



Doc ID: 035463040032 Type: CRP
Recorded: 06/20/2022 at 09:56:18 AM
Fee Amt: \$94.00 Page 1 of 32
Workflow# 0000777832-0001
Buncombe County, NC
Drew Reisinger Register of Deeds

BK **6231** PG **30-61**

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

DIAZ
✓ *37 Longstreet Ct.*
Weaverville, NC 28787

Deed References: Book 4465, Page 1213
Book 4478, Page 135
Book 4481, Page 1028
Book 4572, Page 838
Book 5523, Page 1418
Book 5834, Page 31
Book 5928, Page 949
Book 5928, Page 953
Book 5928, Page 960

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SUMMIT AT HAMBURG MOUNTAIN

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Summit At Hamburg Mountain (hereinafter "Declaration") is made this 17 th day of June, 2022, by The Summit at Hamburg Mountain Homeowners Association, Inc., a North Carolina nonprofit corporation (hereinafter "Association").

WITNESSETH:

WHEREAS, Haywood Street Redevelopment Corporation caused to be recorded that Declaration of Covenants, Conditions and Restrictions for The Summit at Hamburg Mountain subdivision, a North Carolina Planned Community, in Deed Book 4465, Page 1213 of the Buncombe County Registry (hereinafter "Original Declaration");

WHEREAS, the Original Declaration was amended by that First Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Deed Book 4478, Page 135 of the Buncombe County Registry and then re-recorded in Deed Book 4481, Page 1028 of the Buncombe County Registry (collectively hereinafter "First Amendment");

WHEREAS, the Original Declaration was then amended by that Second Amendment to Declaration of Covenants, Conditions and Restrictions recorded in Deed Book 4572, Page 838 of the Buncombe County Registry (hereinafter "Second Amendment");

WHEREAS, a Third Amendment to Declaration of Covenants, Conditions and Restrictions was recorded in Deed Book 5834, Page 31 of the Buncombe County Registry (hereinafter "Third

Amendment”), which endeavored to remove Lots 19B and 19C from the application of the Declaration and subject it to terms and conditions stated therein;

WHEREAS, a Fourth Amendment to Declaration of Covenants, Conditions and Restrictions was recorded in Deed Book 5928, Page 953 of the Buncombe County Registry (hereinafter “Fourth Amendment”), which endeavored to amend and supplement certain restrictions set forth in the Original Declaration as to Lot 18 as provided therein;

WHEREAS, the Original Declaration provided for its amendment by the affirmative vote or written agreement of the Owners to whom not less than seventy-five percent (75%) of all of the votes in the Association are allocated; and

WHEREAS, the Association has, by affirmative vote, in accordance with the aforementioned provision, agreed to amend the Original Declaration, the First Amendment, and Second Amendment as set forth herein; and

NOW THEREFORE, the Association hereby declares that the Original Declaration, the First Amendment, and the Second Amendment are hereby stricken and replaced with the following covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Subdivision, as defined below, as a whole and of each of said Lots. All of these restrictions shall run with the land and shall be binding upon the owners of the same, including those having or acquiring any right, title or interest, legal or equitable in and to the Property or any part or parts thereof subject to such restrictions, and shall inure to the benefit of the same.

ARTICLE I.

DEFINITIONS

Section 1.01 "Annual Organizational Board Meeting" means the annual organizational meeting of the Board, which shall take place within 30 days after each Annual Meeting of the Members.

Section 1.02 "Annual Meeting" means the annual meeting of the Members held in Buncombe County, North Carolina, within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board.

Section 1.03 "Articles" or "Articles of Incorporation" shall mean those articles, filed with the Secretary of State of North Carolina, incorporating The Summit at Hamburg Mountain Homeowners Association, Inc., as a nonprofit corporation under the provisions of North Carolina State law, as the same may be amended from time to time.

Section 1.04 "Assessments" means Regular Assessments, Special Assessments, Working Capital Assessments, Individual Assessments, and Fine Assessments.

Section 1.05 "Association" shall mean and refer to THE SUMMIT AT HAMBURG MOUNTAIN HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation.

Section 1.06 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

3

Section 1.07 "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

Section 1.08 "Class A Members" shall mean as defined in Section 4.05a below.

Section 1.09 "Class B Members" shall mean as defined in Section 4.05b below.

Section 1.10 "Constituent Documents" shall mean this Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations, if any, and any other documents used to create and govern the Subdivision.

Section 1.11 "Common Areas" shall mean any property or real estate including retention ponds, storm drainage improvements, entrance signage, streets (including any dedicated streets prior to their acceptance for public maintenance) and all landscaping and other improvements thereon owned by the Association or for which the Association has an easement for the common use and enjoyment of the Owners.

Section 1.12 "Common Expenses" shall mean, refer to, and include all charges, costs and expenses incurred by the Association for and in connection with the administration of the Subdivision, including, without limitation thereof, operation of the Subdivision, maintenance, repair, replacement and restoration (to the extent not covered by insurance) of the Common Areas, the costs of any additions and alterations thereto; all labor, services, common utilities, materials, supplies, and equipment therefor; all liability for loss or damage arising out of or in connection with the Common Areas and their use; all premiums for hazard, liability and other insurance with respect to the Subdivision; all costs incurred in acquiring a Lot pursuant to judicial sale; and all administrative, accounting, legal, and managerial expenses. "Common Expenses" shall also include amounts incurred in replacing, or substantially repairing, capital improvements within the Common Areas of the Subdivision. Common Expenses shall also include all reserve funds or other funds established by the Association. Common Expenses shall be construed broadly.

Section 1.13 "Default" shall mean any violation or breach of, or any failure to comply with this Declaration and/or any other Constituent Documents.

Section 1.14 "Dwelling Unit" shall mean and refer to the individual family living unit on an individual or combined Lot that has received a valid Certificate of Occupancy.

Section 1.15 "Fine Assessment" means the charge established by Section 5.04b of this Declaration.

Section 1.16 "Individual Assessment" means the charge established by Section 5.03 of this Declaration.

Section 1.17 "Lot" or "Lots" shall mean and refer to any parcel of land designated on the Plat upon which a Dwelling Unit has been or is to be constructed. If any owner purchases more than one adjoining lots, they shall remain separate lots unless the owner builds a dwelling on more than one of the lots or within the setback lines of the lots, in which case the lots with the dwelling so situated shall be deemed one lot.

Section 1.18 "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Article IV below.

Section 1.19 "Owner" or "Lot Owners" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.

Section 1.20 "Plat" shall mean and refer to the record plat of the Subdivision recorded in Book 114, Page 22 of the Buncombe County Registry.

Section 1.21 "Planned Community Act" shall mean and refer to the North Carolina Planned Community Act, currently codified as Chapter 47F of the North Carolina General Statutes, as the same may be amended from time to time.

Section 1.22 "Property" or "Subdivision" shall mean and refer to that certain real estate described in Exhibit A and all other real estate that may be annexed into this Declaration and the Association by the Association.

Section 1.23 "Regular Assessment" means the charge established by Article V of this Declaration.

Section 1.24 "Resident" shall mean and refer to any person living in the Owner's Dwelling Unit, including, but not limited to, temporary guests and Tenants.

Section 1.25 "Restrictions" shall mean all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, all notices, rules and regulations issued in accordance with this Declaration.

Section 1.26 "Rules and Regulations" shall mean and include the rules and regulations made from time to time by the Board of Directors as provided in Section 4.03 below.

Section 1.27 "Special Assessment" means the charge established by Section 5.02 of this Declaration.

Section 1.28 "Tenant" means any person occupying any Dwelling pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.

ARTICLE II.

PROPERTY SUBJECT TO THIS DECLARATION

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

ARTICLE III.

PROPERTY RIGHTS IN COMMON AREAS

Section 3.01 Owner's Easements of Enjoyment. Except as herein otherwise provided, each Owner shall have a right and easement of enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to his Lot. Each Tenant shall have a non-transferable right to use and enjoy the Common Areas, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

- (a) The right of the Board to suspend the right of any Owner or the privilege of any Resident to use such of the Common Areas that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Areas for a period not to exceed sixty (60) days for each such infraction, or for any non-payment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such non-payment or delinquency;
- (b) The right of the Board to adopt, amend, and enforce reasonable limitations and Rules and Regulations upon the use of the Common Areas, including regulations limiting guests of Owners and Tenants who may use the Common Areas at any one time;
- (c) All applicable provisions of valid easements and/or agreements of the Association relating to the Common Areas;
- (d) The right of the Association to grant permits, licenses and public or private easements over Common Areas for utilities, roads and/or other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; or
- (e) The right of the Association to dedicate or convey portions of the Common Areas to applicable governmental authorities for park purposes.

