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CHESTNUT MOUNTAIN FARMS

DECLARATION OF PROTECTIVE COVENANTS,

CONDITIONS AND RESTRICTIONS

Drawn by and mail to:
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LIB CHARLOTTE

CHESTNUT MOUNTAIN FARMS

DECLARATION OF PROTECTIVE COVENANTS,

CONDITIONS AND RESTRICTIONS

WITNESSETH:

WHEREAS, TOWI A WI PLANTATION, LLC, a Florida limited liability company, herein called the "Developer", is the fee simple owner of certain real property known as Chestnut Mountain Farms located in Walnut Grove Township, Wilkes County, North Carolina, a more particular description of which appears on Exhibit "A" attached hereto and made a part hereof (the "Property"); and

WHEREAS, Developer is in the process of subdividing the Property and desires to establish thereon an equestrian themed residential community consisting of single-family residential dwellings to be governed by Chestnut Mountain Farms Homeowners Association, Inc. (the "Association") and further desires that the Property be used, developed, maintained and managed for the benefit and welfare of the Owners (as hereinafter defined) of the Property; and,

WHEREAS, the Developer desires to subject the Property to and impose upon said tracts mutual and beneficial restrictions, covenants, terms, conditions and limitations set forth herein, which shall run with the Property and be binding on all parties owning any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns, to provide for the preservation of the amenities, desirability, value, attractiveness and benefit of all tracts in the Property; and for the continued maintenance and operation of the private streets and Common Areas in the community; and,

WHEREAS, the powers and duties of maintaining the roads and Common Areas, enforcing the covenants and restrictions, and collecting and disbursing assessments, are to be exercised and confined upon the Association;

NOW, THEREFORE, in consideration of the premises, the Developer hereby declares that the Property, and all other property that hereafter may be made subject to this Declaration of Covenants, Conditions and Restrictions (hereafter called the "Declaration") is and shall be held, transferred, sold, conveyed, occupied and used subject to this Declaration. Every party hereafter acquiring any Lot (as hereafter

defined), or portion thereof, in the Property, by acceptance of a deed conveying title thereto or by execution of a contract for the purchase thereof, whether from the Developer or a subsequent owner of such Lot, shall accept such deed or contract subject to each and all of the covenants, restrictions and agreements contained within this Declaration, as well as any additions, supplements, or amendments hereto, and also subject to the jurisdictions, rights and powers of the Developer, the Association, and their successors and assigns. Each grantee of any Lot subject to this Declaration, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Developer, the Association, and with grantees and subsequent Owners of each of the Lots within the Property to keep, observe, comply with and perform said restrictions and agreements.

ARTICLE I
DEFINITIONS

1. "Additional Property" shall mean and refer to any additional real estate near or contiguous to the Property, or within eight thousand (8,000) feet of any boundary of the Property, which may be made subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

2. "Association" shall mean and refer to Chestnut Mountain Farms Homeowners Association, Inc., which shall be established prior to the conveyance of the first Lot within the Property. Copies of the proposed Articles of Incorporation and Bylaws of the Association are attached hereto as Exhibits B and C, respectively.

3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

4. "Common Areas" shall mean and refer to any and all real property or interests therein or easements thereon owned or held by the Association or the Developer for the common use and enjoyment of all Owners including the pavilion (if and any), all riding trails, stables and paddocks, the easement rights in the private streets and roads, greenways and recreational areas and other Common Areas located within the Property which are maintained by the Association. With respect to portions of the Property which the Association does not and will not own in fee simple, but in which the Association has

easements, "Common Area" shall refer either to the portion of the Property with respect to which the easement has been established, or the easement rights, as the context may require.

5. "Developer" shall mean and refer to the Developer herein, TOWI A WI PLANTATION, LLC, a Florida limited liability company, its successors or designated assigns. The initial and any successor Developer may transfer all rights of the Developer hereunder to any third party by written instrument recorded in the Office of the Register of Deeds for Wilkes County, North Carolina, signed by the transferor and the transferee.

6. "Green Area" shall mean and refer to those portions of the Lots or elsewhere within the Property labeled as "Green Area" on the Plats. The easement rights of the Association in the Green Areas, as established in this Declaration, are Common Area, and the Green Areas may be maintained by the Association, as more particularly set forth herein.

7. "Lot" shall mean and refer to any numbered or lettered tract of land (excluding any Common Area) shown on any Plat which is a part of the Property, including without limitation the tract labeled "34.50 acres" shown on the Plat recorded in Map Book 10 at page 127-136 of the Wilkes County Registry, and which shall be restricted for such uses as are consistent with this Declaration and any other restrictions covering the area wherein the tract of land is located. No tract of land shall become a "Lot" as that word is used herein until a Plat of the area in which the same is located is recorded in the Office of the Register of Deeds of Wilkes County, North Carolina.

