

Prepared by Robert A. Phillips, Attorney at Law, Burnsville, N.C.

STATE OF NORTH CAROLINA  
COUNTY OF MITCHELL

DECLARATION OF  
RESTRICTIVE and PROTECTIVE  
COVENANTS

ELMAR PROPERTIES, a Florida general partnership, Owner of the property known as ALPINE MOUNTAIN as shown by a plat of said development by Jerry L. Balls, RLS, dated June 24, 1992, recorded in Plat Book 2, Pages 78-81, Mitchell County Registry, do by these presents declare that said lands as shown on said map are subject to the following conditions, restrictions and limitations, and shall be accepted as covenants running with the land and which shall be binding upon the Owner and all persons hereafter purchasing lots shown on the aforesaid map:

1. No trailers, mobile or modular homes, or temporary structures shall be allowed on the premises. Pending construction of a residence on the property, limited camping shall be allowed, not to exceed four (4) weeks at a time. Recreational and camping vehicles may be placed on the property, provided that they are not used as residences for more than four (4) weeks at a time, and provided that they are not placed within sight of the roads servicing the development.

2. There shall be no assembly or disassembly of motor vehicles in view of the public on the premises, nor shall any motor vehicle which is inoperable be placed or stored on the premises within view of the public.

3. No commercial structures shall be placed on the property, and no retail trade, sales, or business shall be operated on the property. This shall not preclude the use of the property as a non-public home office, non-sales production art or craft studio, or residential rentals, either long- or short-term, including use as a "bed and breakfast" inn.

4. There shall be no dumping or accumulation of rubbish, trash, junk, or litter on the premises, with the exception that stumps, branches, limbs, and leaves from land clearing may be permitted to be placed on designated portions of Lot No. 17 with the specific prior approval of the Owner. Lot owners are encouraged to leave as much natural vegetation as is reasonably possible. Debris from any clearing shall be removed promptly and any such cleared areas shall be promptly planted in grass or covered with mulch so as to prevent erosion.

5. No lot may be subdivided into more than two parcels, nor may more than two residences of any type be placed on one lot. This shall not prohibit combining two or more lots and re-subdividing, provided that the end result is not more than two residences times the number of lots owned. In no case shall any subdivided lot be less than one acre, nor shall any house be built on less than one acre.

6. Any residence constructed or placed on the premises shall contain at least 800 square feet of ground level heated floor space. Once construction has commenced, the exterior of the building shall be completed within one year.

7. No structure may be placed closer than forty (40) feet from the center of any road, or closer than twenty (20) feet from any other boundary.

8. No sign of any kind shall be displayed to the public view on any lot except one sign or not more than eight (8) square feet indicating the name of the property or its lot owner, or "for sale" signs not to exceed six (6) square feet.

9. No livestock may be kept on the property with the exception of domestic pets and/or no more than one horse per lot, provided that such animals be housed and kept in such a manner so as not to be a nuisance to other lot owners.

10. All lot owners shall, upon recordation of a Deed to any lot in the development, have a perpetual and nonexclusive easement to travel on the subdivision roads shown on the recorded plat. There is reserved unto the Owner/Developer a sixty-foot wide easement along all roads for benefit of other lot owners, and for the placement of utilities, including electricity and telephone.

11. All roads shown on the recorded plat are private roads, for the use of the purchasers of any lot in the subdivision. The Owner/Developer herein shall be responsible for maintenance of said roads only to the extent of grading or scraping them periodically in such a manner as, in the Owner's discretion, will render said roads open and passable for vehicular travel (not to include snow removal) until January 1, 1995, at which time all responsibility for maintenance of said roads shall be assumed by the lot owners, whether individually or by association. By acceptance of a Deed or other conveyance to a lot in said subdivision, all grantees shall be deemed to have agreed to join the subdivision property owners association, and to be responsible for their prorata share of road maintenance costs for the subdivision roads after January 1, 1995. Such prorata costs are based on one (1) share per lot or residence constructed on lot regardless of the size of the lot. Road maintenance costs after January 1, 1995, shall also include prorata share of maintenance of roads leading through Alpine Village, Section 4, to the public highway. Any lot owner causing excessive damage at any time to any roads, by construction or other activities, shall repair such damage at his own expense in a timely manner.

