein.

(i) "Owner" means any person, firm, corporation, trustee of a trust, partnership or other legal entity, including Developer, who holds fee simple title to any lot.

(j) "Supplemental Declaration" means any Declaration filed for record in Clay County, North Carolina, subsequent to the filing for record of this document; or, in the event of real property being annexed to the Development, the recorded Supplemental Declaration that incorporates the provisions of this Declaration therein by reference. In either event, the Supplemental Declaration shall include a description of the real property in the Development subject to the provisions of this Declaration and shall designate the permitted uses of such property.

(k) "Improvement" means all buildings, outbuildings, streets, roads, driveways, parking areas, fences and retaining walls and all other walls, poles, antennas, utility lines and other structures of any type or kind.

(l) "Lot" means any numbered or unnumbered lot or parcel of land within the Development as shown on a registered plat of survey.

(m) "Declaration Property" means those lands described on EXHIBIT "A" attached hereto and incorporated by reference herein, and all lands annexed hereto by the filing of answer Supplemental Declaration as set forth herein.

ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Property subject to this Declaration.

The property described in EXHIBIT "A", reference to which is specifically made, is the property hereby declared to be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to this Declaration.

Section 2. Additions thereto.

Declarant shall have the right, in its sole discretion, from time to time to commit to development and to submit to the terms and conditions of this Declaration additional contiguous lands, but nothing contained in this Article or in this Declaration shall obligate Declarant to do so. No lands other than the Declaration Property, as defined in Section 1, above, shall be burdened with the terms and conditions of this Declaration unless and until such lands are formally annexed as Declaration Property and submitted to the terms and conditions hereof in accordance with the provisions of Article VII, hereafter.

ARTICLE III. PRINCIPAL USES

This Declaration shall designate the principal uses of lots. If a use other than set out herein is designated, the provisions relating to permissible uses may be set forth in a Supplemental Declaration. The provisions for residential use of a lot are set forth below:

Section 1. Residential Dwelling.

Except as to those areas that may be designated on a plat or otherwise for a common enjoyment or use by all lot owners, lots in the subdivision shall be used for single-family dwelling purposes only.

Section 2. Minimum square footage, other improvements and standards.

No residence shall be erected with an enclosed, heated floor area of less than 1,500 square feet, 1,100 square feet of which must be on the main level, exclusive of basements, garages, carports, screened areas, porches, patios, terraces and decks.

Necessary parking, consisting of at least two parking spaces, shall be provided by each individual lot owner in a manner that will not obstruct road traffic or present a hazard upon any road way, right of way, easement, common area or common property boundary line.

All Governmental building codes, health regulations, zoning restrictions and the like applicable to the property now or hereinafter made subject to this declaration shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Acceptable external building materials shall be, or combinations thereof of, wood siding or shingle, log, natural or man-made stone, masonry or synthetic stucco or brick. Durable concrete siding board, durable composition prefinished textured or vinyl siding may be used as accents. Soffits, fascia, eaves and trim may be of wood, vinyl or composition materials. Notwithstanding the above, bare masonry block walls or houses wholly sheathed in vinyl or metal siding is not acceptable. Acceptable roofing is, sheet or standing seam metal, fiberglass or composition shingle, slate, tile or wooden shake.

All exposed masonry or concrete walls shall be covered with stucco, brick or stone.

Section 3. Outbuildings and garages.

Each Owner may place only one (1) outbuilding or garage per lot. No metal structures may be used as dwellings, outbuildings, or garages and no other metal buildings or structures may be erected on any of the lots. Outbuildings shall conform with and be of the same quality, materials and workmanship as the permanent dwelling.

Garages may be either attached or free standing, so long as they conform with and are of the same quality, materials and workmanship as the permanent dwelling.

Section 4. Construction of Homes.

The interior and exterior of all houses and other structures shall be completed within twelve (12) months after the commencement of construction of the same as evidenced by the issuance of a building certificate and certificate of occupancy issued by Clay County.

All building debris and trash shall be cleaned up daily, deposited into on site commercial or construction refuse dumpsters and removed from the lot as needed. Failure to maintain a clean and safe construction site or littering could result in the assessment of fines or penalties by the Developer or LHSPOA.

A reasonable amount of landscaping (such as removal of excess dirt, leveling or terracing of yards, lawn seeding and soil erosion stabilization, retaining walls) shall be done within said twelve-month period and the yards reasonably maintained thereafter.

All dwellings, outbuildings and garages must be of conventional materials and constructed on site using conventional methods. No below grade (Other than those conventional multilevel residences having a below grade daylight basement area with at least 25% exposure on grade), berm, foam, concrete or geodesic design dwellings will not be allowed. No trailer, mobile home, doublewide, or manufactured housing will be allowed.

During construction, portable, self-contained toilets shall be utilized on site. These toilets must be positioned, maintained and serviced in an acceptable, safe, hygienic and approved manner. The owners, their contractors, employees and subcontractors shall make every effort to assure that workers utilize these toilets and to minimize the potential for offensive odors or adverse health conditions.

All utility lines and service entries shall be buried underground and conform to applicable code or regulation.