8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, excluding however, those parties having such interest merely as a security interest for the performance of an obligation.

10. "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Wilkes County, North Carolina.

11. "Plat" shall mean and refer to any plat of the Property or any part of it which is recorded from time to time in the Office of the Register of Deeds of Wilkes County, North Carolina, and any and all revisions thereof.

12. "Property" shall mean and refer to that certain real property located in Wilkes County, North Carolina, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II, Section 1 hereof.

13. "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of Wilkes County, North Carolina, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article II hereof.

14. "View Easement" shall mean and refer to the easement rights created under this Declaration in favor of the Association and the Owners with respect to those portions of the Lots and other portions of the Property labeled as "View Easement" on the Plats.

ARTICLE II
ADDITIONS TO THE PROPERTY SUBJECT TO THIS DECLARATION

1. **Additional Property**. The Developer reserves the absolute right, exercisable in its sole discretion from time to time, to cause the Additional Property (or portions thereof) to be made subject to the terms of this Declaration. Such additions shall be made in order to extend the scheme of these restrictions to Additional Property and to bring such Additional Property within the jurisdiction of the Association, thereby subjecting such additions to assessment for their share of the Association's expenses, as set forth herein. Such additions shall be made by filing of record one or more Supplemental Declaration(s) which shall identify the Additional Property to be included and shall incorporate the restrictions under this Declaration by reference. The Developer reserves for itself, its agents, employees, invitees, designees, successors and assigns, the right to use all roads in the Property to reach other properties.

a. Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Developer to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property previously subjected to this Declaration, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in this Declaration.

b. In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Developer shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, section or portion of the Property owned by Developer to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Wilkes County covering only such Phase, section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a property owners association to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not a property owners association is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

c. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Developer owns any part of the Property, the prior written consent of Developer shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

2. **Excluded Property**. No property of Developer shall be subject to these restrictions except that property made subject thereto as herein provided. No property of Developer shall be subject to any restrictions by implication arising from Developer imposing these restrictions on the property herein identified.

ARTICLE III
COMMON AREA PROPERTY RIGHTS

1. **Private Areas**. Each of the streets located on the Property now or hereafter constructed or designated on any recorded or unrecorded map, is a private street and every Common Area within the Property is a private area, and neither the execution nor recording of any plat nor any other act of the Developer or Developer's successor in title to all or any portion of the property is, or is intended to be, or shall be construed as, a dedication to the public of any streets or Common Area, except those that hereafter may be dedicated by a specific written and recorded deed or agreement of dedication.

2. **Reservation of Easements**. The Developer reserves for itself, its successors and assigns, the right to offer to dedicate or transfer any streets or other part of the Common Area to any public agency, authority or utility if it so desires. The Developer reserves for itself and for its agents, employees, invitees, designees, successors and assigns a non-exclusive easement over each of the streets in the Property now or hereafter constructed or designated on any recorded or unrecorded map. The Developer reserves the right to use said roads for the development of any adjoining properties, which Developer may own now or in the future. Each Owner, by accepting a deed to a Lot or any other portion of the Property, acknowledges that the streets, other than existing State Roads, within the Property are not constructed to the State of North Carolina Department of Transportation's minimum standards for subdivision streets. Therefore, the Department will not accept these streets into its secondary roads system. All private street maintenance, including repair and snow removal, will be the responsibility of the Developer or the Association. The Developer and each Owner acknowledge that it is the policy of the Wilkes County Board of Education that school buses will not travel on private streets.

The Developer also reserves for itself, its successors and assigns, easements and rights-of-way through, under, over and across the Property for the installation,

maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone, cable television, conduits, storm sewers, sanitary sewers and other public utilities or conveniences, with a further easement reserved to cut or fill a two to one slope along the boundaries of all public or private streets built on the Property. This reservation shall not apply to Lots in the Property except in easements within such Lots shown on any recorded plat of the Property or any part hereof or as reserved in Section 5 of Article VII hereof. An offer of dedication places no liability upon any public agency to accept the dedicated streets or other property

3. **Ownership of Common Areas**. The Developer may retain the legal title to any Common Areas, other than streets or roads shown on any Plat of the Property, until such time as it has completed improvements, if any, thereon. Notwithstanding Developer having legal title to the Common Areas, the Association shall maintain said Common Areas including any streets and roads located thereon.

