

After recording return to:
Michael M. Thompson
Van Winkle, Buck, Wall, Starnes and Davis, P.A.
422 South Main Street
Hendersonville, NC 28792

(Recording Information Above)

STATE OF NORTH CAROLINA

**COVENANTS, RESTRICTIONS, EASEMENTS,
RESERVATIONS, TERMS AND CONDITIONS
GOVERNING BERWICK DOWNS A SUBDIVISION
FLAT ROCK, NORTH CAROLINA**

COUNTY OF HENDERSON

KNOW ALL MEN BY THESE PRESENTS that Kenmure Enterprises, Inc., a North Carolina Corporation, (herein "Developer") does hereby covenant and agree to and with all other persons, firms or corporations now owning or hereafter acquiring any property in the area hereinafter described, for full value received, and in consideration of the obligation of said Developer and to the landowner and upon acceptance of deeds and numbered lots shown upon the plats of the subdivision of the property entitled "Berwick Downs," recorded in Plat Slide _____, of the Henderson County, N.C. Registry (herein " Berwick Downs,") are hereby subjected to the following restrictions as to the use thereof, running with said properties by whomsoever owned, to wit:

1. PURPOSE:

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of the same has been the creation of a residential community which is aesthetically pleasing and functionally convenient; attracting residents seeking privacy, security and superior facilities in a beautiful environment.

2. DEFINITIONS:

A. "Residential Lot" of "Lots" shall mean any unimproved parcel of land located within Berwick Downs, which is intended for use as a site for a single-family detached dwelling.

B. "Family Dwelling Unit" shall mean and refer to any improved property intended for use as a single-family detached dwelling unit located in Berwick Downs. A family dwelling unit shall be deemed to exist only after certification by Developer of Completion of the improvements.

C. "Lot Owner" shall mean and refer to 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, within Berwick Downs.

D. "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 has conveyed the property.

E. "Annual Assessments" shall mean those amounts as described in Paragraph 31 hereof.

F. "Kenmure Enterprises, Inc." or "Developer" shall mean Kenmure Enterprises, Inc., a North Carolina Corporation, and the assignee of its individual or total rights and duties hereunder. Developer and Berwick Downs Homeowners Association are used interchangeably unless the legal document clearly indicates differently. Once the Berwick Downs Homeowners Association gains control of the association the Developer's responsibility ends and any rights, reservations, or obligations of Developer shall pass to Berwick Downs Homeowners Association

G. "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 or two parents and their children.

3. RESIDENTIAL USE:

All lots shall be used for residential purposes exclusively.

4. SUBDIVIDING AND BOUNDARY RELOCATION:

No lot shall be subdivided, or its boundary lines relocated, for any purpose, without written approval of Developer or Berwick Downs Homeowners Association Inc.

5. COMMERCIAL USE:

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

6. ARCHITECTURAL REVIEW:

A. No family dwelling unit, garage, fence, wall, swimming pool or other structure shall be commenced, erected or maintained upon any lot in Berwick Downs, 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 show the nature, kind, shape, height, materials, basic exterior finish and colors, location and floor plan therefore, and showing front, side and rear alterations thereof, the name of the contractor and landscaper have been submitted to and approved by Developer or Berwick Downs Homeowners Association, as to harmony of exterior design and general quality with the standards of Berwick Downs, and as to location in relation to surrounding structures and topography. In regard to the foregoing, the Berwick Downs Design Guidelines prepared by the Developer shall be applied and followed in all aspects unless the Architectural Review Committee of the Berwick Downs Homeowners Association agrees otherwise.

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, all driveways and walks, 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.

B. Refusal or approval of plans, specifications, contractor, and landscaper, or location of any structure may be based upon any grounds including purely aesthetic considerations which at the sole discretion of Developer shall be deemed sufficient. Any contractor prior to performing any work within Berwick Downs must be approved by Developer or Berwick Downs Homeowners Association. 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 Developer or Berwick Downs Homeowners Association Inc.. In the event any owner violates the terms of this section, Developer or its duly appointed agent, shall give written notice to the owner to cure such violation. In the event of the failure of the lot owner to cure such violation within thirty (30) days, Developer shall be entitled to enter upon the property of the 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 Developer or its agent shall be in addition to all other general enforcement rights which Developer may have for a breach or violation of the terms of these covenants and restrictions and shall not be deemed a trespass by Developer or its agent.

