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NORTH CAROLINA
WATAUGA COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR VALLE CAY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this 15 day of December, 1987, by APPSTER PROPERTIES, a North Carolina General Partnership, (hereinafter called "Declarant");

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of the real property (hereinafter called the "Property") described in this Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Covenants") and is desirous of subjecting a portion or portions of the Property as hereafter determined by Declarant to the protective covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, for the benefit of the parcels or tracts located thereon, whether now already or hereafter subdivided and platted (hereinafter called the "tracts"); and for the benefit of each owner of the parcels or tracts which are now already or may hereafter be subdivided and platted within the Property (hereinafter called the "Property Owners"), and shall apply to and bind the owners thereof, their heirs, successors and assigns; and

WHEREAS, the Property is subjected to these Covenants in order to insure the best use and the most appropriate development and improvement of the Property and the tracts located therein; to protect the owners thereof against such improper use of surrounding tracts as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to encourage

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and insure the highest and best development of the Property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on the Property; to prevent haphazard and inharmonious improvement of the Property; to secure and maintain an aesthetically pleasing quality of development and improvement of the Property, and thereby to enhance the values of the Property.

NOW THEREFORE, Declarant hereby declares that the Property, is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the land herein referred to as the Property and these Covenants are intended to be covenants and servitudes burdening and benefitting all persons now or hereafter deriving a real property estate in the Property, whether by assignment, succession or inheritance or other method of conveyance.

ARTICLE I: PROPERTY DESCRIPTION

Section 1-1: The Property. The Property which is and shall be held, transferred, sold, conveyed and occupied subject to these Covenants for the Valle Cay Community is a portion or portions of the property, as hereafter determined by Declarant, which is located in Valle Crucis, Watauga Township, Watauga County, North Carolina, and more particularly described in Exhibit A attached to these Covenants and incorporated herein by reference.

ARTICLE II: GENERAL LAND USE RESTRICTIONS AND OBLIGATIONS

Section 2-1: Building Requirements. The Property and the tracts located therein shall be used for residential purposes exclusively. No structure except as may be hereinafter provided, shall be erected, altered, placed, or permitted to remain on any tract other than one (1) detached single-family dwelling, not to exceed two (2) stories in height [except when a certain tract is specifically restricted to one (1) story] above the basement and one small one (1) story accessory building which may include a

detached private garage, provided the use of such dwelling or accessory building does not include any activity normally conducted as a business. A guest suite or like facility may be included as part of the main dwelling or accessory building. Such accessory building may not be constructed prior to the construction of the main dwelling.

All homes in Valle Cay shall consist of a minimum of fifteen hundred (1500) square feet of finished living area, not including garages. The roofing shingles on all residences and buildings shall be cedar shake or aesthetically comparable, as determined by Declarant.

Section 2-2: Other Buildings and Vehicles. No structure of a temporary character shall be placed upon any tract at any time, provided, however, that this prohibition shall not apply to equipment shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the tract after completion of construction.

No mobile home, house trailer, pre-fabricated or modular home, barn, tree house or other similar out-building or structure shall be placed on the Property at any time without prior approval from the Declarant; and such approvals shall normally be limited to temporary use of such structures reasonably essential to economical, orderly and efficient construction during the construction process only.

Section 2.3: Architectural and Site Plan Review of Specifications for New Construction or Additions, Reconstructions, Alterations or Changes to Structures and Landscaping. No driveway, home, building, fence or other structure shall be constructed, erected, placed, or altered on any tract until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking areas), landscaping plan, and construction schedule shall have been approved in writing by the Declarant, its successors or assigns. Upon written request by Property Owners for approval of plans, the Declarant shall have thirty (30) days to approve or disapprove the plans. In the event of failure to approve or disapprove within the thirty (30) days, said approval will not be required, provided the design of the proposed building is in harmony with existing structures in the area. Garages must be constructed of the same or compatible

materials as specified for the dwelling. Refusal of approval of plans, location, or specifications may be based upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant, shall deem sufficient. No alterations in the exterior appearance of any building or structure shall be made without like approval by the Declarant. One copy of all plans and related data shall be furnished the Declarant for its records.

Section 2.4: Siting. To assure that homes, buildings and other structures, if any, will be located so that desirable views and privacy will be available and maintained to the the owners of tracts within the Property, and that buildings will be located with regard to the topography of each tract, taking into consideration the location of large trees, buildings previously built or approved pursuant to these Covenants for adjacent tracts and other aesthetic and environmental considerations, Declarant shall have the right to control and to decide the precise site and location of any buildings or other structures and driveway access within the Property. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. Unless where restricted to a greater degree by Declarant in the individual deeds to Property Owners, or unless waived by Declarant as a part of the site plan approval process, no building shall be located closer than twenty (20) feet to the street right-of-way and not closer than twentyfive (25) feet to the adjoining property line.