4. **Owner's Easements of Enjoyment**. Every Owner, including lot or homeowners in Additional Property developed at a future time and subjected to this Declaration, shall have a non-exclusive right-of-way, right to an easement of enjoyment in and to the roads and Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to this Declaration and the following provisions:

a. The right and easement of enjoyment in and to the roads shall be limited to those roads owned or maintained by the Association.

b. The right of the Association to limit use of the roads and Common Areas to Owners, their families and guests.

c. The right of the Association to suspend the voting rights and other rights of membership by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

d. The right of the Association to grant an easement in, dedicate or transfer all or any part of the roads or Common Areas to any public agency, authority, or utility for such purposes.

e. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

f. The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, or any portion thereof, and the right of such mortgage in said properties shall be subordinate to the rights of the Owners hereunder.

ARTICLE IV
HOMEOWNERS ASSOCIATION

1. **Property Owners Association**. On, or before, the conveyance of the first Lot in the Property, there shall be established a property owners association which will be named Chestnut Mountain Farms Homeowners Association, Inc., herein referred to as the "Association," in which the Owners of each Lot are obligated to be members, having one vote per Lot (provided, however, Developer shall be entitled to ten (10) votes for each Lot owned by Developer), and shall be obligated to pay the annual assessment and other assessments that may be assessed by the Association or its governing body in accordance with the terms of this Declaration and the Bylaws of the Association. The Association shall have responsibility for the installation and maintenance of areas of common responsibility (Common Areas) within areas of the Property, including but not limited to: ownership and maintenance of Chestnut Mountain Farms signs, private roads, operation of the Association, insurance protection and/or other protections or guarantees to the Association in general and to the Owners. This paragraph is intended as a general statement of the existence of the Association to the Owners, their heirs and assigns, and their obligations with relation thereto. Further, specific and detailed terms, provisions, operating procedures, assessments, and other terms and provisions relating to said Association will be more specifically and fully set out in the Bylaws of the Association.

2. **Association Membership**. The Association shall include the Owners of all Lots and, at the option of the Developer, the Owners of other tracts in future plats to be included in Chestnut Mountain Farms and subjected to this Declaration pursuant to Article II above. The Association shall also own Common Areas, which will be deeded by the Developer to the Association no later than the date upon which Developer no

longer owns any part of the Property. The Association shall have the responsibility of maintaining all Common Areas.

ARTICLE V
COVENANTS FOR MAINTENANCE ASSESSMENTS

1. **Common Area Maintenance**. Maintenance of the Common Areas, including private roads, entrance signs, landscaping, pond, stable, paddocks, pavilion, trails, and insurance, shall be the responsibility of the Developer during the construction phase. After the construction phase, maintenance of the Common Areas will be the responsibility of the Association. At the time when the private roads are accepted for public maintenance, if ever, by the State of North Carolina, road maintenance shall become their responsibility. In any event, said date of transfer of responsibility of maintenance of Common Areas shall be no later than the date upon which the Developer no longer owns any part of the Property. As of the date of the filing of this Declaration, none of the Common Areas is owned or intended to be owned by the Association in fee simple, and all Common Areas are located on Lots. All of such Common Areas are located upon Lots. Therefore, to the extent that the Association does not maintain a Common Area or portion thereof, the Owner of the Lot upon which such Common Area is located shall maintain it. Such maintenance by the Lot Owners shall include all portions of the rights-of-way for the private roads as shown on the Plats, as the Association will maintain the private roads and drainage ditches and facilities adjacent thereto, but may not maintain the unimproved portions of the private road rights-of-way. Such maintenance shall also include all View Easement areas and Green Areas, to the extent not maintained by the Association.

2. **Annual Assessment**. Each Owner agrees to pay to the Association an annual assessment, which shall initially be $700.00 per unimproved Lot per year and $1,200 per Lot improved by a residence, per year, due on January 1st of each year. The increased assessment becomes effective upon the next due date once construction of improvements on a Lot has begun. The Board of Directors shall fix the amount of the annual assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the payment due, to each

Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth below, the budget is ratified unless at such meeting Members exercising all of the votes in the Association reject the budget. If any annual assessment or installment thereof is not paid within ten (10) days of its due date, there shall be a late fee of $50.00 assessed against the Owner and Lot. The Owner of record as of December 31 shall be responsible for the annual assessment for the following calendar year. Notwithstanding the foregoing, the failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay annual assessments.