Roads during construction: Owner shall be responsible for maintaining roadways to and in front of their lots and their driveway in a good, passable condition during construction on their lot. Roads affected shall be returned to their original completion upon timely completion of construction. If owner fails to repair the affected roads and drives, the Developer or LHSPOA, after providing reasonable notice to the owner shall have the right to repair the damage and the costs will become an assessment to the owner and payable immediately. All lot owners shall pay a special assessment or impact fee of \$500.00, to the Developer or LHSPOA, before the start of excavation or construction on their lot for the purpose of maintaining other roads in the development affected by construction traffic. Proper culverts or drain tiles shall be installed in all driveways; all stumps and other debris of clearing, excavation or construction shall be promptly removed from the lot and properly disposed of. Lot owner shall install and maintain, silt fences, riprap, settlement ponds or basins, hydro-seed exposed areas, to control soil erosion, sediment, and water quality in full compliance with all applicable, subdivision, local, County, State or Federal, regulations, codes or guidelines.

If owner fails to take such action or comply with these provisions, the Developer or LHSPOA, after providing reasonable notice to the owner shall have the right to repair the damage and the costs will become an assessment to the owner and payable immediately.

See also section 24, as it relates to noise from construction activity.

All construction material placed upon any lot shall be assimilated so as not to interfere with the use and enjoyment of appurtenant lots thereto. Owner's, their contractors and subcontractors shall take every precaution to insure that all construction materials are stored in a safe, secure and responsible manner.

In the event an Owner temporarily terminates construction of a residential building on or before the requisite twelve-month construction period as required in Section 6, above, all small building materials must be stored inside the structure, and all large materials must be covered and stored behind the structure (or beside the structure, if it is not possible to store the materials behind the structure) during this period. Such a temporary termination of construction does not toll the running the twelve-month time limit to complete the structure, and said structure must still be completed within twelve months after the commencement of construction.

Section 5. Temporary Structures, Vehicles and watercraft.

No mobile homes, house trailers, motor homes, campers, tents, watercraft or commercial vehicles (including tractor trailers and semi-tractor trailers) shall be used for permanent residences on any lot. Notwithstanding the foregoing statements, a motor home or camper may be used for temporary housing during the construction of a home for a six (6) month period to commence on the first day of construction and terminate exactly one hundred eighty-three (183) days later. Motor homes, campers or watercraft, may be stored upon said lots after construction is completed so long as said motor homes, campers or watercraft are not used for living quarters or residences and are well maintained and neatly stored.

Section 6. Junked Cars, Discarded Appliances or other debris.

No unlicensed, unused, discarded or salvaged motor vehicle of any kind, watercraft, trailer or any part thereof, and no unusable, salvaged or discarded household appliance, machinery, mechanical equipment or part thereof or any other debris shall be placed or left anywhere on any lot outside of any enclosed building, or on the right of way of any subdivision road.

Section 7. No Nuisances.

No noxious, offensive or demeaning activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, harassment or nuisance to the neighborhood. Owners shall not display signs, statues, figurines, or flags that are offensive in nature or content. All lots shall be kept free of accumulations of brush, trash, junk, building materials, inoperable automobiles, or other unsightly things. After fourteen (14) days' written notice to the Owner, sent to the address contained in the list maintained by the Association and/or the Developer, the Association and/or the Developer reserves the right of entry for the purpose of clearing away any such violations, assessing the cost thereof against the Owner, and such assessments shall be enforceable against the Owner as other liens herein provided for. The Developer shall not be required to comply with the provisions of this until all development work has been completed.

Section 8. Fences.

Fences may be constructed of any material (except bare masonry block), so long as the material and design compliment the other improvements thereon. Heavy chain link, barbed wire or "institutional," type fences or fences that obscure or block adjacent lot owner's views are prohibited. All setback provisions and requirements apply.

Section 9. Refuse Disposal, Concealment of Fuel Storage Tanks and Trash Receptacles.

Fuel storage tanks are to be buried such that they are not visible from any street, or common area, if any, within the subdivision.

Owners shall not allow accumulation of refuse or garbage on any lot except in a receptacle which is concealed in such manner as to render it not visible from any street, adjoining waterway, or common area, if any, within the subdivision. Furthermore, such trash or refuse shall be removed from the lot and disposed of timely, in a safe, hygienic and environmentally responsible manner. At no time will the burning of lawn or gardening clippings, limbs, refuse, trash or garbage be allowed anywhere in the subdivision.

Section 10. Septic and Public or Private Sewer Systems.

Prior to the occupancy of any residence on any lot, connection to an on site, functioning, properly sized and licensed septic tank and accompanying waste disposal system, for the disposal and treatment of all sewage is required. No sewage shall be emptied or discharged into any marsh, stream or ravine, or upon the surface of the ground. No sewage disposal system shall be permitted or used on any lot unless said system is located, constructed and maintained in accordance with the requirements, standards and recommendations of the appropriate public health authority, and approval of said system shall be obtained from said authority prior to occupancy of any dwelling on any lot.

It is anticipated that Clay County Public Sewer service will eventually become available to LAKEVIEW HEIGHTS SUBDIVISION. As such, the Developer or LHSPOA, shall retain easements necessary for the construction, maintenance and servicing of a private subdivision sewer system. Each owner by acceptance of a warranty deed to the property is therefore required (even if they currently utilize an individual on site private septic tank and system) to subscribe to, connect to and utilize said system once available. There will be an initial connection fee payable to Developer or LHSPOA, to connect to the subdivision sewer system. In addition there will be an initial "tap," or connection fee, plus monthly service fees payable directly to the Clay County Public Sewer Authority for the acceptance and treatment of wastewater and sewage. Each owner shall be subject to an annual assessment for routine maintenance and servicing, as well as special assessments if necessary. In the event such service comes to being, lot, owners shall be given notice of the availability of service and the resulting fees.

