

SECOND AMENDED AND RESTATED
DECLARATION OF RESTRICTIVE COVENANTS
GOVERNING
KENMURE
A PLANNED COMMUNITY
HENDERSON COUNTY, NORTH CAROLINA
(December 6, 2004)

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

WHEREAS, Kenmure, Inc., a North Carolina corporation, subjected 270 acres of real property in Henderson County known as Kenmure to certain restrictive covenants by means of an instrument entitled Covenants, Restrictions, Easements, Reservations, Terms, and Conditions Governing Kenmure dated February 22, 1979, recorded in Deed Book 574 at page 71 in the Henderson County, North Carolina Register of Deeds (the “Original Declaration”), now known as Phase I; and

WHEREAS, Kenmure Properties, Ltd., a North Carolina Limited Partnership (now Kenmure Properties Limited Partnership, a North Carolina Limited Partnership) by Kenmure Enterprises, Inc., a North Carolina Corporation, as General Partner, acquired all of the property in Kenmure not previously conveyed by Kenmure, Inc., and an additional 1,130 acres of surrounding property, more or less, from Vincent J. Romeo, the President of Kenmure, Inc. (all of which property became and is herein after referred to as “Kenmure”) by means of a deed recorded in Deed Book 664 at page 341 in the Henderson County, North Carolina Register of Deeds, including the total rights, duties and obligations of Kenmure, Inc. under the Original Declaration; and

WHEREAS, certain plat maps have been recorded which describe the Lots in the various Phases of Kenmure and certain declarations, amendments and restatements have been recorded in the Henderson County, North Carolina Register of Deeds at Book 574 at page 71 (Phase I), Book 626 at page 91, Book 697 at page 755 (Phase II), Book 697 at page 770, Book 731 at page 125, Book 731 at page 127, Book 747 at page 607, Book 769 at page 485, Book 779 at page 891, Book 803 at page 829, Book 805 at page 295, Book 809 at page 1, Book 811 at page 437, Book

864 at page 311, Book 1037 at page 162 (Phase V), Book 1088 at page 151 and Book 1115 at page 607 (hereinafter collectively known as the “Kenmure Declarations”); and

WHEREAS, the Developer has developed condominium units on various tracts of real estate, which are part of Kenmure and subject to the Kenmure Declarations, and has recorded condominium declarations covering each of the tracts of real estate comprising each of these condominium developments in the Henderson County, North Carolina Register of Deeds at Book 677 at page 495 (Golfside I), Book 680 at page 447 (Golfside II), Book 683 at page 589 (Fairway Village I), Book 690 at page 397 (Golfside III), Book 698 at page 449 (Golfside IV), Book 700 at page 493 (Fairway Village II), Book 704 at page 221 (Vantage Point), Book 721 at page 487 (Forrest View), Book 764 at page 793 (Woodlands), Book 773 at page 523 (Ridge View) and Book 795 at page 521 (Brookwood), as they have been amended from time to time, (the “Condominium Declarations”); and

WHEREAS, the Kenmure Property Owners Association, Inc., a North Carolina Nonprofit Corporation, (herein "KPOA" or “Association”), an Association comprised of members (the “Members” or a “Member”) who are all of the Lot Owners in Kenmure as defined in the Kenmure Declarations, is the transferee of certain rights, duties and obligations of the Developer under the Kenmure Declarations by means of an instrument entitled Transfer Agreement, recorded in or to be recorded in the Henderson County, North Carolina Register of Deeds; and

WHEREAS, the North Carolina Planned Community Act (herein the “Act”), G.S. 47F-1-102 (d) provides that any planned community created prior to the effective date of the Act, January 1, 1999, may elect to make the provisions of the Act applicable to it by amending its declaration by affirmative vote or written agreement signed by lot owners of lots to which at least sixty seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, Kenmure is a planned community as defined in the Act, G.S. 47F-1-103 (23), and the Members of the Association are Lot Owners in Kenmure; and

WHEREAS, the Members of the Association have, by written ballot, approved by affirmative vote of sixty seven percent (67%), an amendment to the Kenmure Declarations to make the provisions of the Act applicable to Kenmure and otherwise amend and restate said Kenmure Declarations, as provided Section 47F-2-117 (a) of the Act, and have recorded an Amended and Restated Declaration in the Henderson County, North Carolina Register of Deed at Book 1124, page 628 (the “Restated Declaration”), and

WHEREAS, the Members of the Association at the annual meeting of the Association on December 6, 2004, have in accordance with Paragraph 46.B of the Restated Declaration, approved by an affirmative vote of sixty-seven percent (67%), certain amendments to the Restated Declaration;

NOW, THEREFORE, the Kenmure Declarations and Restated Declaration, governing all of the real estate, Residential Lots and Family Dwelling Units in Kenmure, recorded in the Henderson County, North Carolina Register of Deeds, including the real estate and Lots to be developed in the undeveloped land in Kenmure located south of Pinnacle Mountain Road and owned by the Developer as of the recording of this Declaration, are hereby amended by striking

them in their entireties, except for the purpose of preserving legal descriptions, if any, found in the Kenmure Declarations and the Restated Declaration and by substituting therefor the following Second Amended and Restated Declaration of Restrictive Covenants which shall run with said properties and by which Kenmure, a Planned Community, shall be governed:

1. PURPOSE:

The primary purpose of this Declaration and the foremost consideration in the origin of the same is to submit Kenmure to the Act and continue the enhancement of a residential, planned community which is aesthetically pleasing and functionally convenient; attracting residents seeking privacy, security and superior facilities in a beautiful environment.

2. DEFINITIONS:

A. "Annual Assessment" or "Annual Assessments" shall mean any and all sums levied by the Association against any Lot or Family Dwelling Unit and its owner as Common Expenses or other charges to include but not be limited to Common Expense Liability, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth in this Declaration and the Bylaws, including those amounts as described in Paragraph 35 hereof.

B. "Change in Control" shall mean when 51% or more of the partners' interest in Kenmure Properties Limited Partnership, or their General Partner Kenmure Enterprises, Inc., as that interest existed on July 1, 2002, is sold to an individual, group of individuals, partnership, corporation or any other entity without the written consent of the KPOA.

C. "Common Elements" shall mean any real estate or other property within Kenmure owned or leased by the Association, including any improvements thereon, other than a Lot.

D. "Common Expenses" shall mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of Kenmure as a Planned Community.

E. "Common Expense Liability" shall mean the liability for Common Expenses allocated to each Lot or Family Dwelling Unit as permitted by the Act, this Declaration, the Bylaws of the Association, or otherwise by law.