3. **Maximum Annual Assessment.**

a. The Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under N.C. General Statute 47F-3-103(c) or other applicable law, in which case the procedures set forth above shall apply), may increase the annual assessment applicable to each Lot by a maximum amount equal to the previous year's annual assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used. If the annual assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the annual assessments may be

increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members, unless required under N.C. General Statutes 47F 3-103 (c) or other applicable law, in which case the procedures set forth above shall apply.

b. The maximum annual assessment applicable to each Lot may be increased above the maximum amount set forth in subparagraph (a) of this Section 3 by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Developer (so long as Developer owns any part of the Property), subject to the procedures set forth in Section 2 above if applicable.

c. The Board of Directors may fix the annual assessment applicable to each Lot at an amount not in excess of the maximum set forth in Subparagraph (a) of this Section 3 (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental annual assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in Section 2 above, if applicable. In no event shall the sum of the annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

d. With respect to any Lot conveyed by Developer, the purchaser of such Lot shall pay to the Association at closing the amount of the annual assessment for the installment period in which the closing occurs on such Lot, prorated based upon the number of days remaining in such installment period. With respect to any Lot conveyed by any Owner other than Developer, the amount of the annual assessment applicable to such Lot for the installment period in which such closing occurs shall be prorated between the buyer and seller thereof as of the date of closing of such conveyance.

4. **Special Assessments**. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in

part, the cost of (i) the construction of any Common Area improvements which are not originally constructed by Developer or (ii) the reconstruction, repair or replacement of the Common Areas including any improvements located thereon. Provided, however, (a) Developer shall not be obligated to pay any Special Assessments on Lots owned by Developer except with Developer's prior written approval, and (b) any Special Assessment must be approved by Developer (so long as Developer owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

5. **Special Individual Assessments**. In addition to the Annual Assessments and Special Assessments authorized above, the Board of Directors shall have the power to levy a special assessment applicable to any particular Owner ("Special Individual Assessment") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including any improvements located thereon, whether occasioned by any act or omission of such Owner(s), members of such Owner's family or such Owner's agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association or the Developer pursuant to this Declaration or the Bylaws. Provided, however, Developer shall not be obligated to pay any Special Individual Assessment except with Developer's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

6. **Collection Agent**. At the option of the Board of Directors, any person or entity designated by the Board of Directors may act as collection agent for any and all assessments imposed by the Association and/or the Board against the Owners.

7. **Assessments Against Lots Owned by Developer**. Anything to the contrary set forth in this Declaration notwithstanding, Assessments on all Lots owned by Developer shall be in an amount equal to ten percent (10%) of Assessments on all other Lots. Furthermore, Developer shall be entitled to credit against any Assessments on Lots owned by Developer any and all amounts which Developer has paid directly for common expenses, or has paid, subsidized or contributed to the Association for the Association's payment of common expenses.

8. **Creation of Lien and Personal Obligation for Assessments**. The Owner of each Lot, by acceptance of a deed, and Developer so long as it owns any part of the Property, are deemed to covenant and agree to pay to the Association the assessments in this Article V. Such covenant will be deemed to arise whether or not it is expressly stated in the deed or other conveyance to the owner. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was Owner of such property at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall not pass to successors in title (other than as the continuing lien on the land) unless expressly assumed by such successor.

ARTICLE VI
ARCHITECTURAL REVIEW

1. The Developer, its successors and assigns, shall have the right to enforce the requirements set forth in this Article until such time as it passes such responsibility to the Architectural Review Committee (the "Committee") which thereafter, shall assume and be responsible for enforcement. Reference in this Article to the Developer shall mean the Committee after such time as the responsibility is passed to the Committee. In any event, said responsibility shall be passed from the Developer to the Committee on the date upon which the Developer no longer owns any part of the Property. The following provisions regarding architectural review shall apply to each and every Lot now or hereafter subject to this Declaration.

2. No construction, reconstruction, remodeling, alteration, or addition to any building, improvement, or structure of any kind, upon any Lot in the Development, shall be commenced without the prior written approval of the Developer of the proposed site location, plans and specifications.

3. There shall be submitted to the Developer two (2) complete sets of the final plans and specifications for any and all proposed improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans showing the location on the Lot of the building, wall, fence or other structure proposed to be constructed, altered, placed or maintained, together with specifications for the proposed construction material, color schemes for roofs and exteriors thereof and proposed grading and landscaping.

4. The Developer shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. In the event the Developer fails to approve or disapprove such plans and specifications within thirty (30) days, approval will not be required and the requirements of this Section will be deemed to have been fulfilled. One (1) set of said plans and specifications and details with the approval or disapproval endorsed thereon, shall be returned to the persons submitting them and the other copy thereon shall be retained by the Developer for its permanent files. The Developer shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications, which amount is estimated to be $50.00 during the first year following the date of execution of this Declaration with no more than a 10% increase annually in such fee.

5. At such time as the Developer no longer owns any Lot or other portion of the Property, the Association's Board of Directors shall appoint a standing committee of the Board, to be called the Architectural Review Committee, which shall initially consist of three (3) members to be appointed from among the Association's members. Upon its appointment, the Committee shall assume from the Developer all authority to review and approve plans, specifications, and details as otherwise provided herein and bring suit in its name to enforce. The initial committee shall serve for a term of two (2) years, after

which the committee members shall be appointed by the Association's Board of Directors, pursuant to its Bylaws, and shall serve for a term of one (1) year; provided further that the number of committee members may be increased from three (3) to five (5) by a resolution of the Association's Board of Directors.

