

DECLARATION OF RESTRICTIVE COVENANTS
FOR
MOUNTAIN TOP

Costa Partners, LLC, a Florida corporation (Declarant) is the owner of certain property located in Millshoal Township, Macon County, North Carolina, said property being more particularly described as follows:

Declarant desires to create a uniform and common scheme of development for the property. Declarant hereby imposes the following easements, conditions and restrictive covenants on the property, which shall attach to and run with the land.

1. No lot shall be used except for residential purposes, except that nothing herein shall preclude the use of any lot for a utility purpose for the benefit of the subdivision or access by the Declarant or its successors in interest, except that if any lot is purchased from the developer by an individual lot owner or builder, then said lot must be used for residential purposes only.

All dwellings shall be constructed on site. No mobile homes or manufactured homes allowed. This Paragraph does not apply to Modular Homes built in accordance with the then applicable Building Code for North Carolina and which has never been titled by the North Carolina Department of Motor Vehicles or certified by the United States Department of Housing & Urban Development. The developer retains the right to review and accept or reject the plans of all modular homes prior to construction. Once the Property Owners Association takes the place of the developers, then the Property Owners Association may review and accept or reject the plans for Modular Homes.

No travel trailers, camper trailers or motor homes shall be placed or permitted upon the property except as follows:

- (a) A motor home, travel trailer, camper trailer or other temporary structure may be placed upon any parcel and occupied by the property owner for not more than thirty (30) days in any calendar year for the sole enjoyment of the property owner. Motor home, travel trailer, camper trailer or other temporary structure may not remain on the parcel for more than thirty (30) days and may not be stored on the parcel.
- (b) A motor home, travel trailer, camper trailer or other temporary structure may be stored on the parcel only after the permanent residence is completed. In no event shall the motor home, travel trailer, camper trailer or other temporary structure be occupied as a permanent residence. Provided, however, property owners may occupy a motor home or travel trailer as a temporary residence for a

period of not more than nine (9) months while actively constructing a permanent residence for which an active building permit has been secured. During this period the motor home or travel trailer must be connected to a septic system approved by the Macon County Health Department.

2. All dwellings constructed on any parcels shall contain at least 1400 square feet of heated floor space on the main floor, excluding open porches, decks, basements and garages. All structures shall be set back at least twenty (20) feet from any property line or the margin of any roadway easement or right of way. Declarant, its successors and assigns, reserves the right to modify these setback requirements upon subdivision parcels should it reasonably necessary to do so to accommodate the placement of structures.
3. No parcel shall be subdivided into a tract containing less than 2.5 acres. Not more than one single-family residence and one guest cottage shall be constructed per parcel.
4. No noxious or offensive activity shall be carried on upon any parcel, nor shall anything be done thereon which may be at any time an annoyance or nuisance to the neighborhood.
5. Any permanent or security lighting on parcels must be placed on motion detectors and/or shielded from adjoining parcel owners.
6. No business or commercial activity shall be conducted on any parcel which solicits the presence of the general public upon said parcel for the purpose of purchasing goods, services, vehicle or machinery repairs, or which creates noises, odors, or vibrations which would in any way be obnoxious or offensive to any adjoining property owner. No day care or child care facility shall be permitted on any parcel.
7. No parcel shall be used or maintained as a dumping ground for rubbish or trash. Trash, garbage or other wastes shall only be kept in sanitary containers out of the sight of other property owners. No unlicensed or inoperable motor vehicles or nonfunctional appliances may be kept on any parcel. No heavy equipment other than farm tractors shall be stored on any parcel.
8. All parcels shall be maintained in a neat and orderly condition, and all grassed areas shall be kept mowed on a regular basis at least every four (4) weeks between May and October of each year. Declarant, its successors and assigns, reserves the right to mow or have mowed the grass if property owner allows it to become too high, with the costs thereof being assessed to the landowners.