Section 11. Subdivision shared wells, water systems and private wells.

Water will be supplied via Subdivision "shared wells". All wells and supply or distribution lines shall conform to applicable health, environmental and regulatory requirements. There will be a connection or tap fee of \$2,500.00 to connect to the shared well system. There will be a monthly payment of \$30.00 due the 1st of each month for service thereafter. Any monthly water bill which becomes more than 30 days past due will be assessed a late payment fee of \$5.00 and any bill that remains unpaid after 60 days may result in water service being terminated until all delinquent bills are paid in full. Any water connection that must be interrupted due to nonpayment of bills shall be subject to a reconnection fee of \$50.00. Any unpaid water connection fees, monthly water bills or related special assessments that remain unpaid after notice to owner may result in such past due sums becoming liens against owners property as provided by articles within this document or as may be provided by applicable law. Annually the Developer or LHSPOA after giving proper notice to lot owners may "adjust," the monthly fee for the following year to cover the actual expense of maintenance of water wells, pumps, electricity, water supply lines, operating and replacement reserves.

No lot owner, heirs, successor or assigns shall drill, bore, install or contract for or cause to be drilled, bored or installed, a separate well or water system. Only the developer or LHSPOA may add or develop new wells or systems.

Section 12. Maintenance of Lots.

It shall be the responsibility of each Owner to prevent the occurrence or development of any unclean, unsightly or unkempt condition of building(s) or grounds on such lot, which shall tend substantially to decrease the beauty of the neighborhood as a whole, or of the specific area. Excavation and landscaping of a lot shall conform to approved practices of the appropriate county or state agency having jurisdiction over such matters.

In the event an Owner fails to maintain the lot and/or the improvements thereon in good condition, the Developer or LHSPOA, may make such repairs and perform such maintenance as may be necessary for the general benefit of the remaining owners. The cost thereof shall be assessed against the owner and such assessment shall be enforced as other liens as herein provided. Neither the Developer, LHSPOA nor any of their agents, employees or contractors shall be liable for any damage which may result from its actions to bring a non-conforming lot into compliance with the maintenance requirements set forth herein.

Section 13. Animals.

No animal of any kind shall be raised, bred, kept, used for commercial purposes, or allowed to pass over or upon any Lot with except as hereinafter set forth:

- a. Owners in residence may keep household pets (household variety birds, cats or dogs) when accompanied by the Owner. The Owner, or Owners collectively, of each Residence Lot shall not keep or maintain more than two (2) dogs within Lakeview Heights.
- b. At all times when outside Residence Lots, dog(s) must be on a leash, one end of which must be attached to an Owner and the other to a dog(s); dogs must always be under the Owner's control and not disturb others.
- c. Owners shall be responsible for the prompt pick-up and disposal of, in a sanitary manner, solid pet wastes left by their pets within Lakeview Heights.
- d. No guests, tenants, invitees, employees, independent contractors, vendors, renters or others shall bring pets to or within Lakeview Heights.
- e. No dog may be tethered or left on any porch, patio or deck or contiguous lawn area unless the Owner is present and capable of controlling the pet.

Section 14. Access to Lots.

There shall be no access to any lot within the Declaration Property other than by roads (public and private) shown on the plat(s) of said property. There shall be no access from within the Declaration Property to any other lands, other than the easements described in or referred to in the deeds which describe the Declaration Property, except those easements granted by Developer to annexed lands under a Supplemental Declaration. With the exception of the Declarant, no Owner may grant a right of way through his lot for the purpose of affording access to property not within the Declaration Property.

Section 15. Removal of Trees.

No tree measuring twenty-four inches (24") in circumference at three feet (3') above ground level may be removed from any lot without the prior written consent of the Board. There shall be no clear cutting of any trees on any lot.

Section 16. Dangerous Substances.

Owners shall not store or permit to be stored any toxic chemicals, wastes or pesticides on any lot, other than those necessary or customary for household use, or yard maintenance.

Section 17. Subdivision of Lots.

No lot may be subdivided by anyone other than Developer. No lot, or combination of lots, shall be further subdivided by any Owner, other than Developer, nor shall any boundary lines of a lot, or a combination of lots, be altered by any Owner, other than Developer, if the effect of such subdividing or alteration shall result in any of the subdivided or altered lots having less than 0.50 acre, unless the subdivided portion containing less than 0.50 acre shall be merged with another lot. It is specifically permitted, however, that a lot may be subdivided and conveyed simultaneously to two (2) or more adjoining lot owners, with each of the grantees receiving a subdivided portion of the lot merged into their existing lot, so that the lot so subdivided and conveyed ceases to exist as a separate lot. Where portions of a lot are conveyed to two or more adjoining lot owners for the purpose of merging such portion of that lot with an existing lot, each portion so conveyed shall not be deemed a separate lot and building site, but shall be considered an addition to the lot of the acquiring Owner.

Section 18. Setback Requirements.

Building setback lines shall at a minimum, fully comply with all applicable subdivision, local, county, state or federal code, regulation, bylaw or guideline.