F. "Cottage Assessment" or "Cottage Assessments" shall mean those amounts as described in Paragraph 37 hereof.

G. "Cottage Association" shall mean the Cottages of Kenmure Owners Association.

H. "Cottage Owner" or "Cottage Owners" shall mean the owner or owners of a Lot or Lots in any development designated on the recorded plats as "The Cottages of Kenmure."

I. "Development Lot" or "Development Lots" shall refer to Residential Lots that are owned by, and being offered for sale by, the Developer.

J. "Family Dwelling Unit" shall mean any improved property intended for use as a Single Family Detached Dwelling unit or condominium living unit located within Kenmure. A Family Dwelling Unit shall be deemed to exist only after a written Occupancy Permit has been issued by the KPOA.

K. "Intended for Use" shall mean the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which Developer, or a Lot Owner, has conveyed the property.

L. "Inventory" shall mean the Family Dwelling Units and the salable Development Lots suitable for Single Family Detached Dwellings that the Developer owns in Kenmure as of the date of this Declaration, plus those which are added to its Inventory from the 207 acres of property (Phase V) the Developer owns south of Pinnacle Mountain Road.

M. "Kenmure Properties Limited Partnership." or "Developer" shall mean Kenmure Properties Limited Partnership, a North Carolina Limited Partnership by Kenmure Enterprises, Inc., a North Carolina Corporation, as General Partner.

N. "Lot Owner" or "Lot Owners" shall mean the owner or owners as shown by the real estate records in the office of the Register of Deeds of Henderson County, North Carolina, of fee simple title to any Residential Lot or Family Dwelling Unit, situated within Kenmure. Lot ownership is not restricted to natural persons. However, timeshare ownership is not permitted in any form.

O. "Residential Lot", "Residential Lots", "Lot" or "Lots" shall mean any unimproved parcel of land located within Kenmure, which is intended for use as a site for a Single-Family Detached Dwelling.

P. "Single Family Detached Dwelling," shall mean a structure arranged or designed to be occupied by one (1) family and family servants and which is not attached to any other dwelling. "Family" as used in this sense shall mean a group composed of one, two or three adults and their children or other dependents.

Q. "Transfer of Control Event" shall mean: (1) Seven years from the date of this Declaration, or when (2) The Developer has sold 90 properties in its Inventory, or (3) The Developer has sold 60 % of its Inventory, or (4) The Developer gives written notice to the KPOA that it wishes to transfer control, or (5) There is a Change in Control of the Developer or (6) The Developer sells its interest in the Inventory, which ever of the above events occurs first.

3. THE KENMURE PROPERTY OWNERS ASSOCIATION

A. GENERAL:

The Association is a non-profit corporation as defined in the Act, G.S. 47F-3-101, organized to further and promote the common interests of Kenmure property owners, manage and maintain the Road Systems and other Common Elements in Kenmure, and manage the services for which it is responsible under this Declaration. Operation of the KPOA shall be in accordance with this Declaration, the Act, the Articles of Incorporation (hereinafter referred to as the "Articles") and with the By-laws, as they may be adopted or amended from time to time. The KPOA, acting through its Board of Directors (herein the "Board") shall have all of the powers granted to it under NC G.S. 55A, the Act, the Articles, this Declaration, the Bylaws and the Rules and Regulations, as they may be adopted or amended from time to time.

Every Owner of a Residential Lot or Family Dwelling Unit, including the Developer, now or hereafter subject to this Declaration, whether he has acquired title by purchase from the Developer, Developer's grantee, successor or assignee, or by gift, conveyance or by operation of law, is bound to and hereby agrees that he shall accept membership in the KPOA and does hereby agree to be bound by this Declaration, the Articles and the By-laws of the KPOA and the rules and regulations enacted pursuant thereto. Membership is automatic upon acquisition of ownership of a Residential Lot or Family Dwelling Unit in Kenmure and may not be hypothecated or transferred apart and separate from a transfer of the ownership of the Residential Lot or Family Dwelling Unit. Membership shall likewise automatically terminate upon sale or transfer of the Residential Lot or Family Dwelling Unit, whether voluntary or involuntary. Voting rights and qualifications of voters and membership in the KPOA are more fully stated, qualified and determined by the Articles and by its By-laws.

B. KPOA MEMBERSHIP AND VOTING RIGHTS:

Members shall be all owners of Residential Lots and Family Dwelling Units, with the exception of the KPOA, its successors and assigns, and shall be entitled to one vote for each Residential Lot or Family Dwelling Unit owned. When more than one person holds an interest in any Residential Lot or Family Dwelling Unit, all such persons shall be Members. The vote for such Residential Lot or Family Dwelling Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Residential Lot or Family Dwelling Unit.

C. ROAD MAINTENANCE COMMITTEE:

The Road Maintenance Committee (herein the "RMC") shall be a Permanent Committee of the KPOA and shall consist of Board members of the KPOA and Members who will have primary responsibility for road surfaces, shoulders, drainage, rights-of-way, signs, road markings and striping, and speed attenuation devices owned or controlled by the Association (the "Road Systems"). The KPOA Board shall appoint the Chairman of the RMC and shall appoint Directors and members to perform the duties outlined in the RMC Policies and Procedures, the Rules and Regulations of the Association and the Bylaws of the Association as they relate to the

Road Systems. The KPOA Board retains the right to appoint all members of the RMC, who shall serve at the discretion of the KPOA Board.

(Amended by vote of Property Owners December 6, 2004)

D. SECURITY COMMITTEE:

The Security Committee (herein the "SC") shall be a Permanent Committee of the KPOA and shall consist of Board members of the KPOA and Members who will have primary responsibility for the security function for Kenmure, including the security facilities, personnel and policies and procedures related thereto. The KPOA Board shall appoint the Chairman of the SC and members to perform the duties outlined in the Policies and Procedures, the Rules and Regulations of the Association and the Bylaws of the Association as they relate to the security systems. The KPOA Board retains the right to appoint all members of the SC who shall serve at the discretion of the KPOA Board.

(Amended by vote of Property Owners December 6, 2004)

E. JUDICIAL COMMITTEE:

The Judicial Committee shall be a Permanent Committee consisting of three or five Members and shall have duties and functions as provided by resolution of the Board and as provided in this Declaration, the Articles, the Bylaws, and the published Rules and Regulations of the Association. The Board shall appoint all members of the Judicial Committee. The Judicial Committee shall advise the Board regarding its actions.

4. RESIDENTIAL USE:

All Residential Lots and Family Dwelling Units shall be used exclusively for residential purposes and shall be subject alike to this Declaration, except that paragraphs 7, 12, 13, 21, 40, 41 and 43 shall not apply to condominium or cottage units owned by or being constructed by Developer.