9. No fuel tanks may be maintained on any parcel unless the same are installed within the principal dwelling or garage or are buried under ground, and in no event may the same be maintained so that they are visible from any place outside the parcel unless blocked or shielded by decorative fencing.
10. The Declarant, its successors and assigns, hereby reserves a 10-foot utility easement along all side and back property lines, a 30-foot road right of way and utility easement in both directions from the center of all subdivision roads. These utility easements shall also be for the benefit of all utility companies.
11. All residences shall be constructed of materials consistent with North Carolina Building Codes. All exterior masonry surfaces of all structures shall be painted, stained, or covered with stucco to prevent the site of unfinished concrete surfaces. Metal roofing shall be permitted on any structure as long as such material has a single pre-finished color. All buildings must be completed within eighteen (18) months of the date for which the permit was originally issued and/or active signs that construction has begun.
12. Driveways shall be graveled as soon as they are cut so as to prevent erosion on to community roadways and into streams and silt fencing and hydro shall be used appropriately. Silt fencing and hydro-seeding shall be used appropriately to prevent erosion and soil runoff.
13. No outbuilding, garage, barn or other structure shall be constructed on any parcel until after the primary residence is under construction.
14. No tree with a diameter in excess of 20 (twenty) inches may be cut other than as necessary to accommodate construction of structures, drives, septic systems or should the tree be damaged by disease or lightening and pose a threat to the structures on that or an adjoining property. Said trees may be limbed or topped to allow for view from the primary residence. Owners may ask adjoining parcel owners for permission to limb or top trees on adjoining parcels to accommodate a view from their primary dwelling, at the owner requesting the trimming's expense. Should the adjoining parcel owner refuse to allow said trimming, the owner requesting the right to trim the trees may petition the Homeowners Association to mediate the matter and the Association's decision shall be binding on all parties. In any event, the cost of a tree trimming and any resultant damage shall be borne by the homeowner who requested it. Until the Homeowner's Association

is formed, all decisions in reference to tree topping or removal shall be referred to the Declarant.

15. Homeowners may keep normal household pets excluding swine but such pets shall be confined to the owner's property. Such pets may not be maintained for commercial purposes, and may not be permitted to become a noise nuisance to the adjoining property owners. No pets shall be permitted to range freely on or around the community roadways. No pet shall be tied or chained on any property for twenty-four (24) hours a day. If wire fencing is used to confine pets permitted in deed restrictions, then a wood style or decorative fence must be used in addition to the wire fence for aesthetic purposes. Any fencing facing toward common roadways and adjacent property owners must follow these restrictions and requirements.
16. All water systems and septic systems shall be constructed to standards required by the Macon County Health Department. No outdoor toilet(s) shall be permitted.
17. No ATV's, dirt bikes, motorcycles, scooters, similar off-road vehicles or any other unlicensed vehicles may be operated on any parcel or community roadway except as used to maintain such property and not for recreational use.
18. Adequate off-street parking shall be provided by the owner of each parcel. Owners of parcels shall not be permitted to park automobiles, boats, trailers, campers, commercial vehicles and/or all other similar vehicles on the roadways or easement areas.
19. The Declarant, its successors and assigns has constructed, or will construct a system of roads within the subdivision together with signage, gates, and lighting and related facilities. After such construction, the Declarant, its successors and assigns shall have no further responsibility with regard to the roads and gates, including without limitation the maintenance and upkeep of said roads. The maintenance and upkeep of the roads and facilities within the subdivision shall be the responsibility of the property owners. Each lot shall be assessed equally for the costs of the maintenance, repair and upkeep of the roadways within the subdivision. The initial assessment shall be \$500 per calendar year per single-family residence, and \$300 per calendar year per undeveloped parcel, commencing January 1, 2007 (pro-rated for portions of the year 2006). Each property owner shall pay an additional impact fee of \$1,500 to the Declarant or the Property Owners Association once one is established, upon receipt of a building permit for the construction of a residence. Each

property owner shall be responsible for and immediately pay for repairs to any subdivision road damaged by their agents, employees or guests. Any repairs needed during or after construction to repair subdivision roads not covered by the \$1,500 impact fee shall be paid by the property owner within 14 days of the damage and the road shall be returned to its original condition. If the property owner fails to do this, the Declarant or the Property Owners Association, once one is established, shall have the road repaired and assess the property owner for the amount needed to return the road to its original condition. The Declarant or the Property Owners Association shall have the right to place a lien on said property until the assessment has been paid in full. Should the Property Owners Association not incur costs of more than \$500, then \$1,000 of the \$1,500 impact fee will be refunded to the property owner. Lots or parcels owned by the Declarant shall not be assessed any fees.