12. Any road designated on the recorded plat as a dead-end road may be blocked or gated by the owner(s) of the property served by that road, provided that no other lot owner is denied rightful access to his lot by such action. Such blocking of dead-end roads constitutes automatic waiver by such lot owner(s) of any further road maintenance by the Owner/Developer or the property owners association beyond any such blocked point.

13. Invalidation of any one or more of these provisions shall in no way affect any of the other independent provisions which shall remain in full force and effect.

14. If the owner of any restricted land shall violate or attempt to violate any of the covenants, conditions, or restrictions herein, it shall be lawful for any other person or persons owning any of the restricted real estate in the development covered by these restrictions to prosecute a suit at law or a case in equity against the person or persons violating or attempting to violate any such covenant, conditions, or restrictions, and to receive injunctive relief, specific damages for such violation, and reasonable attorney's fees.

15. These covenants, conditions, and restrictions shall run with the land and shall be binding on the Owner and their successors in title until January 1, 2002, at which time they shall automatically be extended for successive periods of ten (10) years unless a majority of the lot owners at the time of renewal agree to terminate or amend these covenants, conditions, and restrictions.

This the 16 day of October, 1992.

ELMAR PROPERTIES, Owner  
Mark A. Walker, Gen. Partner

By: Arthur M. Walker atty-in-fact  
Mark A. Walker, Gen. Partner, by

Arthur M. Walker atty-in-fact  
Ellen Walker DeYoung Gen. Partner  
By: Arthur M. Walker atty-in-fact  
Ellen Walker DeYoung, Gen. Partner,  
by Arthur M. Walker, atty-in-fact

STATE OF FLORIDA  
COUNTY OF Broward

I, Denis R. Heib, a Notary Public in and for the above County and State, do hereby certify that ARTHUR M. WALKER, attorney-in-fact for Mark A. Walker and Ellen Walker DeYoung, General Partners of Elmar Properties, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing instrument for and in behalf of the said Mark A. Walker and Ellen Walker DeYoung, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged and recorded in the Mitchell County Deed Registry in Book 241, Page 682, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said ARTHUR M. WALKER acknowledged the due execution of the foregoing instrument for the purposes therein expressed for and in behalf of the said Mark A. Walker and Ellen Walker DeYoung.

WITNESS my hand and notarial seal this the 16 day of October, 1992.

Denis R. Heib  
Notary Public



My Commission expires:  
Notary Public, State of Florida  
My Commission Expires Nov. 15, 1992  
Bounded This Day Public - Insurance Inc.

State of North Carolina Mitchell County the foregoing Certificate (s) of Denis R. Heib  
is (are) Certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the register of Deeds of Mitchell County, North Carolina  
in Book 241, Page 676  
this 15 day of November, A.D. 1992  
at 2:46 o'clock P.M.  
Don Harold Dobbins Register to Deeds - Assistant Register of Deeds

Prepared by: William A. Leavell, III, Attorney at Law  
STATE OF NORTH CAROLINA  
COUNTY OF MITCHELL

AMENDED AND SUPPLEMENTED DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS

ELMAR PROPERTIES, a Florida General Partnership, current owner of all of the property known as Alpine Mountain, as shown by a plat of said development by Jerry L. Ball, RLS, dated 8-24-92, recorded in Plat Book 2, Pages 78-81, Mitchell County Registry, having previously recorded a Declaration of Restrictive and Protective Covenants dated 10-18-92, and recorded 11-5-92 in Book 242, Page 76, Mitchell County Registry, now amends and supplements said prior Declaration as follows:

1. DEFINITIONS. As used in the "Declaration," and the "Bylaws," as those terms are defined below, the following terms shall have the following meanings:

A. "Association" shall mean Alpine Mountain Property Owners Association, Inc., a North Carolina nonprofit corporation.

B. "Bylaws" shall mean the bylaws of the Association, as amended from time to time.

C. "Common Area" shall mean all real and personal property or rights therein owned by the Declarant or by the Association for the common use and enjoyment of the Owners and designated as "Common Area" on any Plat of the Property duly recorded in the Mitchell County Public Registry, or designated as "Common Area" in the Declaration or in any supplementary declaration, and made subject to the provisions of the Declaration, such Common Areas, including, but not being limited to, the Private Street Rights of Way.