Section 3.02 "Extension of Use." Any Owner may extend his right of enjoyment to the Common Areas to the immediate and/or extended members of his family, his Tenants, guests or contract purchasers of the Owner's Lot.

ARTICLE IV.

HOMEOWNERS ASSOCIATION

Section 4.01 "Homeowners Association." There has been created a North Carolina non-profit corporation, known as The Summit at Hamburg Mountain Homeowners Association, Inc., which shall be responsible for the maintenance, management and control of the Subdivision.

Section 4.02 "Board of Directors and Officers." The Board of Directors, and such officers as may be elected by the Board of Directors in accordance with the Articles or the Bylaws, shall conduct the affairs of the Association. The Board may also appoint committees and managers or other employees and agents who shall, subject to the general direction of the Board, be responsible for the day-to-day operation of the Association.

Section 4.03 "Rules and Regulations." By a majority vote of the Board of Directors, the Association may, from time to time, adopt, amend and repeal Rules and Regulations with respect to all aspects of the Association's rights, activities and duties under this Declaration. The Rules and Regulations may, without limitation, govern use of the Subdivision, including prohibiting, restricting or imposing charges for the use of any portion of the Subdivision by Owners, Residents, tenants, guests, or others, interpret this Declaration or establish procedures for operation of the Association or the administration of this Declaration provided, however, that the Rules and Regulations shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be maintained on the Association website and shall be available to each Owner.

Section 4.04 "Membership of Association." Every Owner of a Lot shall be a Member of the Association. Such Owner and Member shall abide by the Association's Rules and Regulations, shall pay the Assessments provided for in this Declaration, when due, and shall comply with decisions of the Association's governing body. Conveyance of a fee simple title to a Lot automatically transfers membership in the Association without the necessity of further documents. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to Assessment.

Section 4.05 "Classes of Membership." The Association shall have two (2) classes of Membership:

(a) Class A Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has been erected within the Property ("Improved Lot"), shall automatically be a Class A Member of the Association; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. In the event two lots are combined as referenced in Section 1.17, the combined lots will be deemed one lot. A Class A Membership shall be appurtenant to and may not be separated from ownership of any Improved Lot that is subject to Assessment. Class A Members shall be entitled to two (2) votes for each Improved Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any such Improved Lot, then the votes for the membership appurtenant to such Improved Lot shall be exercised as they among themselves determine, but in no event shall more than two (2) votes be cast with respect to any such Improved Lot. In the event an agreement is not reached, the votes attributable to such Improved Lot shall not be cast.

(b) Class B Members. Every person, group of persons, or entity which is a record Owner of a fee interest in any Lot upon which a Dwelling Unit has not been erected within the Property ("Vacant Lot"), shall automatically be a Class B Member of the Association; provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a Member. A Class B Membership shall be appurtenant to and may not be separated from ownership of any Vacant Lot that is subject to Assessment. Class B Members shall be entitled to one (1) vote for each Vacant Lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record Owner of a fee interest in any such Vacant Lot, then the vote for the membership appurtenant to such Vacant Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Vacant

1

Lot. In the event agreement is not reached, the vote attributable to such Vacant Lot shall not be cast.

(c) Voting. Each Class A Member shall have two (2) votes and each Class B Member shall have one (1) vote with respect to each Lot owned by such Member.

Section 4.06 "Maintenance Obligation of the Association." The Association, at its expense, shall maintain, operate and keep in good repair, unless such obligations are assumed by any municipal or governmental agency having jurisdiction thereof, the Common Areas and all improvements located thereon for the common benefit of the Subdivision. This shall include, without limitation, the maintenance, repair, replacement and painting of the following landscaping and improvements (to the extent that such improvements or landscaping are located upon or constitute Common Areas): (a) all lawns, trees, grass and landscape areas, shrubs and fences, except as otherwise set forth hereinbelow; (b) all conduits, ducts, utility pipes, plumbing, wiring and other facilities which are part of or located in, or for the furnishing of utility services to, the Common Areas and which are not for the exclusive use of a single Dwelling Unit.

The Association shall make the determination as to when maintenance, repair, replacement and care shall be done, and its determination shall be binding. The Association shall have the right to employ a manager to oversee and implement the Association's maintenance obligations, and any such management fees incurred thereby shall be paid by the Association. The Association shall also perform the other duties prescribed by this instrument or the Association's Rules and Regulations.

Section 4.07 "Maintenance Obligation of the Lot Owners." The responsibilities of each Lot Owner shall include:

(a) To clean, maintain, keep in good order, repair and replace at his or her expense all portions of his or her Lot and Dwelling Unit. Any repair, replacement and maintenance work to be done by an Owner must comply with any Rules and Regulations of the Association including architectural control and visual harmony.

(b) To perform his or her responsibilities in such a manner so as not unreasonably to disturb other persons residing within the Subdivision.

(c) Not to paint or otherwise alter, decorate or change the appearance of any exterior portion of his Dwelling Unit, without the written consent of the Association.

(d) Not to impair the use of any easement without first obtaining the written consents of the Association and of the Owner or Owners for whose benefit such easements exist.

Each Lot Owner shall be deemed to agree by acceptance of delivery of a deed to a Lot, to repair and/or replace at his or her expense all portions of the Common Areas which may be damaged or destroyed by reason of his or her own intentional or negligent act or omission, or by the intentional or negligent act or omission of any guest, invitee, tenant, licensee family member, including, but not limited to any repairs necessary which result from damage incurred by pets or vehicles owned by the Lot Owner, or owned by any guest, invitee, Tenant or licensee of such Lot Owner. To the extent that any Common Area is damaged as an insurable loss and the proceeds from the Association's insurance policy are utilized to pay for the loss, the Owner shall be

8

responsible for payment of the deductible as an Individual Assessment in accordance with Section 5.03 and Section 7.07 below.

Section 4.08 "Construction Defects." The obligations of the Association and of Owners to repair, maintain and replace the portions of the Subdivision for which they are respectively responsible shall not be limited, discharged or unreasonably postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the project. The undertaking of repair, maintenance or replacement by the Association or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved. Likewise, this Section 4.08 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by the Association may be delayed if the Association does not have the means or the funds to repair the defect or if by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Section 4.09 "Effect of Insurance or Construction Guarantees." Notwithstanding the fact that the Association and/or any Lot Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of a construction guarantee or insurance coverage shall not excuse any unreasonable delay by the Association or any Lot Owner in performing their respective obligations hereunder. Likewise, this Section 4.09 is not intended to work for the benefit of the person or entity responsible for the construction defect. Also, performance by the Association may be delayed if the Association does not have the means or the funds to repair the defect or if, by repairing the defect, the Association would be compromising the right to sue to have the defect corrected and/or to collect damages caused by the defect.

Article V.

ASSESSMENTS

Section 5.01 "Regular Assessments." Regular Assessments for the payment of the Common Expenses shall be made in the manner provided herein, and in the manner provided in the Bylaws. The Regular Assessment is established for the benefit and use of the Association and shall be used in covering all of the Common Expenses.

Section 5.02 "Special Assessment." In addition to levying Regular Assessments, and to the extent that the reserve fund is insufficient, the Board of Directors may levy Special Assessments to construct, structurally alter, or replace improvements which are a part of the Common Areas, provided that funds shall not be assessed for any capital improvement in excess of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) for any one item or in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) in the aggregate in any one calendar year ("Capital Expenditure Limit") without thirty (30) days prior written notice to each Member and thereafter the prior written consent of two-thirds (2/3) of the Members. The Board of Directors shall calculate each Lot's proportionate share of the Special Assessment for the capital improvements,

and shall give the Lot Owner(s) written notice of the proportionate share and of the date(s) that the Special Assessment is due and payable.