5. SUBDIVIDING AND BOUNDARY RELOCATION:

No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot. No subdivision or boundary relocation shall be made without the written approval of the KPOA, except, however, Developer hereby expressly reserves to itself, its successors or assigns, the right to re-plat any Development Lots prior to the conveyance thereof, in order to create a modified Lot or Lots. This Declaration shall apply to each Lot or Lots that may be so created.

6. COMMERCIAL USE:

No commercial, industrial or religious enterprise, undertaking or use is permitted.

7. ARCHITECTURAL REVIEW:

A. KENMURE ARCHITECTURAL REVIEW COMMITTEE:

The Kenmure Architectural Review Committee (herein the "KARC") shall review all construction, and improvements or modifications thereto, on any Residential Lot or Family Dwelling Unit and make recommendation as to approval or disapproval to the KPOA. The KPOA Board retains the right to appoint all members of the KARC who shall serve at the discretion of the KPOA Board. The KPOA shall have power to levy fees and charges payable by the builder or property owner for the service provided by the KARC and to require deposits to insure that construction and landscaping plans are completed as approved. The KPOA shall also have the power to promulgate and enforce all reasonable and necessary rules and regulations in this regard and levy appropriate fines.

(Amended by vote of Property Owners December 6, 2004)

B. PLANS AND SPECIFICATIONS:

No Family Dwelling Unit, garage, fence, wall, swimming pool, tower or other structure shall be commenced, erected or maintained upon any Lot in Kenmure, nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any landscaping or site work be done until complete final plans and specifications showing the nature, kind, shape, height, materials, basic exterior finished and colors, location and floor plan therefor, and showing front, side and rear alterations thereof, the name of the contractor, septic tank contractor and landscaper, have been submitted to and approved by the KARC, as to harmony of exterior design and general quality with the standards of Kenmure, and as to location in relation to surrounding structures and topography.

C. SITE PLAN:

Prior to the construction of any structure, a site plan to scale must be submitted on a topographic map which shows the location of the house, septic tank, drain field, all drive, walks and parking areas, with each clearly indicated. Prior to any physical disturbance of the site, special and/or irreplaceable features are to be identified and provisions for their protection clearly established. This includes large and/or specimen trees, rock outcroppings, springs and streams, and concentrations of azaleas, rhododendrons, and other shrubs and wild flowers.

D. APPROVAL PROCESS:

Refusal or approval of plans, specifications, contractor, septic system contractor and landscaper, or location of any structure may be based upon any grounds including purely aesthetic considerations, which at the sole discretion of the KPOA shall be deemed sufficient. In the event that the KPOA fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing shall be inconsistent with this Declaration unless a variance has been granted in writing by the KPOA.

E. CONTRACTOR APPROVAL:

Any contractor must be approved by the KPOA prior to performing any work within Kenmure. No person, firm or entity shall be approved as a contractor unless such person, firm or entity obtains his income primarily from construction or landscaping of the type which the contractor is to perform and is licensed by the State of North Carolina for his services. No Lot Owner will be permitted to act as his own builder for the exterior of any structure, except where such Lot Owner obtains his income primarily from the construction of the type of structure to be constructed and otherwise as a licensed service provider meets the qualifications for approval by the KPOA.

F. REQUIREMENTS AT COMPLETION:

At the completion of all construction in accordance with the plans submitted, the Lot Owner shall request an on-site inspection by the KARC. No home may be occupied until a written Occupancy Permit has been issued by the Village or County governmental authority authorized to issue such permits. In addition to the above, the following will be required:

1. Final landscaping development plans must be approved and carried out without undue delay.
2. Exterior lighting must be approved.
3. All clean-up must be completed.

G. VIOLATIONS AND ENFORCEMENT:

In the event any Lot Owner violates the terms of this section, the KPOA or its duly appointed agent, shall give written notice to the Lot Owner to cure such violation. In the event of the failure of the Lot Owner to cure such violation within thirty (30) days, the KPOA shall be entitled to enter upon the property of the Lot Owner and remedy such defect including removal of any structure built in violation hereof, all at the expense of the Lot Owner. This right of the KPOA or its agent, shall be in addition to all other general enforcement rights which the KPOA may have for a breach or violation of the terms of this Declaration and shall not be deemed a trespass by the KPOA or its agent.

8. BUILDING SIZE:

No structure except as herein provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Single-Family Detached Dwelling not exceeding two (2) stories in height above the basement, with a minimum requirement of at least a two (2) car garage which may be attached or unattached. The main building shall contain a minimum of 2,200 square feet of living space for a one story dwelling. All two-story Family Dwelling Units shall contain a minimum of 1,900 square feet of enclosed living space for the main floor, with a total minimum of 3,000 square feet of enclosed living space. Garages, porches, patios, greenhouses, unfinished basements, cellars, or similar areas shall not be considered floor space in

meeting the above requirements. One accessory building may include a private garage and/or servants' quarters, providing the use of such accessory building does not overcrowd the site and; provided further, that such building is not used for any activity normally conducted as a commercial, industrial or religious activity. Such accessory building may not be constructed prior to the construction of the main Family Dwelling Unit. Each Family Dwelling Unit must have sufficient enclosed garage space for any and all family cars. No carports are permitted. The size and carport restrictions do not apply to condominium units or The Cottages of Kenmure as shown on Plat Slide 3516, Henderson County Registry and additional plats designated "The Cottages of Kenmure" as recorded in the Henderson County Registry.

9. BUILDING REQUIREMENTS:

No decorative features such as sculptures, bird baths, bird houses, fountains or other embellishments shall be permitted that are visible from any street unless approved by the KARC.

10. TEMPORARY STRUCTURES:

No structure of a temporary character shall be placed upon any portion of Kenmure at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any Family Dwelling Unit. Temporary shelters, including mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of Kenmure after completion of construction thereon as hereinabove provided. Basements or partially complete houses will be considered temporary and may not be inhabited.

11. SETBACKS:

All front setbacks for buildings in Kenmure shall be a minimum of 35 feet, side and rear setbacks shall be a minimum of 35 feet, except for Phase V properties, where the front setback for buildings from the Lot line shall be a minimum of 30 feet, side and rear setbacks shall be a minimum of 25 feet. Relief from said building setback lines may be given by the KPOA, acting through the KARC, to any Lot Owner upon a showing of extraordinary circumstances by said Lot Owner. Such extraordinary circumstances may include unusual topography, Lot shape, frontages and also potential views to give property owners the fullest enjoyment of their Lots. In order to assure, however, that location of houses will be staggered where practical and appropriate so that the maximum amount of view and privacy will be available to each house, that the structures will be located with regard to the ecological constraints and topography of each Lot, taking into consideration topography, the location of large trees and similar considerations, the KPOA, acting through the KARC, reserves the right to control absolutely the precise site and location of any residential unit or other structure upon all Lots. Provided, however, that such location shall be determined only after reasonable opportunity is afforded the Lot Owner to recommend a specific site.