Section 2-5: Tree and Bush Removal. No large trees measuring ten (10) inches or more in diameter at ground level may be removed without the written approval of the Declarant, unless located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building. Unless Declarant gives prior written approval, no trees shall be removed from any tract until the owner shall be ready to begin construction, following submission of building plans and approval of the same.

Section 2-6: Completion of Construction. The exterior of all buildings and other structures must be completed within twelve (12) months after the construction of a particular building or structure shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to

strikes, fires, national emergency or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exteriors thereof have been completed. Substantially all of the landscaping shown in plans submitted to and approved by the Declarant must be completed within one (1) year of the initial occupancy.

Section 2-7: Minimizing Construction Disturbances. During the continuance of construction, the Property Owner shall require the contractor to maintain the site of the building in a reasonably clean and uncluttered condition, and construction may not commence before 7:00 a.m. or be continued after 7:00 p.m. more than sixty (60) days a year, nor may construction activities take place on any Sunday, if located within three hundred (300) feet of an occupied residential dwelling. Declarant may waive the time and day restrictions if Declarant deems no undue nuisance is caused to any other Property Owner in the area.

Section 2-8: Service Yards. All garbage receptacles, electric and gas meters, heat pump and air-conditioning equipment, clotheslines, water pumps, fuel tanks, equipment and service yard contents on the Property must be placed or stored in safe landscaped, fenced or screened-in areas to conceal them from the view on the road and adjacent properties; or installed within the main dwelling house, within an accessory building or buried underground.

Section 2-9: Lights, Signs and Advertising Devices. No "For Sale," commercial, promotional or advertising signs, lights, banners, flags or ornaments, whether mobile or fixed, may be erected or maintained on the Property by anyone except where approved in writing by the Declarant. Declarant reserves the right, after two (2) days' notice is given to the Property Owner, to enter upon the lands or premises of any Property Owner to remove any such non-conforming sign, light, banner, flag, ornament or advertising device at the expense of the owner thereof.

Section 2-10: Antennas, Electronic Transmission and Mechanical Disturbances. No television antenna, satellite antenna, radio receiver or transmitter or other similar device for receipt or transmission of infrared, microwave, television or electromagnetic signals may be erected on the on the Property, on any tract or parcel or the exterior portion of any structure located on any tract.

Any facility with mechanical or other equipment which creates unreasonable noise, odors, glare, vibrations or electrical disturbances beyond the property lines of the owner of such facility is prohibited.

Section 2-11: Parking. Each Property Owner shall provide space for parking a minimum of two (2) automobiles off the street right-of-way prior to the occupancy of any dwelling constructed on said tract in accordance with reasonable standards established by Declarant.

Section 2-12: Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than household pets kept in any one house. Each person who keeps a pet within a house shall abide by the following restrictions and affirmative obligations: (a) no pets may be kept, bred or maintained on the Property for any commercial purpose; (b) no pet shall be allowed to be kept if the pet causes undue disturbance or annoyance to other Property Owners.

Section 2-13: Unsightly Conditions. Each Property Owner shall: prevent and remove the accumulation of litter, trash, or rubbish; prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds, either before, during or after construction; prevent and remove accumulations on his tract which tend to substantially decrease the beauty of the specific tract or the Property as a whole, as determined by Declarant.

Section 2-14: Sound Devices. No exterior speaker, horn, whistle, bell or other sound device, except devices intended for use and used exclusively (and with reasonable regard for neighbors) for safety or security purposes, shall be located, used or placed upon any part of the Property without prior permission from Declarant.

Section 2-15: Offensive Activity. No offensive or noxious activity shall be carried on upon the Property. "Offensive or noxious" activity or behavior shall include but not be limited to a public nuisance per se and shall also include any behavior which is inconsistent with both the reasonable pleasurable use of the Property by Property Owners and their reasonable expectations of vacationing, year-round living, studying, or working free of excessively noisy behavior disrespecting the rights of others, flashing or excessively bright lights, racing or loud vehicles, significantly loud electronic music distractions, or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the

Property by others who are not participating in such offensive or noxious activity.

Section 2-16: Subdivision of Property. No tract shall be subdivided other than by Declarant except by means of a written and recorded instrument indicating that such subdivision has been approved by Declarant.

Section 2-17: Prohibition of Motorcycles. No motorcycles or motor-powered bicycles shall be permitted within the Property for recreational purposes; however, licensed motorcycles or motor-powered bicycles may drive on roads within the Property to and from specific tracts only.