Section 5.03 "Individual Assessment." In the event that the need for maintenance, repair or replacement of any improvement on the Property, for which the Association has the maintenance, repair and/or replacement obligation, is caused through the willful or negligent act of an Owner, its family, pet(s), contractor, guests, tenants, or invitees, the cost of such maintenance, repairs, or replacements shall be paid by such Owner. The Board shall have the maintenance, repair or replacement done and the cost thereof shall be provided by the Board to said Owner and shall be paid by said Owner within thirty (30) days thereafter, unless an earlier date is otherwise set forth herein.

Section 5.04 "Date of Commencement of Assessments, Due Dates; Determination of Regular Assessments; Fine Assessments."

(a) The Regular Assessment provided for herein shall commence as to each Owner of a Lot, on the first day following the initial conveyance of a Lot or the Dwelling Unit to the Owner and shall be prorated. The Board of Directors shall fix the amount of the Regular Assessment to be paid by each Member against each Lot within 10 days after the annual meeting. Written notice (either email or US mail) of the Regular Assessment shall be sent to every Member subject thereto. The Board of Directors shall establish the due dates.

(b) The Board of Directors, or an adjudicatory panel established by the Board of Directors, may levy a reasonable Fine Assessment, as a fine or penalty for violation of this Declaration, all in accordance with the Planned Community Act.

(c) Both Regular and Special Assessments for a Lot Owner shall be determined by the Association based upon the proportion that each Lot bears to the aggregate number of Lots located on the Property.

Section 5.05 "Billing." The Association shall inform each Lot Owner of the amount of the total Regular Assessment due from the owner of that particular Lot. Payment is to be made to such a person at such an address as the Association determines. Special Assessments are due thirty (30) days after the bill for the Special Assessment has been mailed or otherwise sent out by the Association, unless the Association otherwise directs. If the Subdivision is expanded and additional Lots are brought into the Subdivision during a given Assessment year, those additional Lots shall begin paying the Regular Assessment on the first day the additional Lots are annexed into the Association.

Section 5.06 "Common Surplus." If the Regular Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return the Common Surplus, or (b) use the Common Surplus to reduce the Regular Assessment for the following year, or (c) apply the Common Surplus to the Capital Reserve Fund.

Section 5.07 "Assessment Certificate." The Association shall, upon demand, at any reasonable time, furnish to any Owner liable for Assessments a certificate in writing signed by an Officer or other authorized agent of the Association, setting forth the status of said Assessments; i.e., "current", and if not current, "delinquent" and the amount due. Such certificate shall be

conclusive evidence of the payment of any Assessment therein stated to have been paid. A reasonable charge to cover labor and materials may be made in advance by the Association for each certificate.

Section 5.08 "Books and Records of the Association." The Association shall keep full and correct books of account. The Association shall make available to all Lot Owners and the holders of all first mortgages on Lots, current copies of the books, records and financial statements of the Association upon reasonable request during normal business hours. All funds collected by the Association shall be held and expended solely for the purposes designated by this Declaration and shall be deemed to be held for the use, benefit and account of the Association and all of the Lot Owners. All books and records must be kept in accordance with good accounting procedures. All payments must be approved by the treasurer and cosigner but may be approved as an automatic monthly payment.

Section 5.09 "Non-Payment of Assessment." Any Assessments levied pursuant to this Declaration that is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Lot which shall bind the Lot in the hands of the then Owner and the Owner's successors and assigns. Each such assessment, together with such interest thereon and costs of collection thereof, as herein provided, shall also be the personal obligation of the person(s) who was the Owner of such Lot at the time when the Assessment fell due.

If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of ten percent (10%) per year or at such other reasonable rate set by the Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Lot.

Section 5.10 "Priority of the Association Lien." The lien provided for in this Article V shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record before a claim of this lien hereunder has been docketed in the Office of the Clerk of Superior Court in Buncombe County, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the Planned Community Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 5.11 "Disputes as to Common Expenses Adjustments." Any Owner who believes that the portion of Common Expenses chargeable to his Lot, for which an assessment lien has been filed by the Association, has been improperly charged against his or her Lot, may bring action in an appropriate court of law.

Section 5.12 "Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Rules and Regulations of the Association." Any purchaser of a Lot at a foreclosure sale shall

11

automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the Rules and Regulations.

Section 5.13 "Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses." When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot acquires title to the Lot as a result of foreclosure of the first mortgage, first deed of trust or by deed in lieu of foreclosure, such acquirer of title, or his/her heirs, successors and assigns, shall not be solely liable for the share of the Common Expenses or other Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to the Lot by such acquirer, other than Assessments for which a claim of lien has been docketed with the Buncombe County Clerk of Superior Court prior to the recordation of the lien being foreclosed. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Lot from paying future Assessments.

Section 5.14 "Liability for Assessments upon Voluntary Conveyance." In a voluntary conveyance of a Lot, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs and reasonable attorney's fees shall be a lien against the Lot in accordance with Section 5.9 and Section 5.10 herein.

Section 5.15 "Late Charge." The Association may impose a charge against any Lot Owner who fails to pay any amount assessed by the Association against his Lot within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid, or such other amount as may be determined by the Association from time to time.

In the event the Association and an Owner agree that Assessments may be paid in installments, and a Lot Owner defaults in the payment of an installment of an assessment previously agreed to by the Association, the Association has the right to accelerate all further Assessments remaining due in the current fiscal year. The total of such Assessments, together with the delinquent Assessments shall then be due and payable by the Lot Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Lot Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such acceleration amount is not paid by the due date, the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 5.16 "Miscellaneous."

(a) The Association may change the interest rate due on delinquent Assessments (including any late charges), except that the rate cannot be changed more often than once every six (6)

months. As of its effective date, the new interest rate will apply to all Assessments then delinquent.

(b) The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Lot owned. Otherwise notice sent by the Association to the Lot is sufficient for any notice requirement under this Declaration.

(c) The Assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.

(d) This Section 5.16 applies to every type of assessment.

ARTICLE VI.

EASEMENTS AND ENCUMBRANCES

Section 6.01 "Easement for Encroachments." The Dwelling Units, all utility lines, and all other improvements as originally constructed on behalf of Owner or its assigns shall have an easement to encroach upon any setback, Lot or Common Area as a result of the location of the building, utility lines and other improvements across boundary lines between and along Lots and/or the Common Areas, or as a result of building or improvement movement or alterations or additions from time to time, provided that such alterations or additions have complied with the requirements of this Declaration.

Section 6.02 "Lot's Utility Easements." Easements are granted in favor of each Lot Owner to and throughout the Common Areas and, if necessary, the setback areas of any other Lots, as may be necessary for the installation, maintenance, repair and use of underground water, gas, sewer, power and other utilities and services including power and communication, now or hereafter existing, including maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, tree trimming or pruning, or other components.

Utilities include but are not limited to electrical transmission and distribution lines, cable television, telephone, water and sewer. The location of this easement shall be in the roadways, along the boundary lines, upon easement areas designated upon the recorded plat of the Property, or at any other place reasonably appropriate for such installation. In the event a utility company is granted such an easement, the utility company shall put the property in its original condition. The foregoing notwithstanding, no Lot Owner may exercise the easement rights reserved in this Section 6.02 without the prior written approval of the Board as described in Section 6.06 below.

Section 6.03 "Utility Easements." Easements are reserved and/or granted hereby in favor of the Association through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon any Lot) and the Common Areas for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components throughout the Common Areas for utilities and drainage purposes. Without limiting any other provision in this Article VI, it is understood that the Association's easement rights reserved herein may be utilized for the benefit of property within or outside of the

Subdivision. Each Lot Owner and/or his respective Mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint the Association as its attorney in fact, coupled with an interest, to authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 6.03. The easements may be assigned and/or granted by the Association to any utility or service company.

Section 6.04 "Utilities Contracts." The Association reserves the right to subject any and all real property in the Subdivision to a contract with any electric service provider for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial assessment and/or continuing monthly payment to the provider by the Owner of each Lot. All Owners shall promptly pay such assessments and monthly charges. The Association further reserves the right to subject property within the Subdivision to a general contract with other public or private utility services, including, without limitation, natural gas. Structures on all Lots shall be located underground from the utility company's main underground cables or lines to said structures. This provision may be modified if the Association finds it detrimental to the Subdivision in that underground utilities would not be feasible.