D. "Declarant" shall mean ELMAR PROPERTIES and those of its successors and assigns, if any, to whom the rights of Declarant hereunder are specifically transferred by written instrument, subject to such terms and conditions as the Declarant may impose.

E. "Declaration" shall mean the Declaration of Restrictive and Protective Covenants recorded in Book 242, Page 76 of the Mitchell County Registry, as amended and supplemented hereby and as further amended and supplemented from time to time.

F. "Expansion Right" shall mean the right of the Declarant to bring additional property within the scheme of the Declaration and the jurisdiction of the Association, as more particularly provided for in paragraph 2 below.

G. "Lot" shall mean any plot of land, with delineated boundary lines, shown upon any recorded subdivision map of the Properties with the exception of any Common Area. In the event any Lot is increased or decreased in size by Declarant or by any Owner by re subdivision, through recordation of a new subdivision plat, any such newly platted Lot shall thereafter constitute a Lot for the purposes of this Declaration.

H. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having such interest in a Lot solely as security for the performance of an obligation.

I. "Plats" shall mean those maps of the Properties recorded

in Plat Book 2, Page 78 through 81, Mitchell County Registry, and any maps of the Properties hereafter filed by Declarant.

J. "Private Street Rights-of-Way" shall mean the streets described in paragraph 3 below and those areas designated as Private Street Rights-of-Way by Declarant in deeds of portions of the Property, or on plats of portions of the Property or in Supplemental Declarations of Restrictive and Protective Covenants, which rights-of-way are for the use of all Owners, their guests, employees, tenants, and invitees, for the purpose of ingress, egress, and regress from portions of the Property to public streets by vehicle or otherwise.

K. "Properties" or "Property" shall mean the "Existing Property" described in paragraph 2 below and any additions thereto, as are or shall become subject to this Declaration under the provisions of paragraph 2 below.

**2. PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO (EXPANSION RIGHTS).**

A. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, irrespective of whether there may be additions thereto as hereinafter provided, is located in Mitchell County, North Carolina and is that property shown on maps recorded in Plat Book 2, Pages 78 through 81 of the Mitchell County Registry.

This property is referred to herein as the "Existing Property."

B. Additions to Existing Property (Expansion Rights). Any portion or portions of the land conveyed to Declarant by the deed recorded in Book 236, Page 245, Mitchell County Registry or which is contiguous to such land may be annexed to the Properties by Declarant (but shall not be required to be annexed) and brought within the scheme of this Declaration and within the jurisdiction of the Association, in future stages of development, without the consent of the Association or the Owners; provided, however, that said annexations, if any, must occur on or before December 31, 2003.

Such additions shall be made by filing of record Supplementary Declarations of Restrictive and Protective Covenants with respect to the additional properties which shall extend the scheme of the Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessment for their just share of the Association's expenses. Said Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained in the Declaration as may be necessary to reflect only the different character of the added properties and as are not inconsistent with the provisions of the Declaration. Any such Supplementary Declaration shall, and need only, be executed by Declarant.

**3. PRIVATE STREET RIGHTS-OF-WAY.** Section 11 of the Declaration is hereby amended to read as follows: All roads shown on the recorded plat are Private Street Rights of Way, for the use of the Owners of any Lot. The Declarant herein shall be responsible for maintenance of said roads only to the extent of grading or scraping them periodically in such a manner as, in Declarant's discretion, will render said roads open and passable for vehicular travel (not to include snow removal) until January 1, 1995, at which time all responsibility for maintenance of said roads shall be assumed by the Owners, whether individually or by Association. All Owners are members of the Alpine Mountain Property Owners Association, Inc., and are required to pay Association assessments as they come due. Each owner shall have such voting rights as are specified in the Bylaws of the Alpine

Mountain Property Owners Association, Inc., and said Bylaws are hereby incorporated by reference as if fully stated herein. Assessments will be made on Owners by the said Association for maintenance of the Private Street Rights of Way. The Private Street Rights of Way are now comprised of approximately 1.63 miles of one lane gravel roads, approximately 12 feet in width. The names of the existing gravel roads are Ridgeview Road, Long Branch Road, Mine Cove Road, Laurel Hollow Road, Southview Lane, Skyline Road, Pine Tree Road, and Crystal Hollow Road. Owners will also be assessed for a prorated share of maintenance of 3.05 miles of roads leading through Alpine Village, Section 4, to the public highway. The names of those roads are Long Branch Road, Ridgeview Road, and Mine Cove Road. It is anticipated that an additional 2 miles of roads will be added to Alpine Mountain. Those additional roads will be extensions of Skyline Road, Ridgeview Road, and Mine Cove Road. Those additional roads will require maintenance. After additional roads are constructed, Owners will be assessed for the maintenance of those additional roads. Any Owner causing excessive damage at any time to any roads, by construction or other activities, shall repair such damage at his own expense in a timely manner.