12. EXTERIOR CONSTRUCTION:

The exterior of all houses and other structures as well as site work and landscaping must be completed within sixteen (16) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Lot Owner due to strikes, fire, national emergency or natural calamities. Normally, the construction start date will be the date the Village of Flat Rock and/or Henderson County issues a construction permit. In addition, a landscaping plan and driveway surfacing plan, with firm completion dates, must also be approved. Residential units and other dwelling structures may not be occupied until the exterior thereof has been completed. If the exterior is not completed within sixteen (16) months without the prior written approval of the KARC, the Lot Owner shall, after notice and opportunity to be heard, be liable for fines as provided in Section 47F-3-102 (12) of the Act in the amount of up to \$150 per day until all exterior items are completed to the satisfaction of KARC.

(Amended by vote of Property Owners December 6, 2004)

13. TREES:

No flowering trees, shrubs, or evergreens of any size, or trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level, may be removed without the prior written approval of the KARC, unless located within twenty (20) feet of the building, or within ten (10) feet of the right-of-way of driveways and walkways. Excepted here from shall be damaged trees, or trees which must be removed because of any emergency. However, should a Lot Owner remove any tree or vegetation as herein provided without the above-described written approval, or negligently or intentionally damage any tree or vegetation as herein provided, said Lot Owner shall, after notice and opportunity to be heard, be liable to the KPOA for an assessment in the amount of Fifteen Hundred Dollars (\$1,500) for each tree or other plant removed or be liable for fines as provided in Section 47F-3-102 (12) of the Act.

(Amended by vote of Property Owners December 6, 2004)

14. SEWER AND WATER:

Prior to the occupancy of any Family Dwelling Unit, proper and suitable provisions shall be made for the disposal of sewage by means of a septic system, and no sewage shall be emptied or discharged into any creek, lake or shoreline thereof, or upon the open ground. No sewage disposal system shall be used unless such system is designed, located, constructed and maintained in accordance with the requirements, standards and recommendations of the State Board of Health or its successor governmental authority. Each septic system shall be maintained in good condition so that its use and existence shall not constitute a nuisance to any other Lot Owner. Approval of such system shall be obtained from the health authority having jurisdiction. In the event that the KPOA, its successors or assigns, or other person, firm corporation, or governmental authority provides a public sewage disposal system available to the subdivision's lots, any Lot Owner whose Lot has such service available shall be required to hook up to said system on the terms generally arranged for said system. Every Family Dwelling Unit shall have permanent plumbing and running water and a permanent sewage disposal system. No temporary plumbing, water, or sewage systems are allowed.

15. STORAGE TANKS:

Fuel storage receptacles may not be exposed to view and must be installed, either within an accessory building or buried underground. Bottled gas, with the exception of gas grills, is not permitted.

16. TRASH:

Each Lot Owner shall provide sanitary containers for garbage and all garbage receptacles, tools and equipment for use by the Lot Owner or otherwise shall be placed in a fenced enclosure to shield same from general visibility from roads abutting the Lot Owner's property, and also from neighboring properties. Trash, garbage and other waste shall be kept in said sanitary containers. No trash, garbage, construction debris or other unsightly or offensive material shall be placed upon any portion of Kenmure, except as temporary and incidental to bona fide improvements of said area of Kenmure.

17. ANTENNAE AND THE LIKE:

All utilities, wires, cables, antennae (including television satellite receptacles) and the like, of any kind (such as telephone, electrical, television, radio and citizens band radio) must be placed underground or within or upon the house so as not to be visible from the street or adjoining Lots, except as may be expressly permitted by FCC regulation or approved in writing by the KPOA.

18. ROADWAYS AND TRAFFIC CONTROL:

The KPOA either owns, or shall have control of, all rights-of-way for roadways as shown on the various plat maps for Kenmure. The KPOA shall have the power to place any reasonable restrictions upon the use of roadways, including but not limited to, the types and sizes of vehicles using said roads, the maximum and minimum speeds of vehicles using said roads, and the maximum noise level of vehicles. The KPOA shall have the power to levy fees and charges for the impact of construction of new homes upon the roads and other common areas and to require deposits to insure roads and rights-of-way are returned to pre-construction condition at the completion of construction. The KPOA shall also have the power to promulgate and enforce all reasonable and necessary traffic and parking regulations and levy fines for violations.

19. OFF-STREET PARKING:

Each owner of a Family Dwelling Unit not located in a condominium area shall provide sufficient space for parking any and all vehicles off the roadways. Parking on the roadways in any area of Kenmure is not permitted.

20. VEHICLES AND VEHICLE STORAGE:

A. STORAGE:

Any boats, recreational vehicles, campers, motorcycles, motorbikes, all terrain vehicles and the like must be parked in an enclosed area, and shall not be visible from the roads and streets within any portion of Kenmure. No vehicle of any kind shall be stored on any Lot. Garage doors must be closed at all times when not in use.

B. MOTORCYCLES AND THE LIKE:

No motorcycles, motorbikes, all terrain vehicles or similar motor vehicles shall be allowed upon or in Kenmure, without prior written approval of the KPOA.

21. LOT UPKEEP:

It is the responsibility of each Lot Owner to prevent any unclean, unsightly, or unkempt condition of buildings or grounds on the Lot Owner's property, including the right-of-way. The KPOA shall have the right, but not the duty, to enter upon any Lot for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds that tend to decrease the beauty of the neighborhood as a whole or the specific area. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot Owner and shall not be deemed a trespass.

22. NUISANCES:

No obnoxious or offensive activity shall be carried on upon any portions of Kenmure nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Lot Owner, tenant or guest thereof in any area of Kenmure thereby diminishing the enjoyment of Lots by their owners. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as any diminish or destroy the enjoyment of other property in Kenmure by the Lot Owners, tenants, and guests thereof, may be maintained. The KPOA reserves the right in its sole discretion to determine a nuisance, and upon ten (10) days' written notification by the KPOA, the activity must cease.

23. EROSION CONTROL:

The KPOA and the Developer shall have the right to protect the land designated as areas upon which residential building shall take place from erosion by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by the KPOA or the Developer to provide and insure against such erosion. The KPOA and the Developer, however, are under no duty to take such actions as hereinabove provided.

24. FIRES:

No outdoor fire shall be built within Kenmure. No leaves, trash, garbage or similar debris shall be burned except as permitted by a written permit issued by the KPOA. Outdoor grilling shall be done with the greatest of care in view of fire and smoke hazards and general pollution.

25. SIGNS:

No signs, including "for rent," "for sale" and other similar signs shall be erected, placed, allowed or maintained on any Lot by anyone, including but not limited to a Lot Owner, a Realtor, a contractor or subcontractor, except with the written approval of the KPOA or as may be required by legal proceedings. If such approval is granted, the KPOA reserves the right to restrict size, color and content of such signs.