Section 6.05 "Drainage." All natural drainage channels shall remain open and no diversion of natural drainage shall be allowed where such diversion will affect any adjacent lot. The Association reserves the right to require a culvert to be installed at the Owner's expense, when the same is necessary for proper drainage. All culverts shall be corrugated and a minimum of twenty (20) feet in length. The Association shall have the right to control surface water wherever and whenever such action may appear to the Association to be necessary in order to maintain proper drainage and reasonable standards of health, safety and appearance.

Section 6.06 "Access Easement." Appurtenant to each Lot is an easement over any Common Area for necessary pedestrian and vehicular ingress and egress to and from any such Lot over the Common Areas, to and from a thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Association.

Section 6.07 "Use of Easement." Any use of the rights and easements granted and reserved in this Article VI shall be reasonable. If any damage, destruction, or disturbance occurs to a Lot or Common Area as a result of the use of any easement or right, the Lot or Common Area shall be restored by, or at the direction of the Association promptly in a reasonable manner at the expense of, the person or persons making the use of the easement or right that resulted in the damage, destruction or disturbance. Before beginning work, the Association may require all or any part of the expected expense to be prepaid by that person or those persons liable for the expense. Additionally, should any Lot Owner elect to exercise its easement rights hereunder, it shall be required to obtain the Board's prior written approval (not to be unreasonably withheld), after providing the Board with detailed plans of its proposed work, as well as evidence of appropriate insurance and other such reasonable information or assurances as the Board may require. No easement may be granted across, through, over, or under any Lot or Common Area, which materially restricts ingress and egress to the Lot or Common Area, unless reasonable alternate ingress and egress is provided or unless the restriction is only temporary. All easements reserved hereunder shall be perpetual and non-exclusive.

Section 6.08 "Reservation of Access Easement by the Association." The Association reserves an easement for itself, its grantees, successor and assigns, to enter upon the Subdivision for access, including ingress and egress for both vehicles and pedestrians, to and from any public street, road, land, walkway or right-of-way. The easement shall be over the streets, sidewalks, bridges and other access ways of the Subdivision.

Section 6.09 "Roads and Road Maintenance." Roads within the subdivision are maintained by the Town of Weaverville. Any additional roads constructed shall be maintained by the private owner(s) who use the road(s) for ingress, egress, and regress to their Lot, unless and until the maintenance of said additional roads is assumed by the Town of Weaverville. In any event, any such additional roads shall not be maintained, insured, or repaired by the Association.

Section 6.10 "Roadway Easement." The Association has reserved for the benefit of all Lot Owners, the non-exclusive right of ingress and egress on, over and across all public and private roadways (the "Roadways") located on or to be located on a portion of the Subdivision which private roadways extend between one or more publicly dedicated streets. The Association hereby reserves the right (but not the obligation), in its sole discretion, to annex additional Roadways into the Subdivision. Notwithstanding the foregoing to the contrary, no part of the Roadway shall be dedicated or transferred to a unit of local government without acceptance of the unit of local government involved. No Lot Owner, other than the Association, in accordance with the procedure outlined in Section 6.12, may grant, sell or convey an easement, license or right of way for road purposes across any portion of the Subdivision or subdivision road.

Section 6.11 "Association's Easements: General." The easements and grants reserved for and granted to the Association also benefit and bind any heirs, successors and assigns of the Association and their respective guests, invitees or lessees, including, without limitation, assignees of the Association who do not own property within The Summit at Hamburg Mountain.

Section 6.12 "Easements to Run with Land." All easements and rights described in this Article VI are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the Association, its successors and assigns, and any Owner, purchaser, mortgagee, and other person or entity now or hereafter having an interest in the Subdivision, or any part or portion of it.

Section 6.13 "Reference to Easements and Deeds." Reference in the respective deeds of conveyance or any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees in said instruments as fully and completely as those such easements and rights were recited fully and set forth in their entirety in such instruments.

Section 6.14 "Riparian Rights." No changes in any stream may be made and no stream or lake may be dammed or altered unless approved by the Association in writing. Each Owner shall respect the riparian rights of other Owners in matters pertaining to streams, lakes, and surface drainage.

15

Section 6.15 "Water Supply." While water is available to all Lots by the Town of Weaverville, in the event an owner desires to drill a well on their property, wells must be located, constructed, maintained and operated to fully comply with all existing and future Buncombe County Health Department, local government or State laws, regulations and requirements.

ARTICLE VII.

INSURANCE

Section 7.01 "General Insurance." The Association shall carry a master policy of fire and extended coverage, vandalism, malicious mischief and liability insurance, and if required by law, workmen's compensation insurance with respect to the Subdivision and the Association's administration thereof in accordance with the following provisions:

- (a) The Association shall purchase a master policy for the benefit of the Association, the Lot Owners and their mortgagees as their interest may appear, subject to the provisions of this Declaration and the Bylaws. The "master policy" may be made up of several different policies purchased from different agencies and issued by different companies.
- (b) All Common Areas now or at any time hereafter constituting a part of the Subdivision shall be insured against fire and other perils covered by a standard extended coverage endorsement, in an amount not less than one hundred (100%) percent of the replacement value thereof, with a deductible agreed to by the Board of Directors, exclusive of the cost of the land, foundations, footings, excavation, and architect's fees, without deduction for depreciation. The policy shall have cost of demolition, water damage (excluding floods, mudslides, backing up of sewers and drains, the running off of surface overflow of a body of water), and agreed amount endorsements and a deductible on any single loss or group of losses within one year in such amounts as shall be found reasonable by the Board of Directors, after carefully considering and comparing the premium costs resulting from a low deductible with the higher premium costs versus higher per loss risk resulting from a high deductible, together with all other pertinent factors. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement cost thereof (subject to the deductible provisions described above) and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Lot Owner as hereinafter permitted. Such policy shall also contain either a waiver by the insurer of any increased hazard clause, a severability of interest endorsement, or a provision stating that the coverage will not be affected by the act, omission or neglect of any person unless such act, omission or neglect is within the knowledge and control of the Association prior to the occurrence of the loss. Such a policy shall not provide coverage for any items of personal property owned by any Lot Owner.
- (c) Such master policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice to the Association and to any mortgagee or mortgagees of any Lot Owner not less than thirty (30) days prior to any expiration, substantial modification or cancellation of such coverage.

(d) Such insurance by the Association shall not prevent an Owner of a Lot to obtain insurance on its own property, but no Lot Owner may at any time purchase individual policies of insurance covering any item which the Association is required to insure. If any Lot Owner does purchase such a policy, he or she shall be liable to the Association for any damages, expenses or losses which it suffers or incurs as a result thereof, and the Association shall have the same lien rights provided by Article V hereof for Common Expense payments with respect to any such damages, expenses or losses not paid to it by such Owner.

(e) The Board of Directors shall review the insurance coverage required under this Section 7.1 at least annually, and if any of such insurance coverage becomes impossible or impractical to obtain, the Association shall obtain coverage that most closely approximates the required coverage with the deductible provisions as determined by the Board of Directors. In any event, all such insurance must comply, at a minimum, with the applicable requirements set forth in the North Carolina Planned Community Act.

(f) If the required insurance coverage under this Section 7.1 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Subdivision may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2 %) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Subdivision; and shall be due and payable to the mortgagee by the Association immediately. The repayment of this obligation is a Special Assessment against all Lot owners under Article V of this Declaration and shall not require a vote of the Members of the Association, anything to the contrary in this Declaration notwithstanding.

(g) The Association shall also maintain liability insurance in reasonable amounts, covering all occurrences commonly insured against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The Association shall try to have its liability insurance contain cross-liability endorsements or appropriate provisions to cover liability of the Lot Owners, individually and as a group (arising out of their ownership interest in the Common Areas), to another Lot Owner.

Section 7.02 "Fidelity Insurance." The Association must have fidelity coverage against dishonest acts on the part of Officers and employees, members of the Association, members of the Board, trustees, employees or volunteers responsible for the handling of funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than the insured's total Regular Assessment, plus all accumulated reserves and all other funds held by the Association either in its own name or for the benefit of the Lot Owners.