6. After its appointment, the Committee shall establish written architectural and aesthetic criteria to be used in reviewing all plans, specifications, and details submitted for approval, and copies of such criteria may be obtained upon request from the Committee. Such written criteria shall be subject to revision or amendment by the Committee at all times; provided, however, that no amendment to or change in such criteria shall become effective until committed to writing and approved by the Committee in the same manner as the previously controlling criteria; and that no amendment or change in such criteria shall have retroactive application. All homes, garages or outbuildings on the Property shall be constructed with materials whose exteriors incorporate natural products including but not limited to wood or stone.

7. The purpose of the architectural review provisions set forth herein is to protect the value of all real property subject to this Declaration and to promote the interests, welfare, and rights of all Owners. Decisions of the Developer or Committee in approving or disapproving plans and specifications shall be based on criteria established for the Property, consistently applied and such decisions shall be final and not subject to review or appeal.

ARTICLE VII
RESTRICTIONS AND REQUIREMENTS

1. **Residential Use.** No Lot shall be occupied or used except for single-family residential purposes, or as Common Areas if owned by the Association. No structure shall be erected, placed or permitted to remain on any Lot other than one detached, single-family residence dwelling, one guest house, and such outbuildings as are usually accessory to a single-family residence dwelling including a private garage or barn facility. This shall not restrict the Association or the Developer from constructing on any Lot, marketing, construction management, security, maintenance, or other facilities for the benefit of the Development. No obnoxious or offensive activity shall be carried on

upon the Property, which may be or may become a nuisance or annoyance to the neighborhood.

2. **Size and Placement of Residences and Structures.**

a. Every dwelling constructed on a Lot shall contain a minimum of 1,500 square feet of fully enclosed living area for a single story above ground dwelling and 1,200 square feet for the ground floor of a multi-storied dwelling (with some consideration being given to covered non-heated areas) and the Developer and its successor Committee, as provided in Article VI, retains the right to withhold approval of plans for any dwelling including but not limited to a split level, two or three story residence where such a structure is unsuited to the proposed Lot's terrain, where the erection of such a structure would block or materially interfere with the primary view or vista or solar access of another lot, or would not be in keeping with the general development of surrounding area.

b. The Developer and its successor Committee shall have the authority to promulgate regulations pertaining to the height and size requirements of all other types of structures, including but not limited to outbuildings, fences, walls and copings.

c. No above-grade structure (except fences or walls) may be constructed or placed on any Lot within:

(1) Forty-five (45) feet from the front line of the Lot, which is the center line of road in front of such Lot.

(2) Fifteen (15) feet from each Lot side line, unless the side line is the center line of a road, in which case forty-five (45) feet is the setback requirement.

(3) Twenty-five (25) feet from the rear line of each Lot.

(4) A corner Lot shall be deemed to have a front line on each street on which the Lot abuts, and such Lot need only have one rear yard and defined by (3) above.

d. Developer or its successor Committee in its discretion shall have the right to waive said setback line requirements.

e. No structures or above ground improvements may be located in any Green Areas without the prior written approval of the Committee.

f. No structures or above ground improvements may be located in an View Easement areas without the prior written consent of the Committee. The Committee shall not approve any such structures or improvements that would obstruct views of the Property and the surrounding area from individual Lots. At the discretion of the Developer, its successors, assigns and agents (including but not limited to the Association), all living trees, plants or shrubs on a Lot that obstruct the primary view of an adjoining Lot Owner within a View Easement area may be cut and removed by Developer or the Association. Prior to exercising its right to enter upon the property, the Developer or Association, as the case may be, shall give the Owner the opportunity to take the corrective action specified by notice given to the Owner. Removal of obstructions by Developer or Association shall be at the expense of the Owner by means of a Special Individual Assessment on such Owner.

3. **Other Requirements.**

a. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank sewage system constructed by the Owner and approved by the appropriate governmental authority and the Developer, unless public sewage becomes available in the Subdivision.

b. Once construction of improvements is started on any Lot, the improvements must be substantially completed in accordance with plans and specifications, as approved, within eighteen months (18) from commencement.

c. No residence shall be occupied until the same has been substantially completed in accordance with its plans and specifications and a certificate of occupancy has been issued by the Developer or the Committee.

d. All structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot, without approval of the Developer or Committee.

e. Every fuel storage tank shall be buried below the surface of the ground or screened by fencing or shrubbery to the satisfaction of the Developer or

Committee. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible from any street, exception for common receptacles provided by or with the approval of the Developer or Committee.

f. Any dwelling or outbuilding on any Lot which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than three (3) months.

g. It shall be the duty of each Owner to maintain his or her Lot, together with the exterior of all improvements located therein, in a neat and attractive condition. Such maintenance shall include, but shall not be limited to, painting, repairing, replacing and caring for roofs, gutters, downspouts, building surfaces, trees, shrubs, walks and other exterior improvements. In the event an Owner shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Committee, the Association retains the right to enter upon such premises for the purpose of effecting needed maintenance and repairs and shall have the right to levy the amount of the cost thereof as a Special Individual Assessment against the Lot upon which such maintenance was performed.