26. WATER COURSES:

No lake, pond or other water retention basin shall be constructed, nor shall the course of any stream be changed, nor any culverts installed in any stream without prior written approval of the KPOA.

27. WATERWAYS:

The owner of Lots fronting on a lake, stream, or other waterway, or on an open-space area, separating the Lot from such waterway, will not be permitted to erect or maintain a private dock, dam or similar structure on such waterway.

28. BOATS:

No boat, canoe or other watercraft shall be operated upon any lake, stream or other waterway. No boat, canoe or other watercraft shall be beached or stored overnight or permanently on the shore of any lake, stream or other waterway. Notwithstanding this restriction, the KPOA or the Developer shall be entitled to maintain and operate any form of water-craft.

29. ANIMALS:

No animal, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other commonly domesticated household pets may be kept, provided that they are not bred or maintained for commercial purposes. Pets, when running loose, must be kept strictly within the boundaries of the owner's property. At all other times, they must be kept securely on a leash. No pets are permitted if they are kept so as to constitute a nuisance.

30. VACANT LOTS:

Unused and/or vacant Lots are not to be trespassed upon for any reason.

31. HUNTING AND FIREARMS:

Hunting and trapping of animals, fowl and game is prohibited, and the discharge of firearms or bows and arrows for any purpose shall be prohibited.

32. EASEMENTS:

A. UTILITIES AND DRAINAGE:

KPOA and the Developer reserve to themselves, their successors and assigns, a perpetual alienable and releasable easement and right on, over and under the ground to erect, maintain and use electric telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water or other private or public conveniences or utilities on, over and under the rear and front ten (10) feet of each Lot, and ten (10) feet along all sides of each Lot, and such other areas as shown on the applicable plats; provided further that the KPOA and the Developer may cut drain ways for surface water wherever and whenever such action may appear to the KPOA or the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. The KPOA and the Developer further reserve unto themselves, their successors and assigns, a perpetual alienable and releasable easement and right to cut any trees, bushes or shrubbery or to take any other similar action reasonably necessary to provide economical and safe utility installation, and to maintain reasonable standards of health, safety and appearance.

B. WELLS AND PUMPING STATIONS:

The KPOA and the Developer reserve the right to locate wells, pumping stations and tanks within any portion of Kenmure, provided, however, that should the owner of any Lot upon which such pumping station, well or tank shall be located is other than the KPOA or the Developer and the applicable recorded plat of such Lot Owner's property does not designate such property for use as aforesaid, then such pumping station, tank or well shall not be located upon such Lot Owner's property without the permission of such Lot Owner.

C. PESTICIDES AND FIRE CONTROL:

In addition, the KPOA and the Developer reserve unto themselves, their successors and assigns, a perpetual alienable and releasable easement and right on and over and under all Lots to dispense pesticides and take other action which in the opinion of the KPOA or the Developer is necessary or desirable to control insects and vermin, to cut fire breaks and other activities which in the opinion of the KPOA or the Developer are necessary to control fires. The KPOA and the Developer, however, are under no duty to take such actions as herein above provided.

D. LOT OWNER RIGHTS:

Every Lot Owner, his or her guests and lessees, shall have a right and easement of enjoyment in, to and over the Common Elements, including the paved rights-of-way, subject to

the rights of the KPOA under this Declaration, the Bylaws and the rules and regulations of the Association. Such easement shall be appurtenant to and shall pass with the title to every Lot or Family Dwelling Unit. No Lot Owner may give easements through their property to other property owners for the purpose of roads or utilities, excluding the right to give easements to the KPOA and the Developer.

E. DEVELOPER RIGHTS TO REASONABLE ACCESS:

For so long as the Developer, and its successors or assigns, owns the Kenmure Country Club or any real estate or real estate sales operation within Kenmure, reasonable access to Kenmure and Country Club facilities shall be provided to the Developer for their personnel, real estate prospects, Country Club guests, and business or other guests.

33. TRESPASS:

Whenever the KPOA or the Developer is permitted by this Declaration to correct, repair, clean, preserve, clean out or do any action on any Lot or on the easement areas adjacent thereto, entering such Lot or easement area and taking such action shall not be deemed a trespass.

34. SERVICES PROVIDED BY KPOA:

The KPOA, its successors and assigns, shall provide the following services to Lot Owners within Kenmure:

- A. Maintenance and improvement of the Common Elements, including roads.
- B. Security gate guard and security patrol.
- C. Garbage and trash collection.
- D. Administrative Services for the operation of the Planned Community.

35. ANNUAL ASSESSMENTS:

A. GENERAL:

Each Lot Owner shall pay to the KPOA, Annual Assessments for the purposes set forth in Paragraph 34, such assessments to be fixed, established and collected from time to time as hereinafter provided.

B. ANNUAL ASSESSMENTS:

The Annual Assessments for the year beginning January 1, 2002 are in accordance with the following schedule:

- | | |
|--|-----------|
| 1. Residential Lot – Road/Common Element Maintenance | \$ 115.00 |
|--|-----------|

	Security, Trash Collection, Administration	\$ 210.00
2.	Family Dwelling Unit – Road/Common Element Maintenance	\$ 310.00
	Security, Trash Collection, Administration	\$ 510.00
3.	Development Lot – Road Maintenance	\$115.00
	Security and Trash Collection	\$200.00

C. ADJUSTMENT OF ASSESSMENTS:

The Annual Assessment for Residential Lots and/or Family Dwelling Units, as specified in Paragraph B. 1. and 2. above, may be adjusted from time to time as approved by the Board.

D. INCREASE OF ANNUAL ASSESSMENTS:

The Annual Assessment may be increased each year by the KPOA or its successors and assigns by an amount not in excess of the larger of:

1. eight per cent (8%) per year, or
2. the percentage increase (between the first month and the last month of an Annual Assessment period) in the Cost of Living Index (All Urban Consumers) published by the United States Government (or substitute Index if said Cost of Living Index is ever discontinued), whichever of these two percentage figures is larger.

The increase in Annual Assessment shall be on a cumulative basis. (That the Annual Assessment may be increased on a cumulative basis shall mean that for a particular year subsequent to the year following the year of the recording of the Original Declaration, the Annual Assessment may be increased by an amount equal to the maximum annual increase permissible for any preceding calendar year(s) minus the actual increase for any preceding year(s) plus the maximum annual increase permissible for that particular year.)