Setback shall not apply to the common boundary line of lots where one Owner owns two (2) or more adjoining lots.

Section 19. Prohibited activities.

No mining, quarrying, drilling, or other such land disturbing activities shall be permitted on any portion of said property with the following exceptions:

Those land disturbing activities as may be necessary for construction of roads, trails, utility lines, house sites, driveways, septic systems, so long as such disturbances are done in an environmentally sound manner with minimal impact on the environment. Any allowed activity shall require that all applicable soil erosion, sedimentation, air and water quality control rules and regulations will be complied with.

Except as otherwise provided herein, no industry, retail business, trade, occupation, profession, or commercial activity of any kind, whether for profit or nonprofit purposes, shall be conducted, maintained or permitted on any lot, except for activities pertaining to the Developer or HSPOA. A home office is permitted under this section, but shall be limited as to employees. The business owners and all employees, if any, must be the owner/occupants of the lot upon which the business is conducted. In such cases, parking for employees and clients shall be located upon owners lot and meet all applicable Subdivision codes, covenants and restrictions.

No lot may be used under any circumstances, as a “Boarding House”, “Group Home”, “Personal Care Facility”, “Nursing Home”, “Retirement Home”, “Lodging House”, “Inn”, or “Bed & Breakfast”.

Rental Activity. Any owner who chooses to rent or lease their dwelling, regardless of term (yearly, monthly, weekly or daily) shall be required in writing, to make their renters or guest aware, of the subdivision regulations, covenants and restrictions. All rental agreements or listing agreements with agencies and tenants must include specific reference to the subdivision regulations, covenants and restrictions and require that their strict observation of and compliance with same are required as a condition for occupancy. Repeated complaints or violations may result in action being brought against the lot owner, by the Developer or LHSPWA, to insure compliance with all applicable provisions of the Declaration Of Covenants, and Restrictions of Lakeview Heights Subdivision, recover damages or order to cease and desist such activity.

Section 20. Antennas, Towers, Satellite Dishes.

No antenna shall be constructed upon any portion of a lot other than for the purpose of television signal reception for personal use of the lot owner. No television antenna shall be constructed or allowed to remain on any lot which is not connected to the primary residence thereon, nor shall said antenna extend more than six (6) feet above the roofline. No satellite dish or disc shall be greater than twenty-four (24) inches in diameter. No other antenna or tower, either temporary or permanent, shall be allowed for the purpose of receiving or transmitting radio, cellular telephone, citizen band, short-wave radio or radio directional tracking signals.

Section 21. Flagpoles

No flagpole extending beyond seven (7) feet in height or length shall be erected upon any lot or attached to any structure upon any lot. Anyone choosing to display a flag shall observe proper flag etiquette. Any owner or flag displayed shall conform to Section 8 of this document.

Section 22. Name

The name “Lakeview Heights” and any similar expression of said name are the exclusive property of the Declarant and cannot be used by any other person or entity for any reason except to identify the Association or to any common area or lot subject to this declaration.

Section 23. Non-licensed Motor Vehicles.

No unlicensed motor vehicles, including but not limited to: ATV’s, 4-Wheelers, dirt bikes, go carts and golf carts, shall be operated upon any road or common area within Lakeview Heights Subdivision. The operation of such vehicles will be permitted upon an owners lot(s), so long as the vehicles engine is properly “muffled”, and owner complies with all provisions of this document, including but not limited to those dealing with; noise, erosion and dust control.

Section 24. Noise

In an effort to provide for the quiet enjoyment of Lakeview Heights Subdivision, by its owners and their guest, There shall be no loud construction activity (Hammering, saws, nail guns or compressors), lawn maintenance (weed-eating, mowing, leaf-blowers) Loud music, revving of motor vehicles or any other loud activity prior to 7:00 am nor after 10:00 pm, Monday through Saturday.

Section 25. Use of Lakeview Subdivision Water Wells and Water Systems.

The intended primary purpose and use of Subdivision water wells and water systems is to provide safe, potable water for personal consumption, such as drinking, cooking, bathing and toilet. Any other usage such as lawn irrigation, the washing of vehicles, hosing down of walks and driveways will only be allowed to the extent that the sustained production or recovery rate of the wells or water system providing such water is not "taxed" or exceeded. At no time may water be drawn from any lot or common area for use or consumption by anyone other than lot owners of Lakeview Heights Subdivision, the Developers, LHSPOA or responding Emergency Services. At no time will lot owners be allowed to fill swimming pools or ponds from Subdivision systems or sources. It is encouraged that owners act responsibly and fill spas and Jacuzzi's late at night during low consumption periods, so as to not "tax" the production of the wells or systems.

Section 26. Pools, Ponds, Water Gardens, Outdoor Spas or Jacuzzis.

Pools shall be of permanent, in ground, quality construction and located so as to minimize observation from Subdivision roads and common areas. Pools, ponds and water gardens must be of sound design and construction, well maintained, closely monitored for leakage, erosion, and unsafe environmental or health conditions. Pools, ponds, or water gardens may not initially be filled from the Subdivision water systems however, "small," amounts of "add," or maintenance water may be drawn from the Subdivision system. Outdoor spas or Jacuzzis shall be located or screened (lattice, fence, or plants) so as to minimize observation from Subdivision roads and common areas. Owners shall make reasonable efforts to provide safeguards or security measures to minimize the risk for accidents, especially as to unattended children.

