

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

**FIFTH RESTATEMENT  
OF DECLARATION OF RESTRICTIVE COVENANTS  
FOR CONNESTEE FALLS**

WHEREAS, Connetsee Falls Development Corporation, a North Carolina Corporation subjected certain real property in Transylvania County known as CONNESTEE FALLS (“the Community”) to certain restrictive covenants by means of an instrument entitled Declaration of Restrictive Covenants Connetsee Falls recorded in Deed Book 189 at page 443 in the Transylvania County, North Carolina Register of Deeds; and,

WHEREAS, CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC. (“the Association”) is the successor to Connetsee Falls Maintenance Corporation as shown in that instrument recorded in Deed Book 265 at page 157 and is an association comprised of Members who are empowered and obligated as set forth in those instruments and documents governing the Community; and,

WHEREAS, certain properties have been added to the Community, and certain amendments have been made to the Declaration of Restrictive Covenants for Connetsee Falls (“Declaration”) by means of a number of instruments which have been recorded in the Transylvania County, North Carolina Register of Deeds, said instruments having been referenced in the Second Restatement of Declaration of Restrictive Covenants for Connetsee Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds, the Recital of which is hereby incorporated by reference for the purpose of identifying those instruments which added properties and changed the restrictive covenants which govern the Community; and,

WHEREAS, the Fourth Restatement of Declaration of Restrictive Covenants for Connestee Falls recorded in Deed Book 512 at page 224 in the Transylvania County, North Carolina Register of Deeds may be amended by a majority of the votes by Voting Members present or represented by proxy at an annual meeting or special meeting of the Association duly called for the purpose of amending the Declaration duly executed by (a) the requisite number of such Voting Members required to effect such amendment, or (b) by the Association, in which latter case such amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of such Voting Members to effect such amendment, certified by the secretary of the Association; and,

WHEREAS, such an affirmative vote was made by a majority of the votes by Voting Members in good standing present or represented by proxy at a duly called meeting for that purpose on September 15, 2016;

NOW, THEREFORE, the Association does hereby revoke and replace all prior declarations of restrictive covenants, and amendments thereto, except to the extent incorporated herein, with this Fifth Restatement of Declaration of Restrictive Covenants for Connestee Falls.

FIFTH RESTATEMENT OF DECLARATION OF RESTRICTIVE COVENANTS  
FOR CONNESTEE FALLS

NOW, THEREFORE, the Association reaffirms, restates and declares that all of the Lots and Parcels in Connestee Falls are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitude upon each of said Lots and Parcels in favor of each and all other Lots and Parcels; to create reciprocal Rights between the respective Owners of all such Lots and Parcels; to create privity of contract and estate between the grantees of such Lots, heirs, successors and assigns; and shall, as to the Owners of each such Lot or Parcel, heirs, successors or assigns operate as covenants running with the land for the benefit of each and all other such Lots and Parcels in Connestee Falls and respective Owners, present and future.

Capitalized terms in this Declaration not otherwise defined herein shall be defined as set forth in the Restated Articles of Incorporation of Connestee Falls Property Owners Association as lastly adopted or revised on or before the date first written above.

ARTICLE I  
DEFINITIONS

The terms used in the Articles, this Declaration, and the Bylaws are defined as follows:

A. "A&E Committee" means the Architecture and Environment Committee.

- B. "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, single-family Housing Unit, living unit, or any other private or commercial structure designed for occupancy by one or more individuals.
- C. "Amenities" means the desirable and useful features of the Common Areas, buildings, and facilities.
- D. "Articles" means the current version of the Restated Articles of Incorporation of the Association.
- E. "Assessments" means any and all sums levied by the Association against any Lot and its Owner(s) as Common Expenses or other charges to include but not be limited to Common Expense liabilities, Unimproved Lot Assessments, Improved Lot Assessments, Special Assessments, specific Assessments, fines, late charges, interest and attorney's fees as set forth in the Declaration and Bylaws.
- F. "Association" means the Connestee Falls Property Owners Association, Inc., a nonprofit corporation organized under the Nonprofit Corporation Act.
- G. "Board" means the Board of Directors of Connestee Falls Property Owners Association, Inc.
- H. "Board Committee" means a Board-appointed committee, whether a Permanent Committee or a Special Board Committee.
- I. "Bylaws" means the current version of the Bylaws of the Association.
- J. "Common Area(s)" means the real property so described and conveyed to the Association in that deed recorded in Deed Book 211 at page 542, together with those areas designated as Common Areas in those Supplemental Declarations referenced in the Fourth Restatement of Declaration of Restrictive Covenants for Connestee Falls recorded in Deed Book 413 at page 30 in the Transylvania County, North Carolina Register of Deeds; all real property which may be later annexed to Connestee Falls as Common Areas; and, all real property acquired by the Association, so designated together with all Improvements which may be at anytime constructed thereon, including, but not limited to, recreational and Community facilities, lakes, parks, and streets. To the extent necessary to interpret applicable sections of the Planned Community Act, the term "Common Areas" is deemed to mean and be synonymous with the term Common Elements as defined in the Planned Community Act North Carolina General Statutes ("NCGS") Section 47F-1-103(4).
- K. "Common Expense(s)" means expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Community. These include:

1. Expenses of administration, maintenance, repair or replacement of the Common Areas and physical Improvements located thereon;
  2. Expenses defined, referred to, or declared to be Common Expenses by the Declaration or by the Planned Community Act;
  3. Expenses agreed upon as Common Expenses by the Association;
  4. Funding of reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Areas or any other real or personal property acquired or held by the Association; and
  5. Expenses levied against or which may be allocated to any particular Owner for fines, late charges, interests, costs of collection, and attorney's fees.
- L. "Community" means the Community of Connestee Falls, a gated residential development located in Transylvania County, North Carolina as the same may be shown on the maps and Plats thereof recorded from time to time and which is governed by the Articles, the Declaration, and the Bylaws.
- M. "Converted Lot" means any Lot or Parcel of real property which has previously been designated as a residential Lot, has been acquired by the Association, and which is converted from a specific Lot to a Common Area by designation of the Board. Notwithstanding the designation of a Converted Lot as a Common Areas, whether so designated on a Deed or through action of the Board, any converted Lot acquired by the Association shall be available for sale or development in the discretion of the Board, and any such Lots sold in the past or the future shall no longer be considered a Common Areas after conveyance by the Association.
- N. "Declaration" means this Fifth Restatement of Declaration of Restrictive Covenants for Connestee Falls.
- O. "Executive Session" means an assembly of members of the Board, convened when sensitive or privileged issues involving Members, personnel, or legal matters are discussed.
- P. "Guest" shall be as defined under "Non-Member".
- Q. "Housing Unit(s)" means any form of housing to include but not limited to detached Single Family Residential, Single Family Attached, Multi-Family Residential, and condominiums.
- R. "Improved Lot" means any Lot upon which is located, found, placed, or constructed any Improvement. As applied to an Improved Lot, "Improvement" means all buildings, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, docks, antennas and any other structure of any type or kind.

- S. “Improved Lot Assessment” means the charge established by Article VII, Section A, that is levied against an Improved Lot.
- T. “Improvement” shall be as defined under Improved Lot.
- U. “Leasing” means the regular occupancy of a Lot by any Person other than the Owner, for which the Owner or other Person receives any consideration, benefit, fee, exchange, service, gratuity, or emolument.
- V. “Lot” means any numbered Lot designated on the Plat, any Lot actually subdivided, platted, or otherwise identified as a Lot in a multi-family residential area, any apartment or living unit in a Multi-Family Residential Housing Unit, or such portion of a multi-family residential area as the Board shall designate.
- W. “Member” means a Person that is the record Owner of a Lot in the Community, who shall be a Member of the Association with Rights and Privileges as further specified in the Articles, Declaration, Bylaws, Rules and Regulations, and policies of the Association; provided that no Lot shall have more than one Voting Member.
- X. “Membership” means the Rights appurtenant to a Lot by which an Owner becomes a Member of the Association. Membership establishes Rights, responsibilities, duties, obligations, and Privileges to and for Members.
- Y. “Modular Building or Structure” means a building or Housing Unit that is partially constructed off-site. The finished components are transported to the site for final assembly. Modular homes are referred to as factory-built, panelized, system-built, or prefabricated. A mobile home is not a Modular home.
- Z. “Multi-Family Residential Housing Unit” means a residential structure or building containing two or more Single Family Residential Housing Units or apartments, such as, by example and not by limitation, duplexes, multi-plexes, townhouses, condominiums, and constructed on a Lot or Parcel whose use is designated on the Plats or in a Supplemental Declaration as multi-family residential.
- AA. “Nonprofit Corporation Act” means the North Carolina General Statutes (“NCGS”) Chapter 55A, North Carolina Nonprofit Corporation Act.
- BB. “Non-Member” means each Person in the Community that is not a record Owner and is sponsored by a Member or the Association. A Non-Member shall have no Rights of Membership. The Privileges and obligations of Non-Member classifications cited below shall be as specified in the Articles, Declaration, Bylaws, Rules and Regulations, and policies of the Association. Non-Member classifications include but are not limited to:

1. **Resident Affiliate.** Each Person, not otherwise a Member, who cohabits on a regular or on-going basis the same Connestee Falls Housing Unit as a Member.
2. **Tenant.** Each Person occupying a Connestee Falls Housing Unit for which the Owner or other Person receives a consideration, benefit, fee, exchange, service, gratuity, or emolument. A Guest inhabiting a Housing Unit for a period of more than thirty (30) days may be deemed a Tenant by the Association. A Guest occupying a Housing Unit while the Owner is not present in the Housing Unit may be deemed a Tenant by the Association.
3. **Guest.** Each Person on the premises of the Community, invited by a Member, Tenant, or the Association.

CC. "Owner" means a Person who owns an Improved or Unimproved Lot, and has legal title thereto through recording of a deed, but does not include a Person having an interest in a Lot solely as security for an obligation. The Association is not an "Owner" for purposes of this Declaration since it does not pay Assessments on and does not vote the Lots to which it holds legal title.

DD. "Plat" means the maps or Plats of Connestee Falls as they are from time to time recorded.

EE. "Parcel" means any tract of land that is described or delineated on a Plat.

FF. "Permanent Committee" means a standing committee established by the Board by charter, as described and defined in the Bylaws.

GG. "Person" means one or more natural persons, corporations, partnerships, associations, trusts, or other legal entities, or any combination thereof.

HH. "Planned Community Act" means North Carolina General Statutes ("NCGS") Chapter 47F, North Carolina Planned Community Act.

II. "Privileges" means access to and use of some or all of the Common Areas and Amenities in the Community.

JJ. "Purchaser" means any Person who is buying, who has bought, or who acquires an interest in a Time-Share Interval or Time-Share Program.

KK. "Resident Affiliate" shall be as defined under "Non-Member".

LL. "Restated Articles of Incorporation" means the current version of the Articles.

- MM. "Rights" means those rights established by law or by the Association which are not subject to change except by a vote of the Members. These Rights are: the Right of one Member per Lot to vote in Member elections; the Right to serve on a Permanent Committee; and the Right of the Voting Member to become a candidate for the Board. Notwithstanding the foregoing, however, the Right of access to a Lot by its Owner shall be absolute.
- NN. "Single Family Attached Housing Unit" means a Housing Unit whereby two single family residences share a common wall so that there will be two Single Family Housing Units per building and which may be constructed on a Lot or Parcel located solely within the area of Connestee Falls known as Qualla Village as described in that Agreement recorded in Deed Book 404, Page 72 of the Transylvania County, North Carolina registry of deeds.
- OO. "Single Family Residential Housing Unit" means a residential structure built and intended for use and occupancy by a single-family and which is constructed on a Lot designated as a single family residential Lot on any recorded Plat for the Community or in any Supplemental Declaration. Such structure must therefore be built to accommodate only single meter service for any utilities including but not limited to electric, water, and gas.
- PP. "Single Family" means a traditional family unit, a single housekeeping unit, or Persons substantively structured as an integrated family unit such that any of these must function, as a family within the Housing Unit. The composition of the family unit must be relatively stable and permanent.
- QQ. "Special Board Committee" means a committee constituted by the Board for a specific purpose and for a limited time, and is not a Permanent Committee. Ad hoc and select committees, task forces, and advisory groups are Special Board Committees.
- RR. "Special Assessment" means a form of Assessment applicable only to the year in which it is assessed, obligating each Owner on the date it is approved in accordance with the provisions of the governing documents of the Association. The obligation to pay the Special Assessment to the Association attaches to the Owner and not to the Lot or its subsequent Owners, nor does it terminate with the disposal or sale of the Lot.
- SS. "Special Capital Expenditure" means a project for new or upgraded Amenities that has not been included in an approved budget, wherein the Total Estimated Project Cost exceeds \$350,000.
- TT. "Supplemental Declaration" means:
1. The recorded Supplemental Declarations, and Agreements with individual Owners of Parcels of land to change the designation of these certain Parcels of land from a Multi-Family Residential designation to a Single Family Residential designation, referenced in the Recital to this Declaration, or,

2. In the event of real property being annexed to the Community, the recorded Supplemental Declaration which incorporates the provisions of this Declaration therein by reference.

UU. "Tenant" shall be as defined under "Non-Member".

VV. "Time-Share Estate" means an ownership or leasehold estate subject to a Time-Share Program, including tenants-in-common, interval ownership, time-span ownership, or any other type of ownership or leasehold Time-Share Program.

WW. "Time-Share Interval" means a Time-Share Estate or Time-Share Use.

XX. "Time-Share Program" means any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy-in-common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Time-Share Interval is created and whereby the use, occupancy or possession of an Accommodation, Lot, Improvement, Multi-Family Housing Unit, Single-Family Housing Unit, Parcel, Common Areas or any other land or property within the Community, has been or becomes subject to a Time-Share Interval whereby such use, occupancy or possession circulates among purchasers of the Time-Share Interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

YY. "Time-Share Use" means any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a "Time-Share Estate", including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

ZZ. "Total Estimated Project Cost" shall reflect direct costs in accordance with generally accepted accounting principles, including but not limited to: (a) architects fees, engineering fees, interior design fees, survey fees, cost estimating fees, and costs of building permits; (b) contracts for construction and procurement of Association-furnished equipment; (c) furniture, fixtures, and equipment; (d) costs of inspection and project management; (e) interest and fees on any project-related borrowing during construction; and (f) reasonable contingency set-asides.

AAA. "Unbudgeted" means any expenditure not specifically identified in the latest Member-approved operating, capital, and reserve budget.

BBB. "Unimproved Lot" means a Lot in its natural forested state, allowing for limited removal of shrubs and trees as approved by the A&E Committee.

CCC. "Unimproved Lot Assessment" means the charge established by Article VII, Section A, that is levied against an Unimproved Lot.



DDD. "Unit" means a portion of the Community made up of a number of Lots as laid out and developed by the original developer and any successors. For example Unit 6, Lot 90 means platted Lot 90 located in Unit 6.

EEE. "Variance" means a deviation from a prescribed measurement, including but not limited to: a front, side, or rear property line setback; the required size of a Housing Unit; the maximum width of a driveway.

FFF. "Voting Member" means that Member who has the sole Right to cast a vote on behalf of a Lot in any election called by the Board.

GGG. "Voting Quorum" means the minimum number of valid votes required in any Member vote.

## ARTICLE II LAND USE

Lots and Parcels in the Community shall be as designated on the Plats or in Supplemental Declarations and in absence of a designation, the default designation is Single Family Residential as to permissible uses and shall thereupon become subject to the restrictions or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provisions are contained herein (e.g., commercial, governmental, school, etc.), the same may be set forth in such Supplemental Declaration.

A. Single Family Residential. Only single family Housing Units and such outbuildings as are usually accessory thereto shall be permitted on any Lot designated as Single Family Residential. The following restrictions shall apply specifically to said Lots:

1. Changes in Minimum Square Footage Requirements for Single Family Housing Units Not to Affect Existing Housing Units. The square footage requirements contained in this Declaration do not apply to nor affect Housing Units currently standing or in the construction process, nor are they intended to lower the requirements under any recorded Supplemental Declarations. Similarly, these square footage requirements will not prevent Owners of existing Housing Units which are less than these requirements from reconstructing the Housing Unit if damaged or destroyed, or from expanding the homes, even if the reconstructed or expanded home will be less than the minimum square footage requirements contained herein.
2. Minimum Area. Each Housing Unit hereafter constructed shall have fully enclosed and heated habitable floor area (exclusive of roofed or unroofed porches, terraces, garages, carports, or other outbuildings) with not less than the number of square feet based on using outside wall dimensions as follows:

### Location

- a. All Lots in all Units unless otherwise herein specified: Single-story building – 1500, Multi-story building: main floor – 1000, total 1500
  - b. Units 40, 41, 42: Single-story building – 1750, Multi-story building: main floor – 1000, total 1750
  - c. Units 13 & 43: Single-story building – 2000, Multi-story building: main floor – 1200, total 2000
  - d. Except with express approval of the A&E Committee, in determining the square footage within a Housing Unit, no consideration shall be given to any area which is wholly or substantially below ground level.
3. Setbacks. Each Housing Unit shall be at least:
- a. 25 feet from the front Lot line; on corner Lots, the property lines along both streets shall be considered front property lines;
  - b. 25 feet from the rear Lot line;
  - c. 7 1/2 feet from the side Lot lines;
  - d. At or above the elevation of the top of the dam on the lake abutting a lakefront Lot;
  - e. The limitations contained herein shall be applicable to accessory outbuildings but they shall not be applicable to the construction of a pier or dock at or adjacent to the shoreline of lakefront Lots which the A&E Committee has approved;
  - f. In the event that the A&E Committee determines that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the A&E Committee may grant a Variance to the Owner from the provisions of the setback restrictions.
4. Change of Designation of Use of Lot from Single Family Residential. An affirmative vote of a majority of all valid ballots cast by Voting Members in good standing, via a written ballot, shall be required before any Parcel of land currently designated as Single Family Residential can be changed by the Board to any other designation such as Multi-Family Residential or Single Family Attached Residential. Only Board approval is required should an Owner want to make a less intense use of a Lot than is allowed. An example would be when an Owner of a Multi-Family Parcel wanted to build Single Family homes.

5. Lot Combination. The Association allows the combination of contiguous Lots with the end result that two (2) or more individually platted Lots become one (1) Lot. This can also promote the Community policy of less density. Lot combinations are allowed and permitted subject to and in accordance with the Rules and Regulations covering Lot combinations. Once two or more Lots are combined, they cannot be re-subdivided. The applying Owner shall pay a Lot Combination Fee to the Association, which Fee shall be set from time to time in the sole discretion of the Board.
- B. Multi-Family Residential. Only multi-family Housing Units and such outbuildings as are usually accessory thereto shall be permitted on any Lot or Parcel designated as multi-family residential. The following restrictions shall apply specifically to such Lots or Parcels:
1. Zoning or Other Governmental Development Approvals. Multi-family residential use shall be approved by the appropriate governmental authorities when planning, zoning, or other forms of development approval are applicable.
  2. Minimum Areas. There shall be not more than one Housing Unit for each 3,000 square feet of land area in such Lot or Parcel and the amount of fully enclosed and heated floor area devoted to living purposes in each such unit shall not be less than 1000 square feet.
  3. Carport or Garage. A carport, garage or parking space shall be constructed for each Housing Unit constructed.
  4. Type of Construction. Subject to the approval of the A&E Committee, multi-family Housing Units may be of single or multiple story construction, and may be detached or joined by common walls.
  5. Setbacks and Lakefront Elevations. Setbacks and lakefront elevations for multi-family Housing Units shall be the same as for Single Family Housing Units as set forth above.
- C. Single Family Attached Residential. The property within the area of the Community known as Qualla Village as described in the June 6, 1996 Agreement recorded in Deed Book 404, Page 72 of the Transylvania County, North Carolina registry of deeds may be used for the construction of either detached Single Family Housing Units or Single Family Attached Housing Units subject to the following restrictions:
1. Minimum Area. Each Housing Unit constructed shall have fully enclosed and heated floor area (exclusive of roofed or unroofed porches, terraces, garages, carports, or other outbuildings) of not less than the number of square feet established in this Declaration for Single Family Residential Housing Units for the Unit in which the Housing Unit is situated.

2. Setbacks. Each Single Family Attached building, (i.e. two living units) shall be at least:
  - a. 25 feet from the edge of the street right of way,
  - b. 15 feet from any other residential building.
  - c. In the event that the A&E Committee determines that application of the setbacks contained herein to a particular Lot would unreasonably limit the use thereof by the Owner and effectively deprive him of an appropriate construction site upon said Lot, the A&E Committee may grant a Variance to the Owner of said Lot from the provisions of the setback restrictions.
3. Parking. A carport, garage or parking space shall be constructed for each Single Family Attached Housing Unit constructed.
4. Type of Construction. Subject to the approval of the A&E Committee, two Single Family Housing Units may be attached by a common wall.
5. These restrictions for Single Family Attached Housing Units modify any conflicting provisions of the Supplemental Declarations for Units 1, 2, and 5, but only as to the Lots within Qualla Village.

D. Common Areas.

1. Use. The use and enjoyment of Common Areas and Improvements thereon shall be subject to the powers of the Association as set forth the Articles, Bylaws and Rules and Regulations governing the use of such property and Improvements as may from time to time be adopted by the Board.
2. Maintenance. Maintenance of the Common Areas and repairs to any Improvements thereon shall be the obligation and responsibility of the Association.
3. Subsequent Dedication. The Association may, upon the affirmative vote of two-thirds (2/3) of the valid ballots cast by Voting Members in good standing, via a written ballot ordered for that purpose, offer any Common Area for dedication to public use. Such offer shall be subject to acceptance by the appropriate governmental authority pursuant to its then applicable standards.
4. Improvements. All Improvements must be approved by the general manager as hereinafter provided.

ARTICLE III  
RESIDENTIAL RESTRICTIONS

The following shall be applicable to all Lots and Parcels within the Community designated as residential in character and use, and each Owner, as to a Lot or Parcel, covenants to observe and perform the same:

- A. Residential Use. Each of the Lots, or living units in the case of Multi-Family Residential Housing Units in the Community (except for any Parcel specifically designated as commercial on a Plat or in a supplemental declaration) shall be, and the same hereby are, restricted to single-family residential use and shall be occupied only by a Single Family as defined hereinabove.
- B. Business Activities. No business activities shall be conducted on any residential Lot in the Community, provided, however, private offices may be maintained in residences constructed on residential Lots so long as such use is incidental to the primary residential use of the residential Lot. The property shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the Owner of any Lot or any resident thereof. The Board, in its sole discretion, shall determine what constitutes business activity, health hazard, or unreasonable disturbance. No Owner shall make any use of a Lot, or store or keep anything on a Lot which will increase the risk or insurance rates for the Association or for any other Persons.
- C. Restrictions in General. The Lots and Common Areas of the Community are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association. All Owners and other Persons are subject to these restrictions and subject to the enforcement sanctions as are set forth in the Planned Community Act 47F-1-101 et seq., this Declaration, and Bylaws.
- D. Accessory Outbuildings. Without the approval of the A&E Committee no accessory outbuildings shall be erected on any Lot or Parcel prior to the erection thereon of a Housing Unit. In no event shall any such accessory outbuildings, partially completed or temporary structure ever be used for human occupancy or habitation. Neither a separate guest house nor a garage apartment can be constructed on a Lot.
- E. Completion of Construction. Construction of any Improvements, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for ninety (90) days or which have been partially or totally destroyed and not rebuilt within twelve (12) months shall be deemed a violation of the Declaration and of these residential restrictions. The Association, at its sole discretion, may complete, repair, or remove the Improvement or impose a fine against the Owner in accordance with the Declaration and the Planned Community Act. Any and all cost incurred by the Association including reasonable attorneys fees actually incurred connected with the completion, repair, or removal of such Improvement shall be charged to and paid by the Owner. All costs shall, furthermore, be considered as an Assessment against the Lot and shall be collected in accordance with the provisions of Article VII of the Declaration. The A&E Committee, at its sole discretion, may grant an extension of time under extenuating circumstances.

- F. Prohibition Against Used Structures. No used or Modular Buildings or Structures, or used or Modular structural components, which are intended for use as a Housing Unit, shall be placed on any Lot.
- G. Maintenance. All Lots and Parcels, whether occupied or unoccupied, and any Improvements placed thereon, shall at all time be maintained in such manner as to prevent becoming unsightly, unsanitary or a hazard to health. If not so maintained, the Association shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become a part of the annual Assessment to which such Lot is subject. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work as performed.
- H. Disposal of Sanitary Waste. No outside toilet shall be constructed on any Lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank or other sewage system approved by the A&E Committee and the appropriate governmental authority.
- I. Fences. All property lines shall be kept free and open and no fences, hedges or walls shall be permitted thereon without A&E Committee approval.
- J. Golf Course Lots. Owners of Lots adjacent to golf course fairways shall permit reasonable entrance upon Lots for retrieval of golf balls. The Association shall have no liability or responsibility for any damage caused to either Person or property by errant golf balls.
- K. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any Lot or the Common Areas.
- L. Signs. No Person shall erect, display, or maintain upon the premises of any Lot or Housing Unit any sign or advertisement visible to the Common Areas. Home identification, safety notifications, and builders' signs may be excepted by the A&E Committee.
- M. Animals. No animals shall be kept or maintained on any Lot except the usual household pets which shall be kept reasonably confined so as not to become a nuisance.
- N. Garbage and Refuse Disposal. No Owner shall burn trash, garbage or other like household refuse, nor shall any Owner accumulate on a