Section 7.03 "Directors' and Officers' Errors and Omission Insurance." The Association shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present against expenses actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and

17

indemnification for Directors and Officers as the law of North Carolina permits. The policy or policies shall be in an amount to be reasonably determined by the Association.

Section 7.04 "Premiums." All premiums on insurance purchased by the Association shall be Common Expenses. Notwithstanding the foregoing, the Lot Owners may be responsible for certain deductibles to the insurance policies purchased by the Association as outlined in Section 7.01 and Section 7.07 herein.

Section 7.05 "Proceeds." Proceeds of all insurance policies owned by the Association shall be received by the Association for the use of the Lot Owners and their mortgagees as their interest may appear, provided, however, the proceeds of any insurance received by the Association because of property damage shall be applied to repair and reconstruct the damaged property, except as may otherwise be permitted by this Declaration.

Section 7.06 "Power of Attorney." Each Lot Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the master policy or any other insurance policy obtained by the Association. Without limitation on the generality of the foregoing, the Association, as said attorney, shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefor, to collect proceeds and to distribute the same to the Association, the Lot Owners and their respective mortgagees as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Lot Owners and the Subdivision as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters.

Section 7.07 "Responsibility of Lot Owner." The Association shall not be responsible for procurement or maintenance of any insurance covering any Lot or Dwelling Unit, or the contents of any Lot or Dwelling Unit nor the liability of any Lot Owner for injuries not caused by or connected with the Association's operation, maintenance or use of the Common Areas or other property located in the Subdivision. Each Lot Owner shall, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of or occurring within his Lot or Dwelling Unit. In addition, each Lot Owner shall maintain fire and extended coverage insurance on his Dwelling Unit, and the contents of his Dwelling Unit. The Association may request the Lot Owner to provide a copy of the policy(s) to the Association evidencing this insurance coverage at any time.

Each Lot Owner agrees that if any Owner(s) damages a building or other improvements now or at any time hereafter constituting a part of the Common Areas of the Subdivision which is covered under the Association's insurance policy, the Owner or Owners causing such damage shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association's insurance policy, or (b) the cost to repair and/or replace any damage to a building or other improvements, which amount shall be due within ten (10) days after the delivery of written notice of such deductible due or replacement/repair costs by the responsible Lot Owner(s) or twenty (20) days after mailing of such notice by certified mail, whichever occurs first. In the event a Lot Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Association and the amount so advanced by the Association

18

shall be assessed to such Owner as an Individual Assessment, which shall be due and payable following thirty (30) days written notice.

Section 7.08 "Release." All policies purchased under this Article VII by either the Association or the individual Lot Owners shall provide for the release by the issuer, thereof, of any and all rights of subrogation or assignment and all causes and rights of recovery against any Lot Owners, member of their family, their employees, their tenants, servants, agents and guests, the Association, any employee of the Association, the Board, or any occupant of a Dwelling Unit in the Subdivision, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 7.09 "Approximate Coverage." If any of the required insurance coverage under this Article VII becomes or is impossible to obtain or can be obtained only at an unreasonable cost, the Association shall obtain coverage which most closely approximates the required coverage, if such substitute insurance is available.

Section 7.10 "Additional Policy Requirements." All such insurance coverage obtained by the Association shall be written in the name of the Association, for the use and benefit of the Association, the Lot Owners and their mortgagees, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) Exclusive authority to adjust losses under policies in force on the Subdivision obtained by the Association shall be vested in the Association provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (b) In no event shall the insurance coverage obtained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees, and the insurance carried by the Association shall be primary.
- (c) All casualty insurance policies shall have an agreed amount endorsement with an annual review by one or more qualified persons.
- (d) The Association shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - (i) a waiver of subrogation as discussed in Section 7.08;
 - (ii) that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Owners;
 - (iii) that no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and
 - (iv) that any "other insurance" clause in any policy excludes individual Owner's policies from consideration.

ARTICLE VIII

ASSOCIATION

Section 8.01 "Association." The owner of any Lot, upon acquiring title, shall automatically become a Member of the Association and shall remain a Member until such time as his ownership of such Lot ceases for any reason, at which time his membership in the Association shall automatically cease. The Association shall have full power and responsibility to administer, operate, sustain, maintain, and govern the Subdivision including but not limited to, the powers and responsibilities to make prudent investments of funds held by it; to make reasonable Rules and Regulations; to borrow money; to make Assessments; to bring lawsuits and defend lawsuits; to enter into contracts; to enforce all of the provisions of this Declaration, the Bylaws and any other documents or instruments relating to the establishment, existence, operation, alteration of the Subdivision. The powers of the Association shall be construed liberally and shall include, without limitation, all of the powers set forth in Section 476-3-102 of the Planned Community Act.

Section 8.02 "Board of Directors." Unless otherwise specifically stated in this Declaration, the Association shall act exclusively through its Board of Directors (the "Board"). The Association in accordance with the Bylaws shall choose the Board. The Board shall be authorized to delegate the administration of its duties and powers by written contract to a managing agent or administrator employed for that purpose by the Board.

Section 8.03 "Limitations on the Association Duties." The Association did not construct the improvements, including the Dwelling Units.

- (a) The Association does not warrant in any way or for any purpose, the improvements in the Subdivision. Construction defects are not the responsibility of the Association.
- (b) The Association shall have a reasonable time in which to make any repair or do any other work in the Common Area, which it is required to do under the Constituent Documents. The Association must first have actual knowledge of a problem. Any determination of the reasonableness of the Association's response must allow for the facts that the Association is volunteer and that the funds available to the Association are limited.
- (c) In case of ambiguity or omission, the Board may interpret the Declaration and the Board's interpretation shall be final if made without malice or fraud.

ARTICLE IX.

HARMONY, ENVIRONMENTAL CONTROLS

Section 9.01 "Architectural Review Committee." Except for original construction performed by or on behalf of the Association or as otherwise in these covenants provided, no building, fence, electric pet fence, sidewalk, drive, mailbox, or other structure, or improvement or anything attached thereto visible from the outside of the structure or improvement (including without limitation, storm doors, windows, drapes or window coverings) shall be erected, placed, altered, or maintained within the Subdivision nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the proposed building plans,

specifications, exterior color and finish, plot plans (showing the proposed location of such structure, drives and parking areas), and construction schedule shall have been submitted to and approved in writing by the Board of Directors of the Association, or by any Architectural Review Committee (ARC) appointed by said Board of Directors. Refusal of approval of plans, location or specification by said Board of Directors or ARC may be based upon any reasonable ground, including, without limitation, lack of harmony of external design, color, materials, location or relation to surrounding structures and topography and purely aesthetic considerations which, in the discretion of said Board of Directors or ARC shall deem sufficient. The ARC may consult with an architect as needed. After approval by the Board of Directors or ARC is given, no alterations may be made in such plans except by and with their prior written consent. One copy of all plans, specifications and related data shall be furnished to the Board of Directors or ARC for its records.

Section 9.02 "Architectural Review and Environmental Fee." Each application for approval by the ARC shall include a fee of \$5,000.00 to be used by the Committee in connection with such review process and the subsequent construction of the subject project, to include hiring a professional for purposes of consultation, including an attorney, and any unforeseen expenses or costs caused by the construction, or costs to the Board or the Association related to the same. Any portion of the fee described herein remaining after construction of the project is completed shall be returned to the Owner.

Section 9.03 "Foundation Height." The highest point of the foundation of all Dwelling Units shall not extend above the street level at the center point of the Dwelling Unit.

Section 9.04 "Square Footage." The Dwelling Unit shall contain no less than 3,000 heated square feet. No Dwelling Unit shall contain more than 8,000 heated square feet.

Section 9.05 "Commencement of Construction." All buildings to be erected upon any Lot shall be completed within three hundred sixty-five (365) days of the start of construction. Any exceptions from such a covenant must be approved in writing. If the build does exceed the 365 days limit, the Owner must keep the Board apprised of any necessary date extensions. The landscaping and exterior areas adjacent to the residence or other building structures located on a Lot must be substantially (minimum 75%) completed with adequate ground cover or plantings as reflected in the approved landscape plan within eighteen (18) months after the commencement of construction, except where such completion is impossible as a result of matters beyond the reasonable control of any Owner. If it exceeds this timeline, the owner must provide written notice of the changes to the Board and ARC. The owner of any Lot shall be solely responsible for obtaining required governmental construction permits and approvals as are required.