E. DUE DATE FOR ANNUAL ASSESSMENTS:

The Annual Assessments shall be fixed on a calendar-year basis or fiscal year basis as determined by the KPOA and shall be due and payable 45 days after the invoice date for Residential Lots and Family Dwelling Units. The Annual Assessments for Development Lots shall be due and payable monthly in advance. Each Lot Owner shall commence payment of the assessment, prorated for the months remaining in the year, on the first day of the month following the date of closing, or in the case of Development Lots, the first day of the month following the date the Lot is recorded in the Henderson County Registry. Payment of the assessment shall be past due forty-six (46) days after the invoice date and shall thereafter be deemed to be delinquent.

(Amended by vote of Property Owners December 6, 2004)

F. DELINQUENT ASSESSMENTS AND ENFORCEMENT:

Delinquent Annual Assessments together with interest thereon at the rate of eighteen percent (18%) per annum as provided in Section 47F-3-115 of the Act, a late charge of \$40 and cost of collections thereof as hereinafter provided shall be a charge and continuing lien on the Lot Owner's property against which each such assessment is made at such time as the KPOA or its designee or assignee files a notice of lien to enforce such charge in the manner provided in Section 47F-3-116 of the Act. Each such assessment, together with such interest thereon, late charge and cost of collection thereof as hereinafter provided, shall be the personal obligation of the person who was the Lot Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot or Family Dwelling Unit, all such co-owners shall be jointly and severally liable for the entire amount of the assessment. Any lien as established herein shall be enforceable as a lien against the defaulting Lot Owner's property as provided in Section 47F-3-116 of the Act. The KPOA may bring an action at law against the Lot Owner personally obligated to pay a delinquent Annual Assessment or to foreclose the lien against the property, as stated above, and there shall be added to the amount of such assessment, the costs of preparing and filing the notice of lien, the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee actually incurred, together with the costs of the action.

G. RE-PAVING RESERVES:

Reserves for road surface re-paving and incidental striping and right-of-way maintenance shall be maintained by the KPOA out of the road maintenance assessment so that each year the KPOA collects an amount of money which, when multiplied by the number of years remaining before re-paving, will be required (which shall include the year of collection) and added to current KPOA reserves for re-paving, will equal the total estimated cost of re-paving, including striping and buildup and maintenance of the rights-of-way incidental to re-paving. A professional engineer shall be consulted by the KPOA at least every second year for help in determining the future costs of re-paving and the remaining estimated life of the existing paving. Re-paving reserves shall not be used for any purpose other than re-paving road surfaces, striping of re-paved road surfaces and buildup and maintenance of the rights-of-way incidental to re-paving.

H. BUDGETS, ACCOUNTS AND SURPLUS FUNDS:

A separate budget and separate operating accounts shall be maintained for management of and disbursements of assessment funds collected for road/Common Element maintenance, for security and trash collection and for administration. Any surplus funds remaining in the operating budget for road/Common Element maintenance at the end of any given fiscal year shall be deposited in the account for road surface re-paving unless the KPOA Board determines, in its sole discretion, that such surplus funds should be used for another road maintenance purpose or distributed to the Members. Any surplus funds remaining in the operating budgets for security and trash collection or administration at the end of any given fiscal year shall be deposited in the account for emergency reserves unless the KPOA Board determines, in its sole discretion, that such surplus funds should be used for another purpose or distributed to the Members.

36. SPECIAL ASSESSMENT TO ALL OWNERS:

If road re-paving, repair or replacement or construction, repair or replacement of any Common Element is required and funds are not available in the KPOA operating accounts or reserves, the Board of Directors of the KPOA shall determine the total amount required to complete the re-paving, repair or replacement and shall pass a special assessment in that amount. The special assessment shall be due and payable within thirty (30) days of mailing of written notice by the KPOA to the Members and shall be past due thirty-one (31) days after the invoice date and thereafter deemed to be delinquent. Special assessments shall be a personal obligation of the Member and a lien on their real property and delinquent special assessments shall be handled like a delinquent Annual Assessment in accordance with Paragraph 35 F, above. Each owner of a Family Dwelling Unit or Residential Lot, including the Developer, shall pay an equal share of the special assessment, which share shall be a fraction with a numerator of one (1) and a denominator which equals the sum of all Residential Lots and Family Dwelling Units subject to this Declaration.

37. MEMBERSHIP IN THE COTTAGES OF KENMURE OWNERS ASSOCIATION AND SERVICES PROVIDED:

A. MEMBERSHIP:

The Developer anticipates the formation the Cottage Association. All Cottage Owners in Phase V, shall become members of the Cottage Association when it is formed and thereafter, upon acceptance of a deed from the Developer, or a Grantee, successor or assignee of the Developer; and further, each Cottage Owner, by said membership or acceptance of said deed, agrees to be bound by the rules, regulations and maintenance obligations enacted by said Cottage Association, and all Cottages shall be subject to the rules, regulations and maintenance obligations set forth in the By-Laws of said Cottage Association. Until such time as the Cottage Association assumes responsibility for lawn, landscaping and sidewalk maintenance, the Developer, its successors and assigns, shall provide for these services.

B. COTTAGE ASSESSMENTS – GENERAL:

Each Cottage Owner shall pay to the Developer, its successors or assigns, or to the Cottage Association when the Developer so designates in writing to the Cottage Association members, Cottage Assessments for the purposes set forth herein, such assessments to be fixed, established and collected from time to time as hereinafter provided.

C. INITIAL COTTAGE ASSESSMENT:

The initial Cottage Assessment shall be a total of \$1,800.00 or \$450.00 per quarter.

D. INCREASE OF COTTAGE ASSESSMENT:

From and after January 1, 2000, the Cottage Assessment may be increased each

year by the Developer, or its successors and assigns by an amount not in excess of the larger of:

1. eight per cent (8%) per year, or
2. the percentage increase (between the first month and the last month of an assessment period) in the Cost of Living Index (All Urban Consumers) published by the United States Government (or substitute Index if said Cost of Living Index is ever discontinued), whichever of these two percentage figures is larger.

Subsequent to January 1, 2000, the annual increase in assessment shall be on a cumulative basis. (That the Cottage Assessment may be increased on a cumulative basis shall mean that for the particular year subsequent to the calendar year beginning January 1, 2000, the Cottage Assessment may be increased by an amount equal to the maximum annual increase permissible for any preceding calendar year(s) minus the actual increase for any preceding years) plus the maximum annual increase permissible for each particular year.)

E. DUE DATE FOR COTTAGE ASSESSMENT:

The Cottage Assessment shall be fixed on a calendar-year basis and shall be due and payable quarterly in advance. Each Cottage Owner shall commence payment of the assessment, prorated for the months remaining in the quarter, on the first day of the month following the date of closing. Payment of the assessment shall be past due thirty (30) days after the due date and thereafter shall be deemed to be delinquent.