Section 2-18: Willful Destruction of Fish and Wildlife. No hunting shall be allowed within the Property. Fishing may be allowed under controlled conditions approved by Declarant.

Section 2-19: Drainage. The Declarant may establish reasonable regulations and restrictions pertaining to drainage and siltation, originating on construction sites and parking lots, porosity of pavement materials used on roadways and parking lots, and similar provisions relating to hydrological factors on the Property.

Section 2-20: Duty to Insure.

- (a) Property Owners. Each Property Owner shall insure his buildings for their replacement value against loss by fire or other hazards.
- (b) Repair or Replacement of Damaged or Destroyed Property. In the event of damage or destruction by fire or other casualty to any building, the owner of such building shall, within thirty (30) days of the receipt of the insurance proceeds paid pursuant to an insurance policy covering such building but in no event later than six (6) months from the date of such damage or destruction either (i) commence reconstruction of the damaged or destroyed building, or; (ii) clear the tract upon which the damaged or destroyed building is located of all debris and reseed the entire tract. In the event: (i) restoration of the building is commenced but is terminated before completion of the building and such termination continues for a period of at

least ninety (90) days; or (ii) the tract is not cleared of debris within thirty (30) days after commencement of clearance of the tract; or (iii) restoration or commencement of clearance of the tract does not occur within said six (6) month period, Declarant shall have the right to clear the tract of debris and reseed the tract. The cost of such repairs shall be an expense attributable to the tract and becomes an immediately due and payable special assessment against the tract collectible in the same manner as any other assessment.

In the event a tract shall be cleared and reseeded, then it shall be the obligation of the owner of such tract to continue to maintain the tract.

Section 2-21: Duty of Property Owners to Inform Declarant of Current Address. Each Property Owner shall have the affirmative duty and obligation to inform Declarant in writing of any change of ownership of the Property, the Property Owner's current address, and of any known failure of the Property Owner to receive any information from the Declarant at the correct address of the Property Owner. No Property Owner may be excused from his obligations established in these Covenants if the Declarant mailed notice of such obligation, assessment, bill, statement, or other notice to the last address of said Property Owner which is recorded on the books of Declarant and for which Declarant has not received the Property Owner's current address or notice of change of ownership from the Property Owner .

**ARTICLE III: RIGHTS RESERVED BY DECLARANT,
ITS SUCCESSORS AND ASSIGNS**

Section 3-1: Other Rights and Reservations. The omission of any right or reservation in this article shall not limit any other right of or reservation by Declarant which is expressly stated in or implied from any other provision in these covenants.

Section 3-2: No Affirmative Obligation Unless Stated. Any reservation or right of Declarant which is stated in or implied from these covenants shall not give rise to any affirmative obligation or duty on the part of Declarant unless expressly stated in these Covenants.

Section 3-3: Utility Easements. Declarant reserves unto itself, its successors and assigns, a perpetual, alienable, and releasable easement over, on, across, and under each tract for the erection, maintenance, installation, and use of electrical and telephone poles, wire, cables, conduits, and other suitable equipment for the conveyance and use of electricity, telephone equipment, or other public conveniences, or utilities and Declarant may further cut drainways for surface water wherever and whenever such action may appear to Declarant to be necessary in order to maintain reasonable standards of health, safety, and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil 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. Such rights may be exercised by licensee of Declarant to provide or maintain any such utility or service. In exercising the rights of this easement all necessary work shall be located in an area not more than ten (10) feet from the property line of each tract. This reservation shall not be considered an obligation of Declarant to provide and maintain any such utility or service.

Section 3-4: Repurchases by Declarant. In the event the owner of any tract desires to sell his tract, then said property shall be first offered for sale to Declarant at the same price and terms at which the highest bona fide offer has been made for the property. Declarant shall have ten (10) days from receipt of such written offer within which to exercise its option to purchase said property at this price and terms and Declarant shall have an additional period of not less than thirty (30) days within which to close said transaction. In the event Declarant fails or refuses within ten (10) days after receipt of such written notice of the price and terms to exercise its option to purchase said property at the offered price and terms, then the owner of said property shall have the right to sell said property, pursuant to said bona fide offer, subject, however, to all Covenants and limitations herein contained. Should, however, such sale by the owner to a third party not be consummated within six (6) months from the date of presentation of the offer to Declarant at the price and on the terms offered, the terms and limitations of this Section shall again immediately be imposed upon any sale by the Property Owner.

Section 3-5: Enforcement. Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to require full and complete compliance with the terms of these Covenants or to prevent the violation or breach thereof. Violators shall be personally obligated to reimburse Declarant in full for all its direct and indirect costs or damages resulting from the violation or breach, including but not limited to legal fees and expenses incurred by Declarant in maintaining compliance with these Covenants, and such obligation shall also constitute a lien upon the property of any Property Owner in accordance with these Covenants.