Section 9.06 "Storage of Construction Materials." No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot except for purposes of construction on such Lot, and in any event, shall not be stored on such Lot for longer than that length of time reasonably necessary given the construction for which the same is to be used. No personal or jobsite storage units are to be stored on the property by the builder or future homeowner.

21

Section 9.07 "Street Frontage." All dwelling units shall be erected so that the front of the Dwelling Unit faces the street for The Summit at Hamburg Mountain, and the front of the Dwelling Unit shall be parallel with the street.

ARTICLE X

USE RESTRICTIONS

Section 10.01 "Use and Occupancy." The Association shall make Rules and Regulations to govern the use and occupancy of the Subdivision. In addition, the following covenants, conditions, and restrictions, as to use and occupancy shall run with the land and shall be binding upon each Lot Owner, his heirs, tenants, licensees and assigns.

Section 10.02 "Purpose of Subdivision." Except as otherwise provided in this Declaration, no part of the Subdivision shall be used for anything other than housing and the common recreational purposes for which the property was designed, and each Lot shall be used only for single family residential purposes, unless the Board of Directors authorizes in writing some other use. Except for the construction of improvements in the Subdivision, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, may be conducted, maintained, or permitted on any part of the Subdivision property. To the extent permitted by law, an Owner may use a portion of his or her Dwelling Unit for an office or studio provided that the activities conducted therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Subdivision or in and out of said Owner's Lot.

Section 10.03 "Re-subdivision." Except as permitted, no Lot shall be subdivided so as to create an additional building lot. Where a residence has been erected on two or more parcels, none of said Lots shall be thereafter sold separately if such sale would result in a violation of the subdivision provision contained herein.

Section 10.04 "Obstruction of Common Areas." There shall be no storage or parking of any items, including baby carriages, playpens, bicycles, wagons, toys, vehicles, basketball goals, soccer goals, benches or chairs in any part of the Common Areas, except as permitted by the Rules and Regulations.

Section 10.05 "Parking and Driveways." Except for vehicles being used by persons providing services to the Association, the Lot Owners or otherwise used or authorized to be used at the Subdivision by the Association, no part of the Subdivision may be used for the parking of any trailer coach, house trailer, mobile home, automobile trailer, motorcycle, camp car, recreational vehicle, camper, truck which exceeds 3/4 ton, boat, boat trailer, or any vehicle with letters or other markings over four inches tall or wide, or any other similar vehicle (collectively, "Special Vehicles"), unless such Special Vehicles are parked in the garage of the Lot Owner who owns such Special Vehicle and the garage door of such Lot Owner is completely closed at all times when a Special Vehicle is parked therein. Operative vehicles, other than Special Vehicles, used by a resident of a Lot as a primary source of transportation may be parked in the driveway of such Lot Owner or in any garage space owned by the owner of such Lot. However, the residents of any one Lot may not collectively park more than four (4) operative vehicles or

exceed the capacity of a Lot Owner's driveway in the Subdivision. No vehicles are allowed to be parked on the street overnight. Inoperative vehicles may not be parked within the Subdivision unless these inoperative vehicles are parked in the garage and the garage door is completely closed. No auto maintenance and/or repairs may be performed on the Subdivision except if performed inside the garage of a Lot Owner. Vehicles, whether owned by a Lot Owner or not, parked in violation of any part of this Declaration or in violation of any Rules or Regulations, shall be towed away and stored at the Owner's risk and expense. By parking in the Subdivision, the owner of the vehicle or other vehicle user hereby waives any claim against the Association resulting directly or indirectly out of the towing, unless the towing can be shown beyond a reasonable doubt to have been done maliciously by the Association. Note that the Association is not obliged to try to determine the owner of a vehicle and first give notice before towing the vehicle. If a Lot Owner is not sure about the right to park at any particular area or space, the Lot Owner should request, in writing, a written opinion from the Board. If the Board gives the approval sought by the Lot Owner or if the Board does not answer the written request, the Lot Owner may park in the space until further written notice to the contrary from the Board. Note that the Association's right to tow a vehicle includes the right to immobilize it.

All driveways shall be constructed with concrete materials and completed before occupancy. All materials for the driveway must be approved by the Architectural Review Committee.

Section 10.06 "Compliance with Insurance Policies and Waste." Nothing shall be done or kept in any Dwelling Unit, in the Common Areas or on a Lot which will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Lot Owner shall permit anything to be done or kept in his or her Dwelling Unit, in the Common Areas or on a Lot which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas. All laws shall be obeyed.

Section 10.07 "Fencing." Barbed wire, cyclone fencing, chain link or similar metal fencing shall not be permitted on any Lot. No fence shall be erected on any Lot until the size, location and materials thereof are approved by the Architectural Review Committee in writing.

Section 10.08 "Storage Tanks." Any tank for the storage of gas, oil, or any other liquid shall be buried underground or completely screened by decorative natural fencing, vegetation or all year greenery or so placed and kept as not to be visible to the occupants of other Lots or to any street area.

Section 10.09. "Satellite Dishes and Antennas." No television antenna, radio receiver, cell tower, satellite dish, or other similar device with a diameter greater than twenty-four (24) inches shall be attached to or installed on any portion of the Subdivision, unless contained entirely within the interior of a building or other structure, or unless said device(s) is/are totally out of view from the road(s) and other Lots.

Section 10.10 "Animals and Pets." No animals or livestock of any kind shall be raised, bred or kept on any Lot, in any Dwelling Unit or in the Subdivision, except that three dogs, three cats or combination to total no more than three, or two other common household pets may be kept in a Dwelling Unit, subject to the Rules and Regulations, provided that it is not kept, bred or maintained for any commercial purpose, and that it is kept subject to the Rules and Regulations

of the Association. Allowance of additional household pets will be subject to written Board approval. Dogs, cats or other common household pets must be kept within the confines of the Owner's Lot except when being held on a hand leash by the pet owner of the animal. No pet may be "staked", housed, tied up or otherwise left in the Subdivision. A Lot Owner shall be responsible for cleaning up after his household pet. Notwithstanding the above, the Association shall have the right to promulgate Rules and Regulations pertaining to the size, number and type of such household pets and the right to levy fines and enforcement charges against persons who do not clean up after their pets. Additionally, the right of an occupant to maintain an animal in a Dwelling Unit shall be subject to termination if the Board in its full and complete discretion determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or Occupants. No dog house or other structure used or intended for the housing or keeping of animals may be constructed, placed or maintained on any part of the Subdivision. Pet owners are required to obtain any necessary licenses for their pets and also to have all pets properly inoculated.

Section 10.11 "Hunting and Firearms." Hunting of wildlife shall not be permitted within the boundaries of the Subdivision. Firearms and explosives shall not be discharged within the Subdivision. Fireworks shall not be permitted. However, sparklers are allowed.

Section 10.12 "Nuisances." No noxious or offensive activity shall be allowed in any Dwelling Unit, in the Common Areas or on the Lot of an Owner, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Lot Owners or occupants.

Section 10.13 "Impairment of Structural Integrity of Buildings." Nothing shall be done in any Dwelling Unit, or on any Lot, or in, on or to the Common Areas that will impair the structural integrity of any building or that, absent the prior written approval of the Board, would structurally change any building.

Section 10.14 "Lighting." No vapor lights shall be permitted. All exterior lights will be located to prevent glare or spillage of light onto adjacent Lots and shall conform with any rules and regulations established by relevant municipalities. Exterior lighting is to be of the decorative lantern type and must be approved by the ARC.

Section 10.15 "Laundry or Rubbish and Open Fires in Common Areas and Facilities." No clothes, sheets, blankets, laundry of any kind or other materials shall be hung out or exposed on any part of the Common Areas, or on any Lot in a manner visible from any Common Area, neighboring Lot or street. All trash, garbage or other rubbish shall be deposited only in covered sanitary containers as provided in Section 10.21 below. No open fires shall be permitted on any part of the Subdivision other than fires in charcoal grills, or other similar cooking devices, or gas fueled fire pits, or similar non-spark producing devices (if any), provided the use of such devices does not violate any local governmental rules or regulations.