C. At the completion of all construction in accordance with the plans submitted, the lot owner shall request an on-site inspection by Developer. No home may be occupied until an Occupancy Permit has been issued by Developer. Approvals will not be unreasonably withheld, but in addition to the above, the following will be required:

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

7. 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 2,000 square feet with a minimum of 1600 square feet on the main level. Garages, porches, patios, greenhouses or other areas, unfinished basements, cellars, or finished loft or bonus rooms over the garage shall not be considered floor space in meeting the above requirements. One accessory building may include a private garage and/or servants' quarter, 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.

8. BUILDING REQUIREMENTS:

A. All driveways must be concrete unless another paving material is approved in writing by Developer or Berwick Downs Homeowners Association.

B. All play equipment shall be screened by landscaping and placed so that it is not visible from any street or lot. Its placement must be approved in writing in advance by the Developer or Berwick Downs Homeowners Association.

C. No outside clothesline visible from any street or neighboring family dwelling unit shall be permitted.

D. All decorative features such as sculptured bird baths, bird houses, fountains, waterfalls or other decorative embellishments shall not be permitted unless approved in writing in advance by Developer or Berwick Downs Homeowners Association.

E. Each house must have a minimum 200 amp electric service. Each family dwelling unit must have permanent electric service supplied by Duke Power Company or its successor normally supplying electric service.

F. Log cabins are not permitted.

G. No concrete blocks may be exposed unless they are stuccoed.

H. No unpainted sheet metal may be exposed.

I. All roof stacks and plumbing vents shall be placed on the portion of the family dwelling unit roof facing away from the front lot line.

J. All compressor or utility units shall be ground mounted and shall be screened by approved fencing or planting.

9. TEMPORARY STRUCTURES:

No structure of a temporary character shall be placed upon any portion of Berwick Downs 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 Berwick Downs after completion of construction thereon as hereinabove provided. Basements or partially complete houses will be considered temporary and may not be inhabited.

10. SETBACKS:

Front setback for buildings from the front lot line shall be a minimum of 25 feet. Side setback from the side lot line shall be a minimum of 25 feet, rear setback from the rear lot line shall be 35 feet, any lot line adjoining exterior property line must be 35 feet setback (whether the front, side or rear). In order to assure, however, that the 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 and 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, Developer 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.

11. 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. 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, One Thousand Dollars (\$1,000.00) in liquidated damages shall be paid to Developer or Berwick Downs Homeowners Association by the lot owner for each month until completion.

12. TREES:

No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level, any flowering trees or shrubs, or any evergreens may be removed without the written approval of Developer, unless located within twenty (20) feet of a building, or within the right-of-way of driveways and walkways. Excepted herefrom shall be damaged trees, or trees which must be removed because of any emergency. Should a lot owner remove any tree or vegetation as herein provided without the above-described written approval, said lot owner shall be liable for liquidated damages to Developer or Berwick Downs Homeowners Association in the sum of One Thousand Dollars (\$1,000.00) per tree or other plant removed.

13. SEWER AND WATER:

Every family dwelling unit shall have permanent plumbing and running water and a permanent sewage disposal system connected to the Berwick Downs sewer system. No temporary plumbing, water, or sewage systems are allowed. No private wells may be drilled or maintained on any residential lot. No lot owner may grant an easement to neighboring properties for the purpose of extending utilities without exclusive written approval of Kenmure Enterprises, Inc.

14. STORAGE TANKS:

Fuel storage receptacles may not be exposed to view and must be installed either within the family dwelling unit, within an accessory building or buried underground. Bottled gas is not permitted.

15. 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 Berwick Downs, except as temporary and incidental to bona fide improvements of said area of Berwick Downs.

16. ANTENNAE:

All utilities, wires, cables, antennae and the like, of any kind (such as telephone, electrical, television, radio and citizens band radios) must be placed underground except as may be expressly permitted and approved in writing by Developer. Satellite dish location must be approved by Developer or Berwick Downs Homeowners Association

17. TRAFFIC CONTROL:

Developer 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, all other necessary traffic and parking regulations and the maximum noise level of vehicles.

18. OFF-STREET PARKING:

Each owner of a family dwelling unit shall provide sufficient space for parking of any and all vehicles off the roadways. Parking on roadways shall not be permitted.