4. **Prohibitions**.

a. No mobile homes, manufactured or modular homes shall be permitted on any Lot.

b. No privies or outside toilets shall be constructed or maintained on any Lot.

c. No temporary house, trailer, garage, storage shed or other outbuilding shall be placed or erected on any Lot, provided, however, that the Developer or Committee may grant permission for any such temporary structures for storage of materials during construction, and Developer may maintain temporary structures for construction and marketing purposes. No such temporary structures as may be approved shall be used at any time as a dwelling place.

d. No permanent outdoor lights or permanent light sensitive lights shall be permitted on any Lot.

e. No sign (including but not limited to "For Sale" or similar signs) billboard, or other advertising structure of any kind may be erected or maintained upon any Lot except after applying to and receiving written permission from the Developer or Committee, except for signs installed by the Developer in connection with its marketing and construction activities.

f. No stripped, partially wrecked, inoperable or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any street or Lot.

g. All outdoor clothes poles, clothes poles, clothes lines or similar equipment shall be so placed or screened by shrubbery as not to be visible from any street.

h. No structure erected upon any Lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained by the Developer or Committee, except for model homes built by the Developer.

i. No noxious, offensive or illegal activities shall be carried on, on any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

j. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

k. No on street vehicular parking shall be permitted except as permitted by and under regulation issued by Developer or the Committee.

l. No tree over six inches in diameter shall be removed from any Lot without the prior written consent of the Developer or Committee, except trees required to be removed for construction of the approved residence or appurtenant structures.

m. No television or radio receiver or transmitter or other antenna or tower which is visible from the Property, street or adjoining Lot will be permitted without written approval from Developer or Committee. An Owner shall not be prohibited from installing equipment necessary for a master antenna system, security system, cable

television and mobile radio systems or other similar systems within the Property. Should cable television services be unavailable and good television reception not be otherwise available, an Owner may make written application to the Developer or Committee for permission to install a television antenna or satellite dish, and such permission shall not be unreasonably withheld.

n. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot in the Property. In the event that the Owner of any Lot permits trash to collect on the same and on request fails to remove the trash within thirty (30) days, agents of Developer or Association may enter upon the said Lot to remove the trash, without such entrance and removal being deemed a trespass, all at the expense of the Owner of said Lot. This provision shall not be construed as an obligation on the part of the Developer or Association to provide trash removal service. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted.

o. No Lot shall be subdivided, or its boundary lines changed except with the written consent of the Developer or Committee; however, the Developer hereby expressly reserves to itself, its successors or assigns, the right to replat any Lots shown on any recorded or unrecorded plat of any of said development or part thereof owned by it in order to create a modified Lot or Lots, or other parcels, without permission or joinder of any Owner whose Lot lines are not affected by such replatting. With respect to any such modified or combined Lots, Developer reserves the right to designate said modified or combined Lots as one (1) Lot or multiple Lots, in Developer's sole and absolute discretion, for purposes of payment of assessments. The restrictions and covenants herein apply to any Lots resulting therefrom as if the resulting lot or lots had been originally plotted in such manner. All further subdivision or replatting shall be subject to the provisions of the Subdivision Regulations of Wilkes County, North Carolina.

p. No motorized vehicle including but not limited to all-terrain vehicles, "4-wheeler's", motorbikes, motorcycles, mopeds, golf carts, cars and trucks of all makes and models, etc., exclusive of service and utility vehicles, shall be permitted to operate off of the existing or designated common roadways, as shown on platted or unplatted maps of the Property. The speed limit for all existing or designated common

roadways is 20 m.p.h. for all vehicular traffic. Violators shall be subject to fines, as set by the Association.

q. No plant shrubbery, hedge, tree or other plantings on any Lot or Common Area may block or materially interfere with the primary view or vista or solar access of another Lot. In order to retain the primary view of a Lot and in keeping with the general development, views of the Property and the surrounding area from individual Lots shall be unobstructed. At the discretion of the Developer, its successors, assigns and agents (including but not limited to the Association), all living trees, plants or shrubs on a Lot that obstruct the primary view of an adjoining Lot owner, may be cut and removed from the Lot, by Developer. Prior to exercising its right to enter upon the property, the Developer or Association, as the case may be, shall give the Owner the opportunity to take the corrective action specified by notice given to the Owner. Removal of obstructions by Developer or Association shall be at the expense of the Owner by means of a Special Individual Assessment on such Owner.