Declarant retains an easement and license to enter upon any part of the Property, after reasonable notice, to engage in such repair, maintenance, upkeep or reconstruction as may be necessary to enforce compliance with these Covenants, and the full cost of such maintenance, repair, upkeep or reconstruction shall constitute a lien upon the Property Owner's property and shall be a personal obligation of the Property Owner in accordance with these Covenants.

Section 3-6: Subdivision and Replatting of Property. No tract shall be subdivided, or its boundary line changed, except with the written consent of Declarant. Declarant hereby expressly reserves to itself, its successors, or assigns, the right to re-plat any tract shown on the plat of any said subdivision prior to its sale in order to create a modified building tract or tracts. The Covenants herein shall apply to any of said modified tracts resulting from said subdivision as if the resulting tracts had been originally platted in such manner. No tract shall be used as access to other property not a part of Valle Cay, except as approved by Declarant. Declarant, however, retains the right to add additional property to the development provided such additional property be subject to these Covenants.

ARTICLE IV: MEMBERSHIP, NOTICE, VOTING RIGHTS AND CERTAIN OBLIGATIONS OF MEMBERS OF THE VALLE CAY PROPERTY OWNERS ASSOCIATION, INC.

Section 4-1: General. Every Property Owner and Declarant shall be a member of the Valle Cay Property Owners Association, Inc., a non-profit corporation to be organized and to exist under the laws of the State of North Carolina (hereinafter called the "POA"). The purposes of said non-profit corporation shall be to promote the welfare of the

Property Owners and the Property, to enforce these Covenants, to maintain the common properties and roads within Valle Cay, to fix, levy and collect payment of charges and assessments, to pay expenses in connection with the POA, and such other purposes as may be set forth in the Articles of Incorporation and By-Laws of the POA. As soon as fifty (50) tracts have been sold and conveyed, Declarant may cause the POA to be activated by the issuance of Membership Certificates to Property Owners. The POA may not be activated prior to the sale and conveyance of fifty (50) tracts unless agreed to by Declarant and by a majority vote of the Property Owners. Upon activation as aforesaid, the POA shall then assume management of the affairs of the Association. There shall be one (1) membership for each tract owned. At such time as the POA becomes active, a meeting shall be called of all Property Owners, the purpose of which shall be the adoption of By-Laws and election of the Board of Directors, all by majority vote of the Property Owners, voting in person or by proxy. The types or classes of members, voting rights, Board of Directors matters, etc. shall be determined by the By-Laws of the POA. Until the POA has become active and assumes the affairs of the Association, Declarant shall manage the affairs and make all decisions.

ARTICLE V: COMMON PROPERTIES

Section 5-1: General. Title to all Common Property within Valle Cay shall be held by the Valle Cay Property Owners Association, Inc. (the "POA"). All Common Property shall be devoted to and intended for the common use and enjoyment of the Property Owners, Declarant, their guests and invitees. Common Property may be deeded to the POA by Declarant on or before October 1, 1988, and thereafter as determined by Declarant.

Section 5-2: Extent of Members' Easements in Common Property. Every member of the POA shall have a right and easement of access, use and enjoyment in all Common Property and such easement shall be appurtenant to and shall pass with the title to every tract within the Property; provided, however, that the rights and benefits created hereby shall be subject to the rights and functions of Declarant and the POA as set forth in these Covenants and subject to such Rules and Regulations, as may from time to time be established by Declarant and/or the POA.

ARTICLE VI: ASSESSMENTS AND OTHER CHARGES

Section 6-1: Collection and Use of Assessments and Other Charges. The assessments, fees, charges and

liquidated damages described in these covenants or hereafter established by the Valle Cay Property Owners Association, Inc. (the "POA") shall be collected by Declarant until activation of the POA as herein provided, and thereafter by the POA, and used exclusively for carrying out the functions described in these covenants and the By-Laws and/or the Rules and Regulations of the POA. The POA shall establish the various types, classes and categories of assessments applicable to the tracts within the Property and the Board of Directors of the POA shall annually establish a budget and fix the amount of the assessment against each Property Owner and give notice of assessments to every Property Owner subject thereto. Declarant shall not be subject to any assessments set forth herein or hereafter established for any property or tracts owned by Declarant.

Section 6-2: Standard Assessment. Each Property Owner shall pay an annual assessment of Two Hundred Dollars (\$200.00) per tract owned until such time as Declarant activates the POA as herein provided, after which the POA shall establish the amount or type of the Standard Assessment.