Section 10.16 "Mailboxes." Mailboxes shall be enclosed and in keeping with the integrity of the Subdivision, the design of which must be submitted to and approved by the ARC before it can be installed. Mailboxes must be installed prior to occupancy.

Section 10.17 "Prohibited Activities." Except as otherwise provided in this Declaration, no business, trade, industry, occupation or profession of any kind, whether for profit or not for profit, shall be conducted, maintained or permitted on any part of the Subdivision. A Lot Owner is permitted to place and maintain a standard "For Sale" or "For Rent" sign only on the front portion of the Lot; provided, however it is of a typical size within the industry or within an area expressly permitted by the Board of Directors. No other sign that is visible from the outside of Dwelling Units may be placed on any part of the Subdivision except as expressly permitted by the Board of Directors. The Board shall have the right to immediately remove and dispose of those items in violation of this Declaration. A Lot Owner must obtain the prior written consent of the Board of Directors in the event a Lot Owner desires to maintain a "For Sale " or "For Rent" sign which is not of a typical size within the industry, or desires to maintain other displays or advertising, unless otherwise provided for under the Rules and Regulations.

No construction or other activity apt to produce noise which would be an annoyance to a residential neighborhood shall be permitted before 7:00 am or after 7:00 pm, Monday through Friday and before 9 am or after 6 pm, Saturday through Sunday.

Patios, porches, and decks may be used only for their intended purposes.

Section 10.18 "Alteration of Common Areas." Nothing shall be altered or constructed in or removed from the Common Areas except as otherwise provided in this Declaration and except upon the written consent of the Association.

Section 10.19 "Rental of Lots." In order to protect the equity of the Lot Owners and to carry out the purpose for which the Association was formed and preserve the character of the Property as a homogeneous predominantly owner-occupied residential community and to avoid the character of a renter-occupied housing complex, no more than fifty percent (50%) of the Dwelling Units in the Subdivision may be leased by the respective Owners at any one time. Each Owner in the Subdivision must obtain the approval of the Board prior to leasing his Dwelling Unit, which approval shall not be unreasonably withheld if less than fifty percent (50%) of the Dwelling Units in the Subdivision are then currently being leased, and provided the following conditions are met: (a) not less than the entire Dwelling Unit is being leased, b) the term is not less than twelve (12) months; and (c) it is not being rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days, or (ii) any rental if the occupants of the Dwelling Units are provided customary hotel service such as room service for food and beverage, maid service and finishing of laundry and linen. All leases of any Dwelling Unit shall be in writing. All such leases shall provide that they are subject to all of the provisions of the Declaration, the Bylaws and the Rules and Regulations and that any failure by the lessee to comply with any of such provisions shall constitute a default under the lease. A copy of each such lease shall be given to the President of the Association immediately after it is executed.

If any lessor or lessee is in violation of any of the provisions of the foregoing documents, the Association may bring an action in its own name and/or in the name of the lessor to have the lessee evicted and/or to recover damages. If the Court finds that the lessee is or has violated any of the provisions of the Declaration, the Bylaws or the Rules and Regulations, the Court may find the lessee guilty of forcible detainer notwithstanding the facts that the lessor is not a party to the action and/or that the lessee is not otherwise in violation of lessee's lease or other rental agreements with lessor. For purposes of granting the forcible detainer against the lessee, the

25

Court may consider the lessor a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (i.e., the Association). The remedy provided by this Section 10.19 is not exclusive and is in addition to any other remedy or remedies that the Association has. If permitted by present or future law, the Association may recover all of its costs, including Court costs and reasonable attorney's fees, and such costs shall be a continuing lien upon the Lot which shall bind the Lot in the hands of the then Lot Owner and the Lot Owner's successors and assigns.

This provision is not intended to prohibit owners utilizing live-in caretakers, and said caretakers are expressly excluded from this section's provisions.

Section 10.20 "Native Growth." Since it is the parties' intention that the natural appearance of Lots be preserved, so far as it is practicable, no clear-cutting shall occur beyond house and driveway footprints. Large trees (40-50 feet) shall be preserved, and plantings and landscaping shall be maintained in such a way as to reasonably conform with its natural surroundings. The Association shall have the authority to establish rules and regulations concerning the planting, maintenance, and removal of trees, shrubs and other materials constituting a part of the landscaping of a Lot. The ARC may designate an area for the preservation of trees on the Lot as well as the treatment of a ravine, if located on the Lot. Owners agree to protect all on-site native vegetation (mountain laurel, rhododendron, white pines and other native mountain species) during construction and Lot improvements.

Section 10.21 "Trash Disposal." Each Lot Owner shall deposit all trash, garbage, or other rubbish as directed and instructed by the Town of Weaverville. Lot Owners shall keep trash containers at all times in each Lot Owner's garage (if applicable), or in such other locations as designated by the Board, except on the days in which trash, garbage, or other rubbish is collected by the local waste removal authorities. Any containers placed outside by the Lot Owners in the location designated for collection by the local waste removal authorities shall only remain in such a location for a period not to exceed twenty-four (24) hours. The Board shall have the right to dispose of any trash, garbage, or other rubbish of a Lot Owner in violation of this Article X and may assess the Lot Owner for the cost of such removal, which amount shall be payable 30 days after receipt of the assessment.

Section 10.22 "Grass, Trees and Shrubbery." Grass and weeds (including all growth under and around fence lines) are to be trimmed down on all Lots in order to prevent an unsightly and unsanitary condition. This obligation shall apply to the area within the right of way of the roadway adjoining such Lot, which obligation is that of the Owner of the Lot in question and it is to be done at their expense. Remaining areas of the Lot that are naturalized do not need to maintain grass and weed maintenance. In the event that a Lot is deemed to be in violation of this covenant, the Homeowners' Association may, after written notice to the Owner of such Lot, perform necessary mowing or clearing of such Lot and assess the Owner of such Lot the cost incurred, which assessment shall be subject to the collection provisions set forth in Article V.

Except as otherwise set forth herein, no existing trees shall be cut, topped or otherwise altered from their natural state other than those removed to clear the site necessary to construct an approved single-family residence (not more than twenty (20) feet from any side or back of a house and not more than two (2) feet from the side of the driveway) without a tree removal plan. Trees within the Subdivision shall be reasonably protected from damage during construction or

destruction by pets maintained by any Owner. In addition to the foregoing limitations on cutting and topping, no Lot shall be clear-cut.

Recognizing the desire for Lot Owners to enhance their views while also retaining the native growth and animal habitat in accordance with Section 10.20, removal of any additional trees beyond the aforementioned related to construction requires a tree removal plan to be submitted to the ARC for written approval. Existing trees of any size on any Lot may only be removed as noted on the tree removal plan approved by the ARC. In particular, beyond the home's footprint, no more than 20% of the living trees shall be removed without the written consent of the ARC. For any trees to be removed, the cut shall be as close to the ground as possible. Tree stumps shall not be removed without the written consent of the ARC.

When home construction has progressed to allow a more nuanced examination of the Lot view, the Owner and the ARC shall work to finalize the tree removal plan to achieve the desired views, while minimizing tree removal. The tree removal plan, with ARC written approval, may include, if necessary, no more than 7 trees topped per lot, to achieve the desired views for the Owner. The Owner's landscape and tree removal plan may require plans to replace trees being removed outside of the construction footprint in accordance with ARC approval of said plans. As part of the tree removal process, all cut trees, branches and other such debris if in plain view of neighboring properties must be removed within the ARC approved timeline. Tree topping, or cutting off all or most branches of the existing tree canopy for the purpose of improving a view, is prohibited unless ARC written approval is given and within provisions stated herein. Selected removal of tree limbs involving the lower branches may be permitted with ARC written approval. Notwithstanding the foregoing, any dead or diseased tree may be removed, limbed up, pruned or otherwise altered if consistent with proper forest management, by the Owner of the tract where such dead or diseased tree is situated. These restrictions shall apply to every Lot within the Subdivision and remain in force before, during and after the construction of any home.

Section 10.23 "Nondiscrimination." No owner, or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed or national origin in the sale, lease or rental of any Lot nor in the use of the Common Areas.