F. DELINQUENT COTTAGE ASSESSMENTS AND ENFORCEMENT:

Delinquent Cottage Assessments together with interest thereon at the rate of eighteen percent (18%) per annum as provided in Section 47F-3-115 of the Act, a late charge of \$40 and cost of collections thereof as hereinafter provided shall be a charge and continuing lien on the Cottage Owner's property against which each such assessment is made at such time as the Developer or its designee or assignee files a notice of lien to enforce such charge. Each such assessment, together with such interest thereon, late charge and cost of collection thereof, shall be the personal obligation of the person who was the Cottage Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a cottage, the co-owners shall be jointly and severally liable for the entire amount of the assessment. Any lien as established herein shall be enforceable as a lien against the defaulting owner's Cottage and improvements (if any) thereon, as provided in Section 47F-3-116 of the Act. The Developer or its designee or assignee may bring an action at law against the Cottage Owner personally obligated to pay a delinquent Cottage Assessment or to foreclose the lien against the property, as stated above, and there shall be added to the amount of such assessment, the costs of preparing and filing the notice of lien, the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee actually incurred, together with the costs of the action.

G. DEVELOPER RIGHTS AND COTTAGE OWNER RESPONSIBILITIES:

Notwithstanding anything in this Paragraph to the contrary, the Developer, its successors and assigns, specifically reserves the right to maintain all of the lawns, sidewalks and exterior landscaping on each Lot in the development(s) designated on the recorded plat(s) as "The Cottages of Kenmure," as originally installed by the Developer. All additional landscaping, if any, shall be maintained by the specific Cottage Owner. The Developer, its successors and assigns, specifically reserves the absolute right of way and easement over, under and across each such Lot for the purposes of the lawn and landscaping maintenance. The Developer rights reserved under this subparagraph G shall terminate on the same date that its rights terminate under paragraph 45 below.

38. REMEDIES:

A. ENFORCEMENT OF COVENANTS:

Each person to whose benefit this Declaration inures, including the KPOA, and the Developer, may proceed at law or equity to prevent the occurrence, continuation or violation of any provisions of this Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney fees.

B. SUSPENSION OF PRIVILEGES:

After notice and an opportunity to heard in accordance with subparagraph D, below, the Board may suspend all voting rights, if any, and all rights to use the Common Elements, of any Lot Owner for any period during which any Annual Assessment against such Lot Owner remains unpaid, or during the period of any continuing violation by such Lot Owner of the provisions of this Declaration, the Bylaws or the published Rules and Regulations. The right of ingress and egress of an Lot Owner to his/her Lot or Family Dwelling Unit shall not be affected by any suspension of privileges.

C. PENALTIES:

In accordance with Sections 47F-3-102 (11) and (12) and 47F-3-107.1 of the Act, the Board may impose penalties for violations of the provisions of this Declaration, the By-laws and the published Rules and Regulations, after notice and an opportunity to heard in accordance with subparagraph D. Those penalties may include, but are not limited to, suspension of rights to use the Common Elements, and reasonable fines.

D. ENFORCEMENT PROCEDURES:

In accordance with Section 47F-3-107.1 of the Act the Board shall not suspend privileges or impose a fine or charge for damages against a Lot Owner unless and until the following procedure is followed:

1. Demand:

Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is continuing one, or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances that, in the Board's sole determination, pose a danger or nuisance to safety or property. Charges for late payments under Paragraph 35 of this Declaration are not to be regarded as fines that warrant a hearing under this subparagraph.

2. Notice:

Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation is subsequently repeated, the Board may impose a fine or suspend privileges by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine or privileges to be suspended; (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Judicial Committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that all rights to be heard or to have a fine or suspension of privileges reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

3. Hearing:

If the hearing is requested, it shall be held before the Judicial Committee and the violator shall be given a reasonable opportunity to be heard. The Judicial Committee shall render its final decision regarding imposition of the fine or suspension of privileges no later than five (5) days after the hearing and inform the Board of its decision. The Board shall issue a written statement of the results of the hearing.

E. CUMULATIVE RIGHTS:

Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation.

39. SEVERABILITY:

Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the

parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

40. RESPONSIBILITY FOR OTHERS:

Lot Owners are obligated to assume the responsibility that any and all dependents, guests, servants and visitors observe and maintain all the rules, regulations, covenants and restrictions binding the Lot Owners themselves.

41. LEASING OR RENTING:

A. GENERAL:

A Family Dwelling Unit owner may lease or rent his or her Family Dwelling Unit, provided, however, that the tenant or lessee shall be bound by this Declaration and the Bylaws of the Association. Except as provided for Cottage Owners in paragraph B, below, and for condominium owners in the Condominium Declarations, the term of such lease or rental for a Family Dwelling Unit shall be no less than one (1) year and no more than three (3) years; and the owner of the Family Dwelling Unit may not lease or rent more than once in any twelve (12) month period. In no event and at no time may a Family Dwelling Unit owner lease or rent a portion of the Family Dwelling Unit unless the entire Family Dwelling Unit is leased or rented. Timesharing and timeshares as defined in the North Carolina Time Share Act (NC GS Chapter 93A) of any Lot or Family Dwelling Unit in Kenmure is prohibited.

B. COTTAGES:

A Cottage Owner shall have the right to rent his cottage for transient or hotel purposes. In the event the rental is for a period in excess of thirty (30) days, then said lease shall be in writing, and shall be subject to this Declaration and the Bylaws of the Association, and failure of the Lessee to comply with the terms of such documents shall be a default under the lease. Any Cottage Owner who enters into a lease of his Cottage in excess of thirty (30) days shall promptly notify the KPOA and the Cottage Association of the name and address of each lessee, the Cottage rented, and the term of the lease. Other than the foregoing restrictions, each Cottage Owner shall have the full right to lease his Cottage and said right may not be altered, amended or abridged without the written consent of the majority of the Cottage Owners.

42. SPECIAL RESTRICTIONS AFFECTING ALL LOTS ABUTTING GOLF COURSES:

Some Lots and Family Dwelling Units (herein "Course Lots" in Kenmure may abut a golf course owned by the Developer. For those Course Lots only, the following special restrictions apply:

A. LANDSCAPING:

The landscaping pattern of that portion of the Course Lot within fifty (50) feet of the lot line bordering a golf course shall be in general conformity with the overall landscaping pattern for the course fairway area established by the golf course architect and communicated to the Lot Owner by the Developer.