Section 6-3: Special Paving Assessment. Declarant, at its own expense, shall pave the first seventeen hundred (1,700) feet of Valle Cay Drive, beginning at N.C. Highway 194. Thereafter, at such time as fifty (50) tracts have been sold, a special paving assessment of Two Thousand Dollars (\$2,000) per tract shall be made against each of the then Property Owners. This assessment shall be used and applied toward the total cost of paving the entirety of Valle Cay Drive. The remaining costs for paving the entirety of Valle Cay Drive shall be born by Declarant. Declarant shall have the right to levy this Special Paving Assessment at any time prior to the conveyance of fifty (50) tracts and, in this case, Declarant shall pay the cost difference in and cause the paving of Valle Cay Drive.

Section 6-4: Time and Method of Payment of Assessments. Any assessment year shall run from June 1, to May 31. For any assessment year, each Property Owner shall pay in advance, either annually or periodically, all annual assessments due on said property.

Section 6-5: Effect of Non-Payment of Assessments and Other Charges. The following actions may be taken by the Declarant until activation of the POA as herein provided and thereafter by the POA in the event a Property Owner fails to make payment of any assessments set forth above or other charges and obligations when due:

- (a) Interest on Late Payment. An interest charge at an ANNUAL PERCENTAGE RATE OF FIFTEEN PERCENT (15%) will be charged on all late payments of assessments.
- (b) Personal Liability. If the assessment or charge is not paid within thirty (30) days after the past due date, the POA may bring an action at law or in equity against the Property Owner personally, and there shall be added to the amount of such assessment the cost of preparing and filing the legal documents in such action, and in the event a judgment order against the Property Owner is obtained, such judgment shall include interest on the assessment as provided in (a) above, reasonable attorney's fees and expenses to be fixed by the court and the costs of the action.
- (c) Execution on Lien. Subject to Section 7-2 relating to subordination of the lien to mortgages and other encumbrances, the POA may execute its lien upon the subject property according to procedures prescribed by the law of North Carolina.
- (d) Other Rights. In addition to the above, the POA shall reserve the rights it may have under and according to applicable law to attach and execute against any personal assets of a Property Owner in order to receive assessments due.

ARTICLE VII: DURATION, OBLIGATION AND APPURTENANCY OF RIGHTS AND OBLIGATIONS CREATED HEREIN

Section 7-1: Duration. These Covenants shall be in effect, shall run with and bind the land, and shall inure to the benefit of and be enforceable by and against Declarant, the POA, any Property Owner, their respective legal representatives, heirs, successors and assigns for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten-year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for

an additional ten-year period; provided, however, that there shall be no renewal or extension of this Declaration if, during the last year of the initial twenty (20) year period or during the last year of any subsequent ten (10) year renewal period, seventy-five percent (75%) of the members vote in favor of terminating this Declaration at the end of its then existing term.

Section 7-2: Protection of Mortgagees and Other Encumbrancers. No violation or breach of, or failure to comply with, any provision of this Declaration and no action to enforce any such provision or to prevent a violation shall effect, defeat, render invalid or impair the lien of any mortgage, deed of trust or other lien on any property if such lien or deed of trust is taken in good faith and for value and is recorded prior to the time an instrument describing such property and listing the name or names of the owners of fee simple title to the property and giving notice of a claimed violation, breach or failure to comply with the provisions of this Declaration is recorded. Any such violation, breach or failure to comply shall not affect, defeat, render invalid or impair the title or interest of the holder of any such mortgage, deed of trust or other lien or title or interest acquired by any purchaser upon foreclosure of any such mortgage, deed of trust or other lien, nor shall the former owner's violation, breach or failure to comply result in any liability, personal or otherwise, of any mortgage holder or new owner resulting from foreclosure. Any such new owner on foreclosure shall, however, take subject to this Declaration with the exception of the former owner's violations hereof or failures to comply herewith with respect to such new owner, his heirs, personal representatives, successors or assigns; provided, however, that any action of the new owner, after taking title to, or possession of, such property, which constitutes a violation shall cause such new owner to be subject to all assessments, charges, restraints, restrictions, burdens and obligations under the Covenants.

Section 7-3: Owner's Rights and Obligations Appurtenant. All rights, easements, restrictions and obligations of a Property Owner under this Declaration and all rights of a Property Owner with respect to memberships in the POA under this Declaration are hereby declared to be and shall be appurtenant to the title held by the Property Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the title held by the Property Owner. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of the title held by a Property Owner

shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligation.