Section 27. Signs.

No signs other than for sale signs (no more than two (2) per lot) or sign identifying any lot, house or road shall be permitted on any lot. Such sign must not exceed four square feet in size. No signage advertising products, services or "For Sale," may be erected upon common areas or on Rights of Way, except there may be one (1) small sign per Real-estate agency, posted on common areas at the entry into LAKEVIEW HEIGHTS SUBDIVISION. The posting of such signs shall be at the pleasure and sole discretion of the Developers or LHSPOA. They shall not obscure vision, pose unsafe driving conditions, hinder access, any activities necessary for installation, service or maintenance of utilities, roads or rights of way, pose a nuisance, clutter, eyesore or violate any subdivision, local or state provisions, regulations or code. Developer or LHSPAO retains the right to move, relocate or completely remove any or all signs at their sold discretion with prior notice to sign owners. This subsection shall not be construed to prohibiting signs identifying LAKEVIEW HEIGHTS SUBDIVISION, or signage erected by Developer or LHSPOA.

ARTICLE IV. RIGHTS-OF-WAY AND EASEMENTS

Declarant reserves unto itself, its successors and/or assigns, a perpetual, alienable, releasable, and non-exclusive road and utility right of way and easement, forty feet (40') in width, twenty feet (20') on each side of the centerline thereof, for the purposes of ingress, egress, regress, installation of and maintenance of utilities, on, over, across and under all subdivision roads, whether currently existing or not, or as shown on the above-referenced recorded plat of survey, or on any plats of survey recorded in connection with the execution and recording of any Supplemental Declaration, for the benefit of properties now owned or hereafter acquired by

Declarant. "Utilities" shall include, but shall not be limited to, the installation, maintenance and replacement of electrical and telephone conduit and lines, gas pipes, public or private sewer lines, public or private water systems, storm drainage water pipes, cable television lines, or any other public or private utility services serving any lots within the Declaration Property. The rights reserved to the Declarant herein include, but are not limited to, (1) the right to use, maintain, modify, improve, and/or replace the roadways, ditches, slopes, and culverts, and (2) to install, maintain and replace public and private utilities within the rights of way of all roads within the Declaration Property, for the benefit of the Declaration Property and for the benefit of such other lands as may be from time to time designated by Declarant.

Declarant and the LHSPOA and their respective agents and contractors, by the grant of this easement, shall have the express right, privilege and authority to go upon all of the lots in LAKEVIEW HEIGHTS SUBDIVISION for the purpose of servicing, repairing and maintaining all water lines, pumps and facilities, sewage and drainage lines, ponds and facilities, wiring servicing common areas and other public or private utilities located wholly or partially upon any lot or common area in LAKEVIEW HEIGHTS SUBDIVISION. This easement shall run with the land, shall bind the Grantors hereof, their respective successors and assigns and shall inure to the benefit of the Grantees herein stated, their respective heirs, successors and assigns. Any person acquiring a lot in LAKEVIEW HEIGHTS SUBDIVISION shall acquire said lot subject to all of the easements herein granted.

Said road and utility rights of way are for the benefit, use and enjoyment of the subdivision lot owners, their heirs, successors and assigns, and every conveyance of the lands herein restricted shall be deemed to be subject to said easements, while conveying to the Grantee under said conveyance a similar right, appurtenant to his or her lands, in common with the Declarant, its successors and/or assigns, and other lot owners who have similar rights appurtenant to their lands. No Owner shall have any claim or cause of action against Declarant or its licensees or invitees arising out of the exercise or non-exercise of any easement reserved hereunder or shown on a plat of survey of the Declaration Property.

In the event Declarant exercises its right, as reserved herein, to grant additional easements and rights of way, each grantee of such easement shall acquire the same subject to the obligation to pay road maintenance assessments and impact assessments for the construction of improvements, in accordance with the provisions of Article V, hereafter, and by the acceptance of such easement, the grantee agrees that the property benefited by the easement is subject to the lien for Section 47F-3-116 et seq., governing the same.

Property in this subdivision is conveyed together with and subject to that blanket Utility easement to Blue Ridge Mountain Electric Membership Co-operative, recorded in book, _____, Page, _____, of the Clay County, North Carolina Registry.

NOTICE IS HEREBY GIVEN THAT ALL ROADS SET OUT IN THE HEREIN DESCRIBED SUBDIVISION SHALL BE PRIVATE ROADS, AND THAT SAID ROADS ARE NOT AND WILL NOT BE CONSTRUCTED TO A MINIMUM STANDARD SO AS TO ALLOW THEIR INCLUSION WITHIN THE STATE HIGHWAY SYSTEM AND WILL NOT, THEREFORE, BE MAINTAINED BY THE STATE HIGHWAY SYSTEM

OF NORTH CAROLINA.

ARTICLE V. PROPERTY OWNERS' ASSOCIATION

Section 1. Membership Covenant.

All Owners in this subdivision shall become members of the Association upon its organization. Each Owner of a lot subject to these covenants and restrictions shall maintain one (1) membership per lot. All Owners shall abide by the By-Laws of the Association as may be amended from time to time, and further agree to pay to the Association the annual assessments as hereinafter set forth, subject to the following limitations:

Declarant, as Developer, is EXCLUDED from the obligation to pay any connection fee, monthly fee, service fee, annual or special assessments levied by the developer or LHSPOA.