19. VEHICLES:

No ATV's, motorhomes, trailers, RV campers or any similar motor vehicles or disabled or abandoned vehicles shall be permitted on any lot nor shall any vehicle be stored thereon, nor shall major repairs be permitted upon any vehicle parked upon any lot. All vehicles must have an unexpired registration and be lawfully licensed.

20. VEHICLE STORAGE:

Any automobiles (cars and trucks), boats, motorcycles, motorbikes, scooters must be parked in an enclosed area said enclosed area or enclosure must be approved by Kenmure Enterprises, Inc or the Berwick Downs Homeowners Association Inc.. Garage doors must be closed at all times when not in use. Enclosures must be approved by Kenmure Enterprises, Inc or Berwick Downs Homeowners Association Motorcycle riding shall be limited to direct ingress and egress.

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. Developer 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 which 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 Berwick Downs 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 Berwick Downs thereby diminishing the enjoyment of other 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 Berwick Downs by the lot owners, tenants, and guests thereof, may be maintained. Developer reserves the right in its sole discretion to determine a nuisance, and upon ten (10) days' written notification by Developer, the activity must cease.

23. EROSION CONTROL:

Developer shall have the right to protect from erosion, the land designated as areas upon which residential building shall take place 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 Developer to provide and insure against such erosion. Developer, however, is under no duty to take such actions as hereinabove provided.

24. FIRES:

No outdoor fire shall be built within Berwick Downs. No leaves, trash, garbage or similar debris shall be burned except as permitted by Developer or Berwick Downs Homeowners Association 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 the lot owner, a Realtor, a contractor or subcontractor, except with the written permission of Developer or as may be required by legal proceedings. If such permission is granted, Developer or Berwick Downs Homeowners Association reserves the right to restrict size, color and content of such signs.

26. 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.

27. VACANT LOTS:

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

28. 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.

29. EASEMENTS:

Developer reserves to itself, its successors and assigns, a perpetual alienable and releaseable 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 Developer may cut drainways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. Developer further reserves unto itself, its successors and assigns, a perpetual alienable and releaseable 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. 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 Developer.

Developer reserves the right to locate wells, pumping stations and tanks within any portion of Berwick Downs, provided, however, that should the owner of any lot upon which such pumping station, well or tank shall be located is other than 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.

In addition, Developer reserves unto itself, its successors and assigns, a perpetual alienable and releaseable easement and right on and over and under all lots to dispense pesticides and take other action which in the opinion of Developer is necessary or desirable to control insects and vermin, to cut fire breaks and other activities which in the opinion of

Developer are necessary to control fires. Developer, however, is under no duty to take such actions as hereinabove provided.

30. TRESPASS:

Whenever Developer is permitted by these covenants 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.

31. Berwick Downs Homeowners Association .

A. GENERAL

Kenmure Enterprises, Inc., as Developer, has formed the **Berwick Downs Homeowners Association Inc.**, a non-profit corporation (hereinafter referred to as the "Association").

Every Owner of a residential Lot, Family Dwelling Unit now or hereafter subject to the Covenants, whether he has acquired title by purchase from Developer, Developer's grantee, successor or assigns, or by gift, conveyance or by operation of law, is bound to and hereby agrees that he shall accept membership in the Association and does hereby agree to be bound by these covenants, the Articles of Incorporation and the By-Laws of the Association and the rules and regulations enacted pursuant thereto. Membership is automatic upon acquisition of ownership of a residential lot or family dwelling unit in Berwick Downs 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 Association are more fully stated, qualified and determined by the Articles of Incorporation and by its By-Laws.

Operation of the Association shall be in accordance with the Articles of Incorporation attached hereto as Exhibit "A" (hereinafter referred to as the "articles") and with the By-Laws as adopted from time to time by the Association.

B. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

CLASS A. Class A member(s) shall be all owners of residential lots or family dwelling units with the exception of Developer, its successors and assigns, and shall be entitled to one vote for each lot or family dwelling unit owned. When more than one person holds an interest in any lot or family dwelling unit, all such persons shall be members. The vote for such 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 lot or family dwelling unit.