ARTICLE VIII: EFFECT OF COVENANTS AND ENFORCEMENT

Section 8-1: Effect of Provisions of These Covenants.
Each Property Owner, his heirs, successors and assigns, and all others who take an interest in land or realty within the Property do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

- (a) shall be considered incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property by a Property Owner (i) be deemed accepted, ratified, adopted and declared as a personal covenant of the Property Owner, and (ii) be deemed a personal covenant to, with and for the benefit of Declarant, the POA, and any other Property Owner;
- (c) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running in each case, as both burdens and benefits with and upon the title to each tract of real property within the Property and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within the Property and for the benefit of any and all other real property within the Property; and
- (d) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each parcel of real property within the Property which lien, with respect to any respective unit of real property within the Property,

shall be deemed a lien in favor of the Declarant and the POA, jointly and severally.

Section 8-2: Who May Enforce. The benefits and burdens of these Covenants run with the land at law and in equity and Declarant, its successors and assigns, the POA, its successors and assigns, or any Property Owner, his heirs, representatives, administrators, successors and assigns with respect to the Property, shall have the right to proceed against a party to compel compliance with the terms hereof or to prevent the violation or breach in any event.

Section 8-3: Enforcement Remedies. In the event that any residential dwelling or other structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any land use is in violation of these Covenants, Declarant, the POA, or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity: (a) to prevent such unlawful erection, construction, reconstructions, alteration, repair, conversion, maintenance or use; (b) to restrain, correct or abate such violation, or breach of these Covenants; (c) to prevent the occupancy of said residential dwelling, structure or land; (d) to prevent any act, conduct, business or use which is in breach of these Covenants; or (e) to compel any affirmative act which, pursuant to these Covenants "shall" be performed. Violators shall be personally obligated for reimbursement in full for all direct and indirect costs or damages resulting from the violation or breach, including but not limited to legal fees and expenses incurred in maintaining compliance with this Declaration, and such obligation shall also constitute a lien upon the property of the violating Property Owner.

ARTICLE IX: INTERPRETATION AND CONSTRUCTION

Section 9-1: Severability. Should any Covenant or restriction herein contained, or any Article, Section, paragraph, sentence, clause, phrase or term in this declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matter and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Section 9-2: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and which will preserve the Property as a situs for a high amenity, attractive, well maintained, privately-governed commercial and residential resort community.

Contrary to the restrictive common law rule of construction, these Covenants shall by this Covenant be interpreted broadly to touch and concern the Property with recognition of modern, economic, land use planning and real estate finance and development principles, theories and practices. It is Declarant's intent, and all Property Owners who take subject to these Covenants do covenant and agree and are thereby estopped to deny, that any function of Declarant or the POA, and any other covenant, condition, restriction or obligation within these Covenants is intended to promote the use and enjoyment of the Property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the Property, and does touch and concern, benefit and burden and run with the Property.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any subsequently adopted zoning ordinance which allows a less restricted use of the Property.

Section 9-3: Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 9-4: No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 9-5: Captions. The captions and heading in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 9-6: No Implied Liabilities or Duties. Any rules or regulations established pursuant to these covenants

shall not expressly or impliedly create any duty of care to any Property Owner.

IN WITNESS WHEREOF, Appster Properties, Declarant, by and through Appalachian Realty, Inc., its Managing General Partner, has caused this Declaration to be signed and sealed the day and year first above written.

APPSTER PROPERTIES, a North Carolina General Partnership

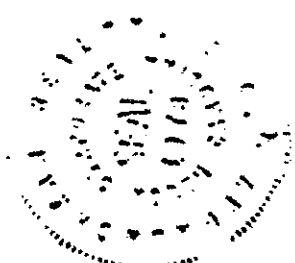
By APPALACHIAN REALTY, INC., a North Carolina Corporation and the Managing Partner of Appster Properties as provided in the Appster Properties Partnership Agreement

By: *[Signature]* President

ATTEST:

Jacquelyn B. Loffin
Secretary

(AFFIX CORPORATE SEAL)



STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

I, *Cynthia Keller Shroyer*, a Notary Public of said County and State, do hereby certify that *Jacquelyn B. Loffin* came before me this day and acknowledged that she is Secretary of APPALACHIAN REALTY, INC., a North Carolina Corporation (the Managing General Partner of Appster Properties, a North Carolina General Partnership, as provided in the Appster Properties Partnership Agreement), and that by authority duly given and as the act of the Corporation the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by its Secretary.

WITNESS my hand and official seal this the 15th day of December, 1987.

My commission expires:

My Commission Expires 3-27-91

Cynthia Keller Gregory
Notary Public

NOTARIAL SEAL:



NORTH CAROLINA WATAUGA COUNTY

The foregoing certificate _____ of _____
Cynthia Keller Gregory, Avery County, NC

Notary(ies) Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 084 Page 757

This 15th day of December, 19 87 at 3:15 o'clock P. M.