4. ADDITION OF SECTION 16. The Declaration is hereby supplemented by adding the following Section 16: The Board of Directors will exercise all powers and duties of the Association. The Directors will initially be chosen by Declarant. Not later than sixty days following conveyance of twenty-five percent of the Lots to Owners other than Declarant, at least one member of the Board and not less than twenty-five percent of the members of the Board shall be elected by Lot Owners other than the Declarant, and not later than sixty days after conveyance of fifty percent of the Lots to Lot Owners other than the Declarant, not less than thirty-three percent of the members of the Board shall be elected by Lot Owners other than the Declarant. Following the expiration of the Declarant Control Period, the Board of Directors shall be elected by the members of the Association with the persons receiving the largest number of votes being elected.

As used herein, the term "Declarant Control Period" shall mean that period from the filing of the Articles of Incorporation of the Association, until the earlier of (i) 120 days after the conveyance of seventy-five percent of the Lots to Owners other than Declarant, (ii) two years after Declarant has ceased to offer Lots for sale in the ordinary course of business, (iii) two years after the Expansion Right to add additional Property to the Declaration was last exercised, or (iv) the date Declarant voluntarily terminates the Declarant Control Period pursuant to an instrument recorded in the office where the Declaration is recorded; provided, however, the Declarant Control Period shall, in all events, terminate on that date which is ten years from the filing of the Articles of Incorporation of the Association; and provided further, in the event that the Expansion Right is exercised to add additional Lots to the Property, the Declarant Control Period shall be adjusted and extended (or revived, as the case may be) to reflect the addition of such additional Lots.

5. ADDITION OF SECTION 17. The Declaration is hereby supplemented by adding the following Section 17: The Owner of each Lot is entitled to one vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members of the Association and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine. Lot Owners will be permitted to subdivide one Lot into two Lots. In the event that a Lot is subdivided, the owner of each subdivided Lot will be entitled to one vote. Owners of subdivided Lots will have the same rights and obligations as other Lot Owners and shall be members of the Alpine Mountain Property Owners Association, Inc., and shall pay

a full (not one-half) share of Association assessments for road maintenance as they become due.

This the 10 day of May, 1993.

ELMAR PROPERTIES, Owner

By: Arthur M. Walker  
Mark A. Walker, Gen. Partner,  
by Arthur M. Walker, attorney-  
in-fact

By: Arthur M. Walker  
Ellen Walker DeYoung, Gen.  
Partner, by Arthur M. Walker,  
attorney-in-fact

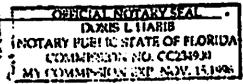
STATE OF FLORIDA, COUNTY OF Broward

I, David S. Stahl, a Notary Public of the County and State aforesaid, do hereby certify that Arthur M. Walker, attorney-in-fact for Mark A. Walker and Ellen Walker DeYoung, General Partner of ELMAR PROPERTIES, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing instrument for and in behalf of the said Mark A. Walker and Ellen Walker DeYoung, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged and recorded in Mitchell County Deed Registry in Book 241, Page 689, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney; that the said Arthur M. Walker acknowledged the due execution of the foregoing instrument for the purposes therein expressed for and in behalf of the said Mark A. Walker and Ellen Walker DeYoung.

Witness my hand and notarial seal this the 10 day of May, 1993.

David S. Stahl Notary Public

My commission expires:



State of North Carolina Mitchell County the foregoing Certificate (s) of David S. Stahl  
is (are) Certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the office of the register of Deeds of Mitchell County, North Carolina  
in Book 245 Page 589  
this 14th day of May, A.D. 1993  
at 11:55 o'clock A.M.  
Don Haskins Arthur M. Walker  
Register of Deeds - Assistant Register of Deeds