B. EASEMENT RESERVATION FOR PLAYERS:

Until such time as a Family Dwelling Unit is constructed on a Course Lot, the Developer reserves an easement to permit and authorize registered golf course players to enter upon such lot to recover a ball or play a ball, subject to the *official rules* of the course, without such entering and playing being deemed a trespass. After a Family Dwelling Unit is constructed, such easement shall be limited to that portion of the Course Lot within fifty (50) feet of the lot line; and, recovery of balls only, not play, shall be permitted in such area. Golfers shall not be entitled to enter on any such lot with a golf cart or other vehicle, nor spend unreasonable time on such lot, or in any way commit a nuisance while on such lot. After construction of a Family Dwelling Unit on a Course Lot, markers may be placed on said lot within fifty (50) feet of the lot line at the expense of the Developer.

C. PROHIBITED ACTIONS:

All Lot Owners shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course or the development of an attractive overall landscaping plan for the entire golf course area. Such prohibited actions shall include, but are not limited to, such activities as burning trash, leaves or other debris, the maintenance of dogs or other pets on the Lot under conditions interfering with play in any way, and permitting children or pets to be on the fairway in such a manner as to interfere with play in any way.

D. DRAINAGE EASEMENT:

Each Lot Owner hereby grants the Developer an easement to cut drainage ways to control the flow of surface water, during the construction and/or maintenance of golf fairways, such improvements to be at the expense of the Developer.

43. VARIANCES:

In case of hardship and for good cause shown, the KPOA may grant variances from any of these covenants and restrictions. Subject to the Developer's rights regarding decisions of the KARC under sub-paragraph 45 B., below, the decision of the KPOA to grant or not grant variances as herein provided is based upon KPOA's sole and absolute discretion. Variances or waivers granted by the Developer and recorded prior to the recording of this Declaration remain valid.

44. RULES AND REGULATIONS:

A. CONSISTENT WITH DECLARATION:

The Board may from time to time promulgate reasonable rules and regulations respecting the restrictive covenants set out in this Declaration, but such rules and regulations shall be consistent with this Declaration and not in derogation of or intended as an amendment thereof.

B. USE OF COMMON ELEMENTS:

The Board may from time to time promulgate reasonable rules and regulations respecting the use of the Common Elements, including exclusive use of part of the Common Elements (such as picnic facilities, if any) by a Lot Owner and his or her guests, which exclusive use may be conditioned upon, among other things, payment of a fee.

C. GENERAL POWERS OF THE BOARD:

The Board may from time to time, without the consent of the Members, promulgate, modify, or delete rules and regulations applicable to Lots and Family Dwelling Units, Common Elements, administration and management of Kenmure, or Kenmure as a whole. Such rules and regulations shall be binding upon all Lot Owners, guests of Lot Owners, tenants of Lot Owners, contractors and other guests until and unless overruled, canceled, or modified in a regular or special meeting by the vote of Members holding a majority vote in the Association. Such rules and regulations may be enforced by the Association in accordance with the Act, this Declaration and Bylaws, to include but not be limited to the imposition of fines and penalties pursuant to Sections 47F-3-102 (11) and (12) and 47F-3-107.1 of the Act, after notice and an opportunity to be heard.

45. SPECIAL RIGHTS OF DEVELOPER:

In addition to any other rights specifically reserved in this Declaration, the Developer will have the following additional rights until the Transfer of Control Event is reached, after which the rights granted by this paragraph shall terminate.

A. APPOINTMENT OF REPRESENTATIVE:

The Developer shall have the right to appoint a representative to the KARC as described in Paragraph 7., above and to the SC, as described in Paragraph 3., above.

B. DECISIONS OF THE KARC AND SC:

The Developer shall have the right to make the final decision on acceptance or rejection decisions of the KARC and to make the final decision on management and operational issues that come before the SC. However, the Developer does not have the right to make unilateral

decisions relating to any covenant or restriction contained in this Declaration, or any aspect of architectural review or security.

46. FUTURE RESTRICTIONS AND AMENDMENT:

A. DEVELOPER RIGHTS:

The Developer may add additional restrictive covenants in respect to lands currently owned by Developer in Kenmure and conveyed in the future by the Developer and may amend these covenants and restrictions from time to time, however, any such additions or amendments shall only be allowed for Phase V or later Phases of Kenmure and only with the written consent of the KPOA, which consent shall not be unreasonably withheld, and shall not at any time alter the rights which shall have already been vested in any property owner prior to such additions or amendments.

B. PROPERTY OWNER AMENDMENTS:

This Declaration may be amended by the affirmative vote of 67% of the votes entitled to be cast by Members of the KPOA present or represented by proxy at a meeting called for that purpose, in accordance with Section 47F-2-117 of the Act. No such amendment approved by the Members shall alter or impair any rights of the Developer under this Declaration without the written consent of the Developer. Amendments under this subparagraph B shall be effective and binding on all property owners in Kenmure when duly recorded in the office of the Register of Deeds of Henderson County, North Carolina.

IN WITNESS THEREOF the undersigned President of the Kenmure Property Owners Association, Inc., acting on behalf of the Members, and Kenmure Properties Limited Partnership, a North Carolina Limited Partnership by Kenmure Enterprises, Inc., a North Carolina Corporation, as General Partner, hereby amend and restate the Kenmure Declarations and the Restated Declaration by striking them in their entireties, except for the purpose of preserving legal descriptions, if any, contained therein, and by substituting therefor this Second Amended and Restated Declaration of Restrictive Covenants Governing Kenmure which they certify incorporates amendments duly adopted and approved by the Members of the Association by a 67% affirmative vote of the votes entitled to be cast by Members at a meeting called for that purpose on December 6, 2004.

This the _____ day of _____, 2005

By: _____
President, Kenmure Property Owner's
Association

(Seal)

Attest: _____
Secretary

By: _____
President, Kenmure Properties Limited Partnership,
a North Carolina Limited Partnership by Kenmure
Enterprises, Inc., a North Carolina Corporation, as
General Partner

(Seal)

Attest: _____
Secretary

STATE OF NORTH CAROLINA
HENDERSON COUNTY

I, _____, Notary Public for said County and State, certify that
_____ personally came before me this day and acknowledged that
(s)he is Secretary of the Kenmure Property Owners Association, a nonprofit corporation, and that
by authority duly given and as the act of the corporation, the foregoing instrument was signed in
its name by all of its Directors, sealed with its corporate seal, and attested by herself/himself as
its Secretary.

Witness my hand and official seal, this the _____ day of _____, 2005

(Seal)

Notary Public

My Commission Expires _____

STATE OF NORTH CAROLINA
HENDERSON COUNTY

I, _____, Notary Public for said County and State, certify that
_____ personally came before me this day and acknowledged that
he is Secretary of Kenmure Properties Limited Partnership, a North Carolina Limited Partnership
by Kenmure Enterprises, Inc., a North Carolina Corporation, as General Partner, and that by
authority duly given and as the act of the partnership, the foregoing instrument was signed in its
name by its President, sealed with its seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the _____ day of _____, 2005.

(Seal)

Notary Public

My Commission Expires _____

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