Phyllis E. Foster

Register of Deeds

by: Jan W. Russell Deputy

EXHIBIT A
TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR VALLE CAY

Legal Description

The Property which is and shall be held, transferred, sold, conveyed and occupied subject to these Covenants for the Valle Cay Community is a portion or portions, as hereafter determined by Declarant, of the property which is located in Valle Crucis, Watauga Township, Watauga County, North Carolina, and more particularly described as follows:

TRACT ONE:

A. 247.411 acre tract being located on the southeast side of N.C. Highway 194 and on the west side of Baird Creek Road (NCSR 1113) and being more particularly described as follows:

BEGINNING on a railroad spike set in the center of N.C. Highway 194, said spike being located in the Charley Church line and being located South 86 degrees 56 minutes East, 27.73 feet from a "PK" nail in the old Sycamore corner in a 26" Sycamore tree on the east side of the Watauga River; thence from the beginning and with the center of N.C. Highway 194 the following courses and distances: North 01 degrees 52 minutes East, 50.42 feet; thence North 11 degrees 07 minutes East, 49.45 feet; thence North 15 degrees 31 minutes East, 103.57 feet; thence North 12 degrees 03 minutes East, 49.92 feet; thence North 08 degrees 12 minutes East, 52.47 feet; thence North 05 degrees 55 minutes East, 106.70 feet; thence North 07 degrees 44 minutes East, 52.14 feet; thence North 11 degrees 57 minutes East, 51.91 feet; thence North 22 degrees 12 minutes East, 50.10 feet; thence North 37 degrees 22 minutes East, 52.52 feet; thence North 54 degrees 08 minutes East, 48.80 feet; thence North 65 degrees 59 minutes East, 52.27 feet; thence North 75 degrees 12 minutes East, 125.98 feet; thence North 77 degrees 49 minutes East, 152.82 feet; thence North 71 degrees 26 minutes East, 53.67 feet; thence North 72 degrees 48 minutes East, 53.71 feet; thence South 87 degrees 33 minutes East, 52.44 feet; thence South 79 degrees 25 minutes East, 107.64 feet; thence South 89 degrees 40 minutes East, 298.98 feet; thence North 86 degrees 54 minutes East, 49.10 feet; thence North 83 degrees 09 minutes East, 50.29 feet; thence North 81 degrees 23 minutes East, 51.24 feet; thence North 78

degrees 21 minutes East, 104.10 feet; thence North 74 degrees 39 minutes East, 111.01 feet; thence leaving said highway South 22 degrees 28 minutes East, 20.39 feet to an existing iron pin; thence South 22 degrees 28 minutes East, 422.18 feet to an iron pin found at a Service Berry tree; thence South 33 degrees 53 minutes East, 86.50 feet to an iron pin set at the end of a farm road; thence North 71 degrees 46 minutes East, 285.49 feet to an iron pin found; thence North 37 degrees 02 minutes East, 339.24 feet to an iron pin found in a fence line; thence with said fence line, South 45 degrees 12 minutes East, 308.25 feet to a pin found; thence North 27 degrees 10 minutes East, 79.63 feet; thence North 41 degrees 51 minutes East, 118.22 feet to an iron pin set; thence North 54 degrees 14 minutes East, 98.14 feet to an iron pin set at a marked Locust tree; thence North 22 degrees 14 minutes West, 400.81 feet to a forked Maple tree; thence South 80 degrees 07 minutes East, 793.75 feet to an iron pin found at a Chestnut tree snag; thence South 02 degrees 08 minutes West, 979.14 feet to an iron pin found; thence South 84 degrees 09 minutes East, 993.51 feet to an iron pin found; thence North 24 degrees 07 minutes East, 554.63 feet to an iron pin found at an Oak tree; thence North 76 degrees 37 minutes East, passing a reference iron at 1902.65 feet, in all 1932.70 feet to a point in the center of Baird Creek Road (NCSR 1113); thence with the center of said road, South 00 degrees 30 minutes West, 917.50 feet; thence leaving the said road and with the Fred Townsend, Jr. line the following courses and distances: South 44 degrees 53 minutes West, 73.64 feet; thence South 84 degrees 45 minutes West, 74.64 feet; thence South 84 degrees 45 minutes West, 146.02 feet to an iron pin found; thence South 75 degrees 04 minutes West, 60.00 feet; thence South 80 degrees 21 minutes West, 344.05 feet to an iron pin found; thence North 29 degrees 34 minutes West, 8.00 feet to a point in the center of a small branch; thence up and with said branch, South 80 degrees 04 minutes West, 73.83 feet; thence South 65 degrees 49 minutes West, 31.65 feet; thence South 81 degrees 19 minutes West, 85.04 feet; thence South 38 degrees 28 minutes West, 74.50 feet; thence South 69 degrees 35 minutes West, 177.43 feet; thence leaving said branch and continuing with the Fred Townsend, Jr. line South 52 degrees 16 minutes East, 394.59 feet to an iron pin found at a White Oak tree; thence South 16 degrees 17 minutes East, 424.33 feet to an iron pin found at a fence corner; thence leaving the Fred Townsend, Jr. line and with a fence line South 58 degrees 37 minutes West, 478.50 feet to an 18" Sourwood tree; thence South 70 degrees 16 minutes West, 465.54 feet to an iron pin set; thence South 62 degrees 15 minutes West, 140.24 feet; thence South 05 degrees 44 minutes West, 91.49 feet to an iron pin set; thence South 66