CLASS B. Class B member(s) shall be Developer, its successors and assigns, and it shall be entitled to three (3) votes for each lot or family dwelling unit owned by Developer. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, plus the total votes that could possibly be outstanding in Class B membership if additional Property owned by Developer were submitted to these Covenants or

(b) When Developer voluntarily relinquishes in writing all of its Class B Votes, or

(c) 2020

C. ANNUAL ASSESSMENT OF THE ASSOCIATION:

Each owner of a residential lot or family dwelling unit shall pay to the Association annual assessments for the operation of the Association, roadway maintenance and road repaving reserves, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments together with interest thereon and cost of collections therefore, as hereinafter provided shall not be a charge and continuing lien on the residential lot or family dwelling unit against which each such assessment is made, until such time as the Association files a notice of lien to enforce such charge. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the 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. Should the Association be required to employ an attorney to collect any assessment, it shall be entitled to collect, in addition thereto, all costs of a collection including reasonable attorney's fees. Any lien as established herein shall be enforceable as a lien against the defaulting owner's lot and improvements (if any) thereon, as if said lien were a statutory lien enforceable in accordance with Article 2 of Chapter 44A, of the North Carolina General Statutes.

THE INITIAL ASSESSMENT SHALL BE AS FOLLOWS:

During 2008 and 2009 the assessments set forth below will be prorated based on the number of months remaining in the year

1. Residential Lot without a completed house: \$ _____
2. Family Dwelling Unit, or Residential Lot with a substantially constructed house thereon - \$ _____

From and after 2010, the annual Assessment may be increased each year by the Association by an amount not in excess of the larger of: (a) eight per cent (8%) per year, or (b) 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. Subsequent to 2010, the annual increase in assessment may be on a cumulative basis. (That the annual assessment may be increased on a cumulative basis shall mean that for the particular year subsequent to the calendar year 2008 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 each particular year.)

The annual assessments shall be fixed on a calendar-year basis by the Board of Directors of the Association and shall be due and payable monthly, quarterly or annually, in advance, as required by the Board of Directors of the Association. Each Class A member shall commence payment of the assessment 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. The annual assessment for Class B members shall commence upon the first day of the first month the closing and recording of deed.

The Annual Assessment shall become delinquent if not paid on or before the past due date specified by the Board of Directors of the Association, and shall together with interest thereon at the rate of ten per cent (10%) per annum from the past due date and cost of collection

thereof, be a charge and continuing lien on the real property and all improvements thereon, against which each such assessment is made, in the hands of the then lot owner, his heirs, devisees, personal representatives and assignees at such a time as the Association files a notice of lien to enforce such charge. The personal obligation of the lot owner at the time when the assessment first became due and payable to pay such assessment, however, shall remain his personal obligation; and shall also pass as a personal obligation to his successor in title; and they shall be jointly and severally liable therefore. If the assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the lot owner personally obligated to pay the same or to foreclose the lien against the property, as stated in subparagraph A, 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 together with the costs of the action.

D. SPECIAL ASSESSMENT AND RESPONSIBILITY OF KENMURE ENTERPRISES, INC.:

Lots or family dwelling units owned by Developer, its successors and assigns, shall be assessed at twenty-five percent (25%) of the annual assessment of Class A owners of the same Property, provided, however, that Kenmure Enterprises, Inc., shall be required, at its option to pay either the Annual Deficit of the Association or the same amount of Annual Assessment paid by Class A Owners for like property. The Annual deficit of the Association shall be defined as the total assessments of the Association less the sum of (1) its administrative and operating expenses, and (2) its road maintenance expenses and reserves for road repaving allocated for the year.

Reserves for road repaving shall be maintained by the Association so that each year the Association collects an amount of money which, when multiplied by the number of years remaining before repaving, will be required (which shall include the year of collection) and added to current Association reserves for repaving, will equal the total estimated cost of repaving. A professional engineer shall be consulted by the Association at least every second year for helping in deciding the future costs of repaving and the remaining estimated life of the existing paving.

E. SPECIAL ASSESSMENT TO ALL OWNERS:

If road repaving, repair or replacement is required and funds are not available in the Association operating accounts or reserves, the Board of Directors of the Association shall determine the total amount required to complete the repaving, 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 mail-in or written notice by the Association to the members and shall be a personal obligation of the member of the Association and a lien on their real property in the same manner as an annual assessment. Each Owner of a residential lot, condominium or family dwelling unit, regardless of class of membership, 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, condominium and family dwelling units subject to these Covenants.

32. ENFORCEMENT

A. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

B. Enforcement of these covenants and restrictions shall be by the association or

any lot owner by any proceedings at law or at equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44 of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these Covenants. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Developer to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover reasonable attorney's fees as a part of such action.