Section 10.24 "Quiet Enjoyment." No one may engage in any abusive or harassing behavior or any form of intimidation or aggression, whether verbal or physical, against other Members, Residents, guests, invitees, members of the Board, or the Association's management, employees, agents, or vendors. Because the breach of quiet enjoyment is largely subjective, the Board may choose to act only against egregious breaches. In the event the Association chooses not to act on a complaint of breach of quiet enjoyment, or the complaining party believes the Association's action is not sufficient, such party may take legal action to enforce this provision against other residents in accordance with this Declaration, but specifically waives his/her right to take action against the Association and its officers, directors, employees, and agents in their handling of the party's complaint.

ARTICLE XI.

ENFORCEMENT

Section 11.01 "Enforcement."

(a) The Association or any Lot Owner may enforce these covenants, conditions and restrictions. Enforcement of these covenants, conditions and restrictions shall be through a proceeding at law or in equity against any person or persons violating or attempting to violate ("Violating Party") any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, and against the land to enforce any lien created by these covenants. In addition to all other amounts due on account of said violation or attempted violation, the Violating Party shall be liable to the parties enforcing the covenants and/or restrictions of this Declaration (the "Enforcing Parties ") for all reasonable attorney's fees and court costs incurred by the Enforcing Parties. Failure or forbearance by the Association or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

(b) In addition to all other remedies of the Association, the Association shall have the right to assess a maximum fine of \$150.00 per day (or such higher amount as may be allowed by law) per violation against any Owner who violates any provision of this Declaration, the Articles, Bylaws or Rules and Regulations of the Association after such Owner has been given notice of the violation and an opportunity to be heard with respect to the violation in accordance with such policies and procedures as may be adopted from time to time by the Board of Directors or as may be set forth in the Bylaws.

(c) In addition to the above rights, the Association may also enter upon a Lot or any land upon which a violation exists to remove any violation, perform maintenance or make repairs thereon which is the responsibility of a Lot Owner who has failed to remove said violation or to perform such maintenance or make such repairs (i) after having given such owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency.

Any action brought by the Association hereunder may be brought in its own name or in the name of its Board. In any case of flagrant or repeated violation by a Lot Owner, he or she may be required by the Association to give sufficient surety or sureties for his or her future compliance with the covenants, conditions and restrictions contained in this Declaration, the Bylaws and the Rules and Regulations.

ARTICLE XII

DISPUTE RESOLUTION

Section 12.01 "Participation in Dispute Resolution." All members of the Association, by virtue of their ownership of a Lot, agree that before they file any suit in any court, it will first submit to the alternative dispute resolution procedures set forth below with respect to any claim, grievance, or dispute arising out of or relating to the following:

1. the interpretation, application or enforcement of the Declaration;
2. rights, obligations and duties of any Party described in the Declaration; or

- 18
3. the design or construction of improvements within the Subdivision, other than matters of aesthetic judgment, which shall not be subject to review.

The alternative dispute resolution procedures shall not be required for the following unless all Parties to the matter agree to submit the matter to the alternative dispute resolution procedures:

1. any suit by the Association to collect assessments or other amounts due from any Owner;
2. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce provisions of this Declaration;
3. any suit between Owners, which does not include the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Declaration;
4. any suit in which any indispensable party is not bound by this Section; and
5. any suit as to which any applicable statute of limitations would expire within 180 days after giving the Notice required by the alternative dispute resolution procedures, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such claim for such period as may reasonably be necessary to comply with this Section.

Section 12.02 "Dispute Resolution Procedures." The following procedure shall apply to the Dispute Resolution Requirement set forth in this Section:

1. Notice. The Party asserting a claim (the "Claimant") against another Party (the "Respondent") shall give written notice to each Respondent and to the Board stating:
 - (i) the nature of the claim, including the parties involved and the Respondent's role in the claim;
 - (ii) the legal basis of the claim; the Claimant's proposed resolution or remedy; and
 - (iii) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the claim.
2. Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation.
3. Mediation. If the parties have not resolved the claim through negotiation within thirty (30) days after the date of the notice described in subsection (1) of this Section (or within such period as the Parties may agree), the Claimant shall have thirty (30) additional days to submit the claim to mediation with an independent agency providing dispute resolution services in Buncombe County, North Carolina. If the Claimant does not submit the claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to Claimant on account of such claim. Each Party shall bear its

own costs of the mediation, including attorneys' fees, and each Party shall share equally any fees charged by the mediator.

- 4. Arbitration. If the Parties do not settle the claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter have thirty (30) additional days to submit the claim to arbitration with an independent agency providing dispute resolution services in Buncombe County, North Carolina. The final decision of the arbitrator shall be adhered to by all parties involved in the action. Each Party shall bear its own costs of the arbitration, including attorneys' fees, and each Party shall share equally any fees charged by the arbitrator.
- 5. Settlement. Any settlement of the claim through negotiation or mediation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party all costs incurred in enforcing such agreement or award, including all attorneys' fees.

ARTICLE XIII

MISCELLANEOUS

Section 13.01 "Maintenance of Private Street." Any owner that creates or constructs a right of way for purposes of ingress and egress to more than one lot that is not publicly maintained shall be the sole responsibility of the owners of the lots benefited and the Association shall not be responsible for any road maintenance.

Section 13.02 "Severability." Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 13.03 "Restrictions Run with the Land." The easements or other permanent rights or interests herein created, and the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Dwelling Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 13.04 "Amendment." The Association may amend this Declaration at any time, as long as such amendments are consistent with the design, scheme and purposes of this Declaration, by the affirmative vote or written agreement of the Owners to whom not less than sixty-seven percent (67%) of all of the votes in the Association are allocated in accordance with Section 4.04 and Section 4.05 above. Any amendment must be recorded in the Buncombe

County Register of Deeds. No such agreement to amend, in whole or in part, shall be effective unless written notice of the proposed amendment is sent to every Member at least thirty (30) days in advance of any action taken.

Section 13.05 "Management and Service Contracts." Any agreement for the professional management of the Subdivision or the Common Areas may not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee upon reasonable notice.

Section 13.06 "Binding Determination." In the event of any dispute or disagreement with or between any Owner(s) relating to, or of any other disputes, disagreements or questions regarding, the interpretation or application of the provisions of this Declaration or the Articles or Bylaws of the Association, the determination thereof by the Board of Directors of the Association shall be final and binding on each and all such Owners.

Section 13.07 "Captions and Titles." All captions, titles or headings in this Declaration are for the purpose of reference and convenience only and are not deemed to limit, modify or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

Section 13.08 "Notices." Except as otherwise provided in this Declaration, any notice to any Owner under this Declaration shall be in writing and shall be effective when received by such Owner. The Owner must provide to the HOA Secretary their mailing address and email for future notices. The preferred method of notice is via email to all HOA members. The Articles and Bylaws shall specify the permissible manner of giving notice for voting and all other Association matters for which the manner of giving notice is not prescribed in this Declaration.

Section 13.09 "Governing Law." This Declaration shall be deemed to be made under, and shall be construed in accordance with and shall be governed by, the laws of the State of North Carolina, and suit to enforce any provision hereof or to obtain any remedy with respect thereto shall be brought in state court in Buncombe County, and for this purpose each Owner by becoming such hereby expressly and irrevocably consents to the jurisdiction of said court.

IN WITNESS WHEREOF, the Association has executed this Amendment as of the date first written above.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

The Summit at Hamburg Mountain Homeowners Association, Inc.

By: Patricia Z. Diaz

Name: Patricia Z. Diaz

Title: President, HOA

STATE OF North Carolina

COUNTY OF Buncombe

I, Ryan Dennard, certify that Patricia Z. Diaz personally came before me this day and acknowledged that s/he is President of The Summit at Hamburg Mountain Homeowners Association, Inc., a North Carolina nonprofit corporation, and that s/he as its President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 17th day of June, 2022.

My Commission Expires:
04-06-2027

Ryan Dennard

Notary Public
Ryan Dennard

Printed Name of Notary Public

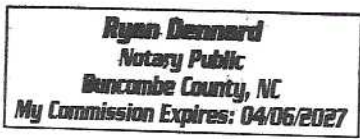


EXHIBIT A

That real property is shown on the plat recorded in Book 114, Page 22 of the Buncombe County Registry.