degrees 52 minutes West, 278.91 feet to an iron pin set in a fence corner; thence South 04 degrees 31 minutes West, 104.29 feet to an iron pin set in a fence corner; thence North 81 degrees 15 minutes West, 26.07 feet to an iron pin set; thence South 04 degrees 49 minutes West, 572.33 feet to an iron pin found at a fence corner; thence South 06 degrees 59 minutes West, 245.65 feet to an iron pin set at a fence intersection; thence North 84 degrees 16 minutes West, 598.67 feet to an 18" marked Hickory; thence North 05 degrees 41 minutes East, 660.28 feet to an iron pin set in a Chestnut tree stump; thence North 83 degrees 11 minutes West, 1028.92 feet to an iron pin set at an old fence corner; thence North 05 degrees 17 minutes East, 281.63 feet to a 19" Black Walnut tree; thence with a line that randomly crosses a new farm road from side to side, the following courses and distances: North 50 degrees 32 minutes West, 65.30 feet; thence North 53 degrees 33 minutes West, 131.02 feet; thence North 38 degrees 33 minutes West, 131.02 feet; thence North 65 degrees 33 minutes West, 49.13 feet; thence South 76 degrees 27 minutes West, 65.51 feet; thence South 49 degrees 27 minutes West, 65.51 feet; thence South 67 degrees 27 minutes West, 65.51 feet; thence North 68 degrees 33 minutes West, 425.80 feet; thence North 78 degrees 33 minutes West, 114.64 feet; thence North 75 degrees 33 minutes West, 163.77 feet; thence North 84 degrees 33 minutes West, 147.39 feet; thence North 74 degrees 33 minutes West 229.28 feet; thence North 59 degrees 33 minutes West, 163.77 feet; thence North 19 degrees 33 minutes West, 163.77 feet; thence North 34 degrees 33 minutes West, 196.52 feet to an iron pin set at a fence on a ridge at the forks of the old road; thence with the ridge fence, North 28 degrees 44 minutes West, 300.59 feet to an iron pin set in a fence on ridge; thence North 52 degrees 33 minutes West, 333.89 feet to a 26" White Oak tree; thence North 10 degrees 59 minutes West, 175.58 feet to an iron pin set at two Chestnut tree stumps; thence North 68 degrees 35 minutes West, 162.70 feet to an iron pin set; thence North 88 degrees 52 minutes West, 292.92 feet to the BEGINNING and containing 247.411 acres and shown on Job #ALS 83015 entitled "The Albert L. Rosasco Estate" prepared by Frank Lea Hayes, R.L.S. No. L-1488, dated March 15, 1983 and recorded in Plat Book 10, Page 12, Watauga County Registry, reference to which map or plat is hereby made for a more complete description of the property. See Book of Records 70, Page 485, Watauga County Registry.

TRACT TWO:

A 2.832 acre tract being a portion of the northwest corner of the Standard Laboratories, Inc. 139.170 acre tract and being more particularly described as follows:

BEGINNING on an existing iron pin, said iron pin being a common corner to Standard Laboratories, Inc. and Harvey Gilliam and being located North 29 degrees 40 minutes West, 296.73 feet from an iron pin, the north corner of the 0.979 acre lot; thence from the beginning and with a new line, South 58 degrees 00 minutes West, 580.35 feet to an existing iron pin, a Taylor corner; thence with the Taylor and Meister lines, North 06 degrees 36 minutes East, 543.95 feet to an existing iron pin, a Meister and Gilliam corner; thence with the Gilliam line, South 61 degrees 33 minutes East 488.64 feet to the BEGINNING; being described using distances relative to the horizontal and bearings relative to the magnetic needle in the year 1980, as shown on the survey entitled "Monte Crucis, a Development of Standard Laboratories, Inc." by Frank Lee Hayes, RLS #L-1488, revised May 5, 1986 and being survey number H80180-ALS84207-86151. See Book of Records 70, Page 485, Watauga County Registry.