20. Each parcel and each property owner must and shall automatically become a member of Mountain Top Owners Association, and shall be subject to all duly adopted articles, bylaws, rules, regulations and resolutions of the Association. Any action of a majority of the members of the Association is binding on all members.

21. Assessments for road maintenance, gate(s) maintenance and lighting shall be payable on a calendar year basis or more frequently if so determined by Declarant or the Property Owners Association, and shall be payable at such times during the calendar year and in such amounts as the Declarant, and later the Association may, from time to time, establish and shall be delinquent if not paid in full by the times established. Any change in the amount due for assessments shall be recorded at the Register of Deeds Office for Macon County, North Carolina. If any assessment is not paid by the due date, such assessment shall be delinquent and shall bear interest from the due date at the rate of eighteen (18) percent per annum or the maximum interest rate allowed by law, whichever is less. The assessments levied against a parcel remaining unpaid after the due date shall constitute a lien on that parcel when filed for record in the Office of the Clerk of Superior Court for Macon County, North Carolina in a manner provided therefore by Article 8 of Chapter 44 of the General Statutes. The lien may be foreclosed in like manner as a mortgage on real estate under Power of Sale under Article 2A of Chapter 45. If the delinquent assessment is placed in the hands of an attorney for collection, there shall be added to the amount due all costs of collection including all reasonable attorney fees. The lien shall include all interest which accrues and continues to accrue on the assessment and shall include the aforementioned costs of collection and attorney fees. All assessments, interest, costs and attorney fees shall be and constitute the personal, joint and several obligations of each parcel owner. The Association may in

addition or in the alternative to enforcing its lien bring an action against the parcel owner to seek a money judgment for the amount of the assessment, interest, costs of collection and attorney fees. The Association may purchase the parcel at any sale ordered pursuant to an action to foreclose the lien.

Any contribution not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the contributions provided herein by non-use of his lot.

The lien of the contributions provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lots shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any contributions thereafter becoming due or from the lien thereof.

22. The foregoing restrictive covenants shall be effective for a period of fifty years after they are recorded and shall be automatically renewed for successive ten-year periods thereafter, unless altered or amended as hereinbelow addressed. These restrictive covenants may be altered or amended by the action of the owners of 75 percent of the parcels in the subdivision at any duly constituted meeting of the property owners if the notice of the meeting specifies the intention to alter or amend the restrictions at such meeting. Provided, however, no provision of this declaration which affects the rights, duties and obligations of the Declarant may be altered or amended without the written consent of the Declarant and no easements may be modified in such manner.

23. In the event that two or more parcels as originally sold by the Declarant shall be developed as a unit, the provisions contained herein relative to building set-backs, easements, voting rights in the Association and the payment of the road and gate(s) maintenance assessments shall apply to the combined unit, and to each parcel. The combined unit will be assessed as one parcel if a recording is made declaring that the parcels are to be used as one unit. If the property owner records a declaration to that effect, and if the parcels are ever sold individually, then all original assessments shall apply.

24. These Restrictive Covenants, Conditions and Easements shall be enforceable by any property owner in the Subdivision. The failure of the Declarant or any property owner to enforce any right, reservation, restriction or condition herein, however long continued, shall not be

deemed a waiver of right to do so subsequently as to the same violation, or as to any violation occurring prior or subsequent thereto, and shall not bar or affect its later enforcement.

IN TESTIMONY WHEREOF, the said Declarant has caused this instrument to be signed in its corporate name by its duly authorized officer, the day and year first above written.

COSTA PARTNERS, LLC

_____(Seal)
By:

STATE OF _____
COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged that he is _____ of Costa Partners, LLC, a corporation, and that he, as _____, being authorized to do so, executed the foregoing on behalf of the corporation. Witness my hand and official stamp or seal, this _____ day of _____, 2005.

(SEAL)

NOTARY PUBLIC

My Commission Expires _____