5. **Easements**.

a. All of the properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, trails, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established by the Developer or by its successors in title and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area such further easements as are requisite for the convenient use and enjoyment of the Property.

b. It is contemplated that as the Property is developed the Developer will create pedestrian and equestrian access easements, which will provide for Owners convenient means of ingress and egress to and from the Common Areas. Such easements shall be for pedestrian and equestrian traffic only and no vehicles shall be permitted to use such easements, except for bicycles or horses. Such access easement are Common Area and labeled on the Plats as "30' horse trail easement" or by similar designation.

c. The Developer reserves for itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, invitees, designees, successors and assigns, for purposes incident to its

development of the real property subject to these restrictions, the following easements and/or right-of-way:

(1) An easement over each Lot within the road right-of-way and a fifteen (15) foot strip along the rear and side lines for the purpose of installing, operating and maintaining utility lines and mains and surface water drainage ditches or lines;

(2) The right to trim, cut and remove any trees and brush and to locate guy wires and braces within the road rights-of-way, and front, rear and side line setback areas for the installation, operation, and maintenance, together with the right to install, operate and maintain gas, water and sewer mains and other services for the convenience of the Owners; and

(3) The right to withdraw water from any river, stream, creek or other above ground water source for the benefit of an Owner whom the Developer has determined is unable to obtain a sufficient quantity of potable water at reasonable expense within his Lot. The method and location of such water withdrawal devices shall be subject to Developer's approval.

d. The Developer reserves for itself, its agents, employees, lessees, invitees, designees, its successors and assigns an exclusive easement for the installation and maintenance of radio and television transmission cables within the rights-of-way and easement areas reserved and defined above.

e. Developer reserves for the benefit of itself, its agents, employees, lessees, invitees, designees, its successors and assigns, and grants to the Association, its agents, employees, invitees, designees, successors and assigns and to each Owners, their family members, tenants, guests, invitees, successors and assigns, the street and road rights-of-way shown on the plats now or hereafter recorded of the development for purposes of ingress and egress, for maintenance of utility lines and mains and for drainage, and no Owner may interfere with such rights-of-way or such uses therein.

f. Developer reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, invitees, designees, successors and assigns, and to each Owner of a Lot, their family members, tenants, guests, invitees, successors and assigns, a perpetual

non-exclusive easement, right and privilege of passage and use, both pedestrian and equestrian, over and across any and all hard surface or soft surface trails, or similar pathways located upon those portions of the Property designated by Developer as part of a system of equestrian trails, including all trail related signs and structures within the Property as may be shown on any Plat, including all trails labeled on the Plat as "30' horse trail easement" or by similar designation (collectively, the "Trail System"). Developer further reserves, for the benefit of itself, its agents, employees, lessees, invitees, designees, successors and assigns, and grants to the Association, its agents, employees, invitees, designees, successors and assigns, a perpetual non-exclusive easement to maintain the Trail System.

g. On each Lot, the rights-of-way and easement areas reserved by Developer shall be maintained continuously by the Association but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of the road, or utilities, which may change the direction or flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or interfere with established slope ratios or create erosion or sliding problems, provided, however, the existing location of a drainage channel may be relocated, provided such relation does not cause an encroachment on any other Lot in the Property. Improvements within such areas shall also be maintained by the respective lot owner except for those for which public authority or utility is responsible. Trails reserved by the Developer may be relocated by the Owner at the Owner's expense, provided that the plans for relocation are submitted to the Developer or Committee and approved in writing.

h. Developer does hereby reserve, grant, create and establish, in favor of the Association and the Owners, and their family members, guests, tenants, and invites, the right and easement to use and enjoy the Green Areas as open space, and to use any and all facilities or improvements installed by Developer thereon. Developer and the Association shall have the right and easement to install such improvements as it may desire on the Green Areas, and all such improvements shall be maintained by the Association as Common Areas. The Owner of a Lot upon which a Green Area is located

may use and enjoy such Green Area in any manner which does not unreasonably interfere with the right and easement in favor of the Developer, Association, and other Owners as set forth above.

ARTICLE VIII
GENERAL PROVISIONS

1. **Enforcement**. The Developer, Association, and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Developer, Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. **Amendment**. Except as otherwise expressly provided herein and subject to the limitations hereinafter contained, this Declaration may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association Members at which a quorum is present, all in accordance with the Bylaws. Provided, however, if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by Developer so long as Developer is the Owner of any Lot or other portion of the Property, which consent Developer may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Association Members is required pursuant to this Section 2 shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Wilkes County, North Carolina; provided, however, such an amendment or modification, in lieu of being

executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members, as provided in this Section 2.