Section 2. Purpose for Assessments.

The Board shall, pursuant to these Declarations, have the power to levy assessments for the purpose of financing the operations of the Association and maintaining roads and other improvements for services within or for the benefit of subdivision lots, including roads and/or utility easements in accordance with the formula herein set forth.

Section 3. Creation of Lien and Personal Obligation for Assessments.

Each lot is and shall be subject to a lien and permanent charge in favor of the Association for the annual and special assessments set forth in this Article. Each assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a permanent charge and continuing lien upon the lot or lots against which it relates and shall also be the joint and several personal obligation of each Owner at the time the assessment becomes due and payable, and upon such Owner's successor in title if unpaid on the date of the conveyance of the lot. Each and every Owner covenants to pay such amounts to the Association when the same shall become due and payable. The purchaser of a lot at a judicial or foreclosure sale shall be liable only for the assessments due and payable after the date of such sales.

Section 4. Annual Assessments.

No later than January 1st of each calendar year, the Board shall establish the annual assessments upon the following considerations:

- (1) The cash reserve, if any, on account with a lending institution as created for the benefit of the lots in the subdivision;
- (2) The expenditures devoted to the benefit of the subdivision lots during the immediately preceding twelve (12) month period; and,
- (3) The projected annual rate of inflation for the forthcoming year foreseeable for Clay County as determined by a review of information available to any person, firm or corporation, by any governmental agency, lending institution or private enterprise which provides such statistical data upon request.

Association assessment, for each lot shall initially be Fifty Dollars, (\$50.00) per year. This assessment is established to cover the miscellaneous costs of the administration of the Association and the Board, including, but not limited to, postage, copies of notices of meetings

(whether annual or special), copies of minutes, utilities and maintenance for common areas. Road maintenance assessment, for each lot shall initially be Two Hundred Dollars (\$200.00). Thereafter it shall be based upon the prorated "historical," actual cost plus operating and replacement reserves.

Shared well and water system assessments. All lots within Lakeview Heights Subdivision shall be conveyed with expressed water rights to the subdivision community shared wells. Prior to connection, the lot owner shall pay a one-time connection fee of Twentyfive Hundred Dollars (\$2,500.00), plus monthly payments of Thirty Dollars (\$30.00) for continuation of service, Thereafter it shall be based upon the prorated "historical," actual cost plus operating and replacement reserves.

Developer, and LHSPAO shall construct, maintain and limit the number of connections to each well system in accordance with all applicable Subdivision, local, County and State regulations. It is anticipated that eventually Clay County Public Water Authority and/or the Developer and/or LHSPAO may develop a private subdivision wide; water system. This system or service shall be made available to all owners of lots in LAKEVIEW HEIGHTS SUBDIVISION. As such, the Developer or LHSPAO, shall retain easements necessary for the construction, maintenance and servicing of such system. Each owner by acceptance of a warranty deed to the property is therefore required (even if they currently are connected to a subdivision community shared well system) to subscribe to, connect to and utilize said system once available. There will be an initial connection fee payable to Developer or LHSPAO, to connect to the new system, such connection fee shall be equal to the prorated portion of all expenses incurred in the development and construction of such system. If Clay County Public Water Authority provides the new system, there will be the initial "tap," or connection fee previously described, plus monthly fees payable directly to the Clay County Public water Authority. Each owner shall be subject to an annual assessment for routine maintenance and servicing, as well as special assessments if necessary.

Sewer assessment. In the event that public or Subdivision sewer systems become available, there shall be an assessment each year to cover the expense of operation and maintenance of sewer lines, tanks, pumps, electricity, operating and replacement reserves. Initially, this assessment shall be the prorate portion of the "estimated," cost. Thereafter it shall be based upon the "historical," actual cost. This assessment will not apply to individual, on site septic tanks and systems installed by lot owners upon their lot. Such "private septic systems," are entirely the responsibility of the lot owner.

Impact assessment. Prior to the commencement of construction, there shall be an impact assessment (to pay for repair of damage caused by heavy loads, transport of materials, equipment, abnormal road usage or other damage during construction), in the amount of Five Hundred dollars, (\$500.00), to be due and payable at the time a building permit is issued by Clay County Authorities, for construction on any lot.

The Board shall give written notice to each Owner of each lot of the assessments levied against each respective lot for such immediately succeeding calendar year.

The developer or HSPOA, as provided herein, shall collect the assessments levied, as provided in this Article.

The assessments levied herein shall not be used to pay for the following expenses:

- (a) Fire or casualty insurance of individual Owners for their lots and improvements thereon, or for their possessions with any improvement thereon, any liability insurance for such Owner insuring themselves and their families, which insurance coverage shall be the sole responsibility of the Owner(s);
- (b) Utility charges, including, but not limited to, water, telephone, gas, sewer, cable television, electricity, etc., for each lot, which expenses shall be the sole responsibility of the Owner(s); and,
- (c) Ad valorem taxes for any lot, improvements thereon, or personal property owned by an Owner.

Section 5. Special Assessments.