33. FUTURE RESTRICTIONS:

Developer reserves the right in each instance to add additional restrictive covenants in respect to lands conveyed in the future by or to the Developer and to amend these covenants and restrictions from time to time, but such amendments shall not at any time alter the rights which shall have already been vested in any person prior to such amendments.

34. 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.

35. 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.

36. LEASING OR RENTING:

A lot owner may lease or rent the family dwelling unit owned by such lot owner, provided, however, that the tenant or lessee shall be bound by all covenants and restrictions contained herein. Further, the term of such lease or rental shall be no less than one (1) year and no more than three (3) years; and the lot owner may not lease or rent more than once in any twelve (12) month period. At no time may a lot owner lease or rent a portion of the family dwelling unit unless the entire family dwelling unit is leased or rented.

37. VARIANCES:

In case of hardship and for good cause shown, Developer may, in its sole discretion, grant variances from any of these covenants and restrictions. The decision of Developer to grant or not grant variances as herein provided is based upon Developer's sole and absolute discretion.

38. SPECIAL RESTRICTIONS AFFECTING ALL LOTS ABUTTING GOLF COURSES:

Although Developer does not include within the subdivision any recreational facilities, some lots may abut a golf course. For those lots only, the following special restrictions apply:

A. Until such time as a family dwelling unit is constructed on a residential lot, 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 lot within twenty-five (25) 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 lot, out of bounds marker along Kenmure Golf Course # 13 hole may be placed along the rear property line on a lot at the expense of Developer.

C. 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 to be on the fairway in such a manner as to interfere with play in any way.

D. Assumed Inconveniences and Disturbances by Owners Adjacent to Golf Course Land. By the acceptance of a deed of conveyance to a Lot or Dwelling located adjacent, or nearly adjacent, to the Golf Course Land, such owner acknowledges and agrees that such Owner assumes the risk of (a) the entry by golfers onto the Property to retrieve golf balls pursuant to the easement set forth in section A above (which such entry will not be deemed a nuisance or trespass); (b) possible overspray in connection with the irrigation and fertilization of the roughs, fairways, greens and tees of the golf course and odors arising therefrom; (c) noise from golf course maintenance and operation equipment; (d) disturbance and loss of privacy resulting from golf cart traffic and golfers; and (e) activities associated with lake or lagoon edge maintenance. Additionally, each Owner acknowledges and understands that herbicides, fungicides, pesticides and chemicals may be applied to the golf course areas throughout the year, and that treated effluent or other sources of non-potable water may be used for the irrigation thereof.

E. Assumption of Risks of Owners Adjacent to Golf Course. Each Owner and Occupant, for himself and his guests and invitees, acknowledges that risks of injury to persons or property and inherent to persons or property located upon or in close proximity to a golf course, and agrees that Owner or Occupant assumes all risks resulting therefrom, including but not limited to, errant golf balls, claims of negligent design of the golf course, dwellings and negligent construction of improvements or location of improvements. Each Owner and Occupant, by expressly assuming such detriments and risks, agrees that neither the Declarant, nor the owner of the Golf Course Land, nor the Association, nor the successors or assigns will be liable to any Owner or Occupant claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of, or damage to, property, trespass or any other alleged wrongdoing or entitlement to remedy based upon, due to arising from, or otherwise related to the proximity of such Owner's or Occupant's Lot or Dwelling to the Golf Course Land, including without limitation, any claim arising in whole or in part from the negligence of the Declarant, any affiliate of the Declarant, the owner of the Golf Course Land, the Association, and/or their invitees agents, servants, successors and assigns, against any and all such claims, including claims of negligent placement of Lots in relation to the Golf Course Land.