Notwithstanding the terms of the immediately preceding paragraph of this Section 2, for so long as Developer owns any portion of the Property, Developer, without obtaining the approval of any Association Member or any other owner or owners, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Developer deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration.

3. **Mutuality of Benefit and Obligation**. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Property and are intended to create mutual, equitable servitudes upon each Lot in favor of each and all of the other Lots therein; to create a privity of contract and estate between the grantees of said Lots, their heirs, successors and assigns, and with the Association, and shall, as to the Owner of each Lot, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other Lots in the Property and their respective Owners. Developer, so long as it shall own a Lot or any part of the Property, or any Common Area in its own name, any Owner or the Association shall have the right to enforce this Declaration.

4. **Severability**. Every part of these restrictions are hereby declared to be independent of, and severable from the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Therefore, if any of the restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the restrictions.

5. **Captions**. The captions preceding the various paragraphs and subparagraphs of this Declaration are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of this Declaration. Wherever and whenever applicable, the singular form of any word shall be taken to mean

or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or the neuter.

ARTICLE IX
RIGHT OF FIRST REFUSAL

Developer reserves unto itself, its agents, employees, lessees, invitees, designees, its successors and assigns, the right of first refusal to purchase unimproved Lots in the Property. Prior to the sale of any unimproved Lot, the Owner thereof shall notify Developer in writing setting forth the price and terms of sale, and the name and address of the purchaser. Such notification shall be made by certified mail, return receipt requested, and shall constitute an offer to sell said property to Developer for the price and on the terms set forth therein. Developer shall have twenty (20) days after receipt of said notice to accept the offer. Notice of acceptance shall be made by certified mail, return receipt requested, and shall be deemed made when deposited in the United States mails. If Developer fails to accept the offer within said time period, the Owner shall be free to sell the property to the identified purchaser at the price and under the terms set forth in the notice to Developer. If the sale does not close within six (6) months after expiration of the twenty (20) day offer to Developer, the procedure set forth herein must be reinstituted. This first refusal right shall not apply to any conveyance resulting from the foreclosure of a deed of trust, security agreement or other lien; by operation of law or by devise upon the death of any Owner; or to a bona fide gift; provided that, the grantee of said property shall hold said property subject to the right of first refusal herein set out. This right shall continue and exist for each unimproved Lot for a period of fifteen (15) years after the initial conveyance of such Lot. Developer shall, at the request of any Owner, acknowledge in writing any person having an interest, that it has waived, or has been deemed to have waived, the right and option herein reserved, if that be the case.

IN WITNESS WHEREOF, TOWI A WI PLANTATION, LLC, a Florida limited liability company, has caused this Declaration to be executed its managing members, this the _____ day of _____, 2005

TOWI A WI PLANTATION, LLC, a
limited liability company

By: Timothy S. Ritch
Timothy S. Ritch, Member-Manager

By: _____
Gregory G. Boree, Member-Manager

FLORIDA

Duval COUNTY

I, Barbra J. Tinkle, the undersigned, a Notary Public in and for said State and County, do hereby certify that Timothy S. Ritch and Gregory G. Boree, personally appeared before me this day and acknowledged that they are Member-Managers of TOWI A WI PLANTATION, LLC, a Florida limited liability company, and that by authority duly given and as an act of the limited liability company, the foregoing instrument was signed in its name.

WITNESS my hand and notarial seal this the 14th day of April, 2005.

Barbra J. Tinkle

My commission Expires:

BARBRA J. TINKLE
MY COMMISSION # DD 020854
EXPIRES: August 26, 2005
Bonded Thru Notary Public Underwriters

NORTH CAROLINA, WILKES COUNTY

Presented for registration and recorded in this Office in Book_____
Page_____This_____day of_____20_____at_____o'clock_____M

Richard L Woodruff
Register of Deeds By_____
Deputy/Asst Register of Deeds

NORTH CAROLINA WILKES COUNTY

The foregoing certificate of Barbara J. Tinkle is certified to be correct

Richard L. Woodruff
Register of Deeds By Misty M Smithey
Deputy/Asst. Register of Deeds

EXHIBIT A

THE "PROPERTY"

All those certain Lots and other Property shown on the Plats labeled as "Towi A Wi Plantation, Phase 1, " and "Towi A Wi Plantation, Phase 2," prepared by Foresight Surveying, dated November 8, 2004, as last revised, recorded in Map Book 10 at pages 127-130 of the Wilkes County Registry.