In addition to assessments set forth in Section 4, above, the Association may levy in any calendar year special assessments for the purpose of supplementing the annual assessments if the same are inadequate to pay expenses and for the purpose of defraying, in whole or in part, the cost of construction or reconstruction, repair or replacement, or improvements on any lot or appurtenances thereto which serve all the owners of the subdivision, **PROVIDED**. However that any such special assessment shall have the assent of the majority of the votes represented in person or by proxy at a meeting at which a quorum is present, such meeting being duly called for the express purpose of approving such assessment, written notice of which shall be sent to all Owners not less than ten (10) days nor more than sixty (60) days in advance of the meeting, which notice shall set forth the date, time, place and purpose of the meeting. Any special assessments shall be levied against the specific lot or lots for which an expenditure is appropriated. The period of the assessment and manner of payments shall be determined by the Association. A special assessment may be levied as a **damage assessment** for injury to or destruction of Declaration Property (or improvements thereon) or any portion thereof by an Owner or a guest of an Owner, said injury or destruction not to include ordinary wear and tear.

Section 6. Date of Commencement of Annual Assessments – Due Dates

Assessments are due in annual installments on or before January 1st. of each calendar year. The annual assessments provided for in this Article shall be paid in advance at the time of purchase of the lot(s) and subsequent annual assessments shall be due and payable on January 1st of each year thereafter.

The Board shall, upon demand at any time, furnish any Owner liable for any such assessment, a certificate in writing setting forth whether the same has been paid. A reasonable charge may be made for the issuance of any certificate. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of the Association

If an assessment is not paid on the date when due as hereinabove provided, then such assessment, together with any interest thereon and cost of collection, including attorney's fees as hereinafter provided, shall be a charge and a continuing lien on the respective lot to which it relates and shall bind such property in the hands of the Owner, his heirs, legal representatives, successors and assigns, for payment thereof. The personal obligation of the then Owner to pay such assessment

and related costs shall remain his personal obligation, such prior Owner shall nevertheless remain as fully obligated as before to pay the Association any and all amounts which said Owner was obligated to pay immediately preceding the transfer of title thereto; and such prior Owner and his successor in title who may assume such liability shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and his successor in title creating the relationship of the principal and surety as between themselves other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to make any lot assessment payment.

Any such assessment not paid by the 15th day of March as herein set forth of the year within which such assessment is due, shall bear interest at the rate of eighteen per cent (18%) per annum from such date, known as the "delinquency date" and shall be payable in addition to the basic assessment amount then due and payable.

The Association may institute legal action against any Owner personally obligated to pay any assessment, to foreclose its lien against any lot to which it relates, or pursue either such course at the same time or successfully. In such event, the Association shall be entitled to recover attorney's fees actually incurred but not exceeding fifteen per cent (15%) of the amount of the delinquent assessment, and any and all other costs of collection, including, but not limited to, court costs.

The acceptance by Owner of a deed or other conveyance of a lot in the subdivision vests in the Association the right and power to institute all actions against Owner personally for the collection of such charges as a debt, and to foreclose the aforesaid lien in appropriate proceedings at law or in equity.

The Association shall have the power to bid on any lot at any foreclosure sale and to re-acquire, hold, lease, mortgage and convey any lot purchased in connection therewith.

No Owner shall be relieved from liability from any annual assessments (including associational, road maintenance and impact assessments) or special assessments (including damage assessments) provided for herein by abandonment of his lot or lots, or by non-use of the roads.

Section 8. Subordination of the Charges & Liens to Deeds of Trust Securing Promissory Notes

The lien and permanent charge for the annual (including associational, road maintenance and impact) assessments and any special (including damage) assessments (together with interest thereon and any such costs of collection, including, but not limited to, attorney's fees and court costs) authorized herein with respect to any lot is hereby made subordinate to the lien of any deed of trust placed on any lot if, but only if, all such assessments with respect to any such lot having a due date on or prior to the date such deed of trust is filed of record have been paid in full. The lien and permanent charge hereby subordinated is only such a lien and charge as it relates to assessments authorized hereunder having a due date subsequent to the date such deed of trust is filed of record prior to the satisfaction, cancellation or foreclosure of such lien of deed of trust, or sale or transfer of any mortgaged lot pursuant to any proceeding in lieu of foreclosure, or the sale under power of sale contained in any deed of trust.

(a) Such subordination procedure is merely a subordination and does not relieve the Owner of the mortgaged property of his personal obligation to pay all assessments coming due at a time when he is a lot Owner; shall not relieve such property from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished as a result of such subordination or against the beneficiary of the deed of trust or his assignees or transferees by foreclosure, or by sale or transfer in any proceeding in lieu of foreclosure, or by power of sale); and no sale or transfer of such property to the beneficiary of any deed of trust or any existing or previous Owner of such lot of any personal obligation, or relieve any subsequent Owner from liability for any assessment coming due after such sale or transfer of title to a subdivision lot.

(b) Notwithstanding the foregoing provision, the Association may, in writing, at any time, whether before or after a deed of trust is recorded as to a subdivision lot, waive, relinquish or quitclaim, in whole or in part, the right of the Association to any assessment provided for hereunder with respect to such lot coming due during the period while such property is or may be held by the beneficiary of the deed of trust pursuant to the said sale or transfer.

Section 9. Initial Board of Directors of the Association

The initial Directors of the Board of Directors of the Association shall be Richard O. Johnson and Marilyn B. Johnson. The initial Directors will serve as the Directors of the Association until (1) All of the lots are sold (including the lands described herein and all annexed lands); or, (2) The Declarant appoints other directors to take their place. No other directors will be elected by the Association until such time as all lots are sold (including all annexed lands).