39. OPTIONS TO REPURCHASE:

In consideration of the agreement of Developer to restrict other lots within Berwick Downs, lot owner agrees that if he should desire to sell, exchange or otherwise transfer a lot and any improvements thereon, then said lot shall be offered for sale to Developer, its successors, transferees, or assigns at the same price at which a bona fide offer has been received by the lot owner. An offer to be bona fide must be in writing and in a form so as to constitute a binding contract under the laws of the State of North Carolina. Upon receipt of such bona fide offer, the lot owner shall notify Developer, its successors, transferees and assigns, in writing of the receipt by the lot owner of such bona fide offer and transmit a copy of such bona fide offer to Developer, its successors, transferees and assigns. Upon receipt by Developer, its successors, transferees and assigns of said written notice and a copy of the bona fide written offer, Developer, its successors, transferees and assigns, shall have ten (10) days from the date of such receipt or from the date upon which all assessments owed to Developer, its successors, transferees and assigns, by the lot owner have been paid, whichever date is later, to exercise its option to purchase said lot and any improvements thereon at the price and upon the terms as set forth in the said bona fide offer. Provided, however, terms concerning time of closing shall not restrict Developer, its successors, transferees and assigns; and Developer, its successors, transferees and assigns, shall have sixty (60) days from the date of the notification to the lot owner of the exercise of its option to close the purchase. In the event the bona fide offer calls for a closing date later than that allowed herein, Developer, its successors, transferees and assigns, such later closing date shall be the date on which Developer, its successors, transferees and assigns, is required to close. Further, Developer, its successors, transferees and assigns, may in its discretion meet the price contained in a bona fide offer by the payment of cash, notwithstanding the provisions of such bona fide offer for a different form of payment.

If Developer, its successors, transferees and assigns, does not exercise its option, the owner of said lot shall then have the right to sell, exchange or otherwise transfer said lot, subject, however, to all covenants and restrictions applicable thereto, at the price and terms contained in the bona fide offer transmitted to Developer, its successors, transferees and assigns. Should, however, such sale, exchange or transfer to someone other than Developer, its successors, transferees and assigns, not be consummated within six (6) months of the date of the notice transmitted to Developer, its successors, transferees, or assigns, the terms and limitations of this paragraph shall again be imposed upon any proposed sale, exchange or transfer by the lot owner.

The provisions of this paragraph shall not apply to devise to individuals occurring upon the death of the lot owner nor to inheritance by operation of law.

40. CLUB MEMBERSHIP:

Each Lot carries with it a Social Membership in Kenmure Country Club which shall be appurtenant to and run with the transfer of title to the Lot and for which there shall be no initiation fee paid on the initial purchase from Kenmure Enterprises, Inc., as Developer. However, on each purchase & sale of a lot from a Seller other than Kenmure Enterprises, Inc., **Purchaser shall** at closing, pay to Berwick Downs Owners Association the then current membership dues for a Social membership in Kenmure Country Club, which monies received shall be paid by Berwick Downs Owners Association to Kenmure Country Club. The membership classification and the dues for it shall be in accordance with Kenmure Country Club Rules and Regulations and the dues shall be included in and paid for by the Berwick Downs Homeowners Association Inc., Inc., as part of its annual budget. The costs of any upgrades in the membership category and any increase in dues therefrom shall be borne by the Lot owner and not by the Association. Club members who purchase lots shall only be entitled to have the Association pay their dues to the extent of one Social Membership. A person owing two or more unimproved lots shall only be entitled to have the Association pay dues for one Social Membership. Shareholders of Kenmure

Enterprises, Inc., the Developer and owner of Kenmure Country Club do not pay Membership Fees or Dues and thus the Association shall not have any obligation to pay Kenmure Country Club for dues or fees on their behalf. Social Memberships which are appurtenant to the lots must be activated upon the completion of a house on the lot or within two (2) years from the date of closing whichever occurs first. Upgrades of the social membership must be activated in accordance with the terms of their issue

41. SALE OF UNIMPROVED LOT:

Until such time as Eighty percent of the 38 Lots (30 Lots) have been sold by Developer, or its assigns, a Lot owner of an unimproved lot shall not sell it until One (1) year after the date of closing on the purchase .

42. ADDITIONS TO THE PROPERTY:

For as long as Developer has a majority of the Association votes it shall have the right without any consent of the Association or of any Owner, to add and bring within the plan and operation of this Declaration, the whole or any portion of any property contiguous or near to the property, which property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions under this section shall be made by the filing of a Supplemental Declaration with respect to the land to be added hereto and which shall extend the operation and effect of the covenants and restrictions of the Declaration thereto, and which, upon filing of record of a Supplemental Declaration shall constitute a part of the property. A Supplemental Declaration may contain such complementary additions or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of Developer to reflect the different character, if any, of the land added hereto, and as are not materially inconsistent with this Declaration, but such modifications shall have no effect on the Property subjected to this Declaration prior to the filing of record of the Supplemental Declaration in question. A Supplemental Declaration must be filed of record with a Site Plan showing the land being added or such portions thereof as are being added to the Property, as well as Lots and Common Areas therein. Any such Supplemental Declaration shall expressly submit the added land to all or specific provisions of this Declaration, as may be provided therein, and such other covenants, restrictions, conditions and easements as Developer, in its sole discretion, shall determine.

43. ACCESS, INGRESS AND EGRESS: PRIVATE ROADWAYS:

All Owners, by accepting title to any Lot, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Lot and acknowledge and agree that such access. ingress and egress will be limited to roads, sidewalks and paths located within the Property from time to time, provided that pedestrian and vehicular access to and from all such Lots will be provided at all times, subject to casualty, force majeure, emergencies, adverse weather, maintenance activities and other events beyond the Association's control. Subject to the right of Declarant to dedicate any roadways within the Property, there is reserved unto Developer, the Association, and their respective successors and assigns, the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Property, provided that access to the Property may be granted to any person who gives evidence satisfactory to entry guards, if there are any, that entry is with the specific permission of an Owner or his duly authorized agent. Neither Developer nor the Association will be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Property in accordance with the foregoing.

Neither Developer nor the Association shall in any way be considered Insurers or Guarantors of any gate or controlled access to the property or safety measures undertaken with respect thereto by either or both of them, nor shall either or both be liable for any loss or damage resulting from any failure to provide controlled access or safety measures, or from leaving any gate open, or from a failure or ineffectiveness of any such controlled access or safety measures undertaken by either or both of them. No representation, warranty or covenant is given to any Owner or Occupant by either or both of Developer and the Association that any controlled access or safety measures installed or undertaken can not be bypassed or compromised, or that they would, in fact, avert damage or loss resulting from that which they are designed to prevent, and each Owner by acceptance of a deed to a Lot or Dwelling and each Occupant thereof shall indemnify and hold Developer and the Association harmless from any damage and costs and expenses, including attorney fees, incurred by either or both of them as a result of any such assertion or determination.

44. CONVEYANCES OF COMMON AREAS:

All parcels of land shown as Common Areas on the Site Plan or which are identified herein as Common Areas and require a conveyance to vest in Association ownership and use thereof will be deeded or an easement will be granted with respect thereto by Developer concurrently with the filing of the recorded plat of the subdivision in the Office of the Register of Deeds **and prior to the** conveyance of any lot in the subdivision. Any such conveyance shall be subject to all matters of record or as would be shown by a current survey. Upon any such conveyance or grant of easement, if such is required, or upon completion of any improvements thereon or thereto by Developer, the Association will immediately become responsible for all maintenance, repair and replacements therefore, the operation thereof and such additional construction of improvements as may be authorized by the Board of Directors. For purposes of measuring the foregoing one (1) year period any improvements will be deemed completed the later of the date all required certificates or permits of occupancy or use are issued therefore or the date such improvements may be first used in the manner and for the purposes for which they are constructed. It is the purpose of this provision to provide that the Association will be responsible for the general maintenance of the open space constituting any part of the Common Areas, upon the designation of the open space as part of the Common Areas, as specified in this Declaration, and all maintenance of the improvements located on all Common areas as such improvements have been completed, notwithstanding the fact that Developer is not obligated to deed or grant an easement for such properties until one (1) year after improvements have been completed thereon. Any such conveyance by Developer will be conveyed subject to all restrictive covenants filed of record at the time of conveyance and all rights otherwise set forth in this Declaration.

In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements hereunder, the Association hereby agrees to accept title to any property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance of record to the Association, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association.

OWNERS EASEMENTS OF ENJOYMENT:

Every Owner shall have a non-exclusive right, privilege and easement of use and

enjoyment of the Common Areas, which right, privilege and easement shall be appurtenant to and shall pass with the title to every Lot, whether or not referred to in any deed conveying title to any Lot, but subject to all of the provisions of this Declaration.

DELEGATION OF USE:

Any Owner may delegate, in accordance with and as limited by the Governing Documents, the Owner's rights of use and enjoyment of the Common Areas to the members of his family, guests, tenants, or contract purchasers, provided that every such delegate shall reside upon the Property or be accompanied by the Owner or otherwise be permitted to engage in such use in accordance with the Governing Documents.

45. **OWNERSHIP OF PROPERTY:**

The Association will be authorized to own, purchase, lease and use under any use agreement and maintain Common Areas, equipment, furnishings and improvements devoted to the uses and purposes expressed and implied in this Declaration, including but not limited to, the following uses:

- (a) For roadways, park areas, walks, paths, trails and other access areas throughout the property;
- (b) For security services, including security stations, maintenance buildings and/or guardhouses;
- (c) For providing any of the services which the Association is authorized to provide; and
- (d) For purposes set out in deeds or agreements by which Common Areas are conveyed or by which use rights are granted to the Association.

46. **SERVICES PROVIDED BY DEVELOPER OR HOME OWNERS ASSOCIATION:**

The Association will be authorized to provide such services required to promote the uses and purposes for which the Association is formed as expressed or implied in this Declaration, including, but limited to, the following services:

- (a) Cleanup and maintenance of all Common Areas, private roads, roadways, road shoulders, roadways medians, parkways, lakes, lagoons, drainage areas and easements outside of the Lots, and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;
- (b) Landscaping of Common Areas and walking paths within or constituting a Common Area;
- (c) Lighting throughout the Common Areas;
- (d) Maintenance of any installed electronic and other access and control devices for the protection of the Property, if any such devices are ever installed, and assistance to the local police and sheriff departments in the apprehension and prosecution of persons who violate applicable laws within the Property;
- (e) Insect and pest control to the Common Areas to the extent that it is necessary or

desirable in the judgment of the Board of Directors to supplement the service provided by the state and local governments;

(f) The services necessary or desirable in the judgment of the Board of Directors to carry out the Association's obligations and business under the terms of this Declaration and collect annual assessments, special assessments, emergency special assessments, specific assessments and other fees and charges collectable from the Owners hereunder;

(g) To take any and all actions necessary to enforce these and all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;

(h) To set up and operate an architectural review committee in the event that the Association is assigned the whole or any portion of the function of the ARC by Declarant.

(i) To construct improvements on Common Areas for use for any of the purposes or as may be required to provide the services as authorized in this section;

(j) To provide administrative services including but not limited to legal, accounting and financial and communications services informing Members of activities, including notice of actions incident to the above listed services;

(k) To provide liability and hazard insurance covering improvements and activities on Common Areas;

(l) To provide a sewage system connecting to a sewer line of the City of Hendersonville.

(m) To provide any or all of the above listed services to another Association or Owners or real property under a contract, the terms of which must be approved by the Board of Directors; and

(n) To provide for hearings and appeal process for violations of Rules and Regulations

(o) Any other matters provided for in the Berwick Downs Homeowners Association Bylaws

47. **INDEMNIFICATION:**

The Association shall indemnify every officer, director and committee member against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit or other proceedings (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer, **director or committee member**.

The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to

others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other right to which any present or former officer, director or committee member may be entitled. The Association shall, as a Common Expense maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

48. USE OF COMMON AREAS:

All Owners, Occupants, invitees, guests and other persons visiting the Property shall comply with all Rules and Regulations and shall not undertake, cause or allow any construction or alteration of the Common Areas, except with the express authorization of the Association. In general, the Common Areas shall be utilized only in a prudent and reasonable manner for the intended purposes with due regard for the preservation of the Common Areas and the safety and security of all other persons and all Improvements located in the Property. Each Owner shall be responsible for any damage or casualty caused to the Common Areas by any person who has accessed the Property upon the invitation or under the authority of the Owner or any member of the Owner's immediate family, including all Occupants of the Owner's Dwelling. In particular, all Occupants shall comply with all Rules and Regulations related to the use and parking of vehicles on the Property, including, without limitation, the observation of speed limits and requirements for the operation of golf carts, and violations shall subject to appropriate Occupants and Owners to fines as discussed in the Rules and Regulations.

IN WITNESS WHEREOF, said Kenmure Enterprises, Inc. has caused these presents to be signed in its corporate name by its President, attested by its Secretary, and its corporate seal hereto affixed, all by order of its Board of Directors duly given, this the _____ day of _____, 2007.

KENMURE ENTERPRISES, INC
BY: _____ President

(CORPORATE SEAL)

NORTH CAROLINA, HENDERSON COUNTY

I, _____, a Notary Public of the County and State aforesaid, certify that H. Lee King personally came before me this day and acknowledged that He is President of Kenmure Enterprises, Inc And that he as President, being authorized as such to do so, executed the foregoing on behalf of the Corporation. Witness my hand and official stamp or seal, this _____ day of _____, 2008.

My commission expires: _____, Notary Public

SEAL/STAMP