ARTICLE VI. REMEDIES FOR VIOLATIONS; AMENDMENT TERMS; AND MISCELLANEOUS PROVISIONS

Section 1. Enforcement

These covenants, restrictions, easements, reservations, terms and conditions shall run with the land and shall be binding on all parties and all persons claiming under them. Enforcement of these covenants, restrictions, easements, reservations, terms and conditions may be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Either the Developer or any successor in title to the Developer, or the Association, or any Owner of any lot affected hereby may institute such proceedings.

Section 2. Amendment

These covenants, restrictions, easements, reservations, terms and conditions may be altered, amended or repealed at any time by filing in the office of the Register of Deeds of Clay County, North Carolina, an instrument setting forth such annulment, amendment or modification, executed by either the Developer or its assigns and/or successors in interest at any time during which it owns of record a lot or lots in the subdivision subject to this Declaration, or Declarant is an Owner of adjacent properties which it intends or has intention to subdivide, or, in the alternative, by the Owner or Owners of record as set forth on the records in the office of the

Register of Deeds of Clay County, North Carolina, at any time of the filing of such instruments by consent in writing of seventy-five per cent (75%) of the Owners of lots subject to these restrictions, SUBJECT, HOWEVER, TO THE FOLLOWING LIMITATION: So long as the Declarant, Marich Development, LLC has any interest in the lands herein restricted, or in any adjoining properties which may be annexed into the subdivision and subjected to the covenants, restrictions, easements, reservations, terms and conditions set forth herein, no annulment, amendment or modification will be enforceable without the express written consent of said Marich Development, LLC.

Section 3. Invalidation

Invalidation of any one (1) of the provisions of this instrument by a judgment or order of a court of competent jurisdiction shall in no way affect the validity of any of the provisions which shall remain in full force and effect.

Section 4. Developer's Obligations

In this instrument, certain easements and reservations of rights have been made in favor of the Developer. It is not the intention of the Developer in making these reservations and easements to create any positive obligations on the Developer insofar as building or maintaining roads, water systems, sewage systems, furnishing garbage disposal, beginning and prosecuting lawsuits to enforce the provisions of this Declaration, or of removing people, animals, plants or things that become offensive and violate this Declaration. Where a positive obligation is not specifically set forth herein, none shall be interpreted as existing as it relates to the Developer.

Section 5. Term

The provisions of this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date this Declaration is filed for record in the office of the Register of Deeds for Clay County, North Carolina, at which time the Declaration shall be automatically extended for successive periods of ten (10) years each, unless prior to the beginning of such ten year period an instrument is signed by the then Owner(s) of seventy-five per cent (75%) of lots subject to this Declaration agreeing to terminate, amend or modify this Declaration shall have been recorded in the office of the Register of Deeds for Clay County, North Carolina, SUBJECT, HOWEVER, to the limitation set forth in Section 2, above, entitled "Amendment".

Section 6. Governmental Regulations

The Declaration Property and all lots subdivided there from, in addition to being subject to this Declaration, are conveyed subject to all present and future rules, regulations and resolutions of the County of Clay, State of North Carolina, if any, relative to subdivision of land, zoning, and the construction and erection of any buildings or other improvements thereon.

Section 7. Notices

Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or Owner of record, or the Developer or its assigns, including the Association, at the time of such mailing.

ARTICLE VII. ANNEXATION AND SUBMISSION OF ADDITIONAL PROPERTIES TO THE DECLARATION

Section 1. Property to be annexed

Declarant may, for time to time, at its sole discretion, annex additional lands which are contiguous to the Declaration Property and submit said lands to the terms and conditions of this Declaration and/or to amendments hereto.

Section 2. Manner of Annexation

Declarant shall affect such annexation by recording a Supplemental Declaration, which shall:

- (1) Describe the real property being annexed, and designate the permissible use thereof;
- (2) Set forth any new or modified covenants, restrictions, easements, reservations, terms or conditions which may be applicable to such annexed property, including limited or restricted uses of road; and,
- (3) Declare that such annexed property shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration and to the aforesaid modified covenants, restrictions, easements, reservations, term or conditions, if any.

Section 3. Results of Annexation

Upon the recording of the Supplemental Declaration, the annexed area shall become a part of the Declaration Property, subject to all of the provisions of this Declaration as supplemented or modified by said Supplemental Declaration.

Section 4. Revision of Plats by Declarant

Notwithstanding the provisions and conditions contained herein, Declarant intends to prepare and record plats of LAKEVIEW HEIGHTS SUBDIVISION, and does hereby reserve unto itself its successors and/or assigns, the right to relocate, open or close roads shown on said plats, and to revise, re-subdivide and change the size, shape, dimensions and locations of unsold lots in said subdivision. Upon such relocation, opening or closing of a road, or revision, re-subdivision or changing of size, shape, dimensions and locations of unsold lots, the covenants, restrictions, easements, reservations, terms and conditions hereby imposed shall be applicable to the resulting lots in lieu of the lots as originally shown on earlier plats prior to such revision, relocation or change. Any lot or lots sold prior to such revision, relocation or change, however, shall not be deprived of that portion of the road or roads on which it bounds nor deprived of access to such lot(s) from the roads with the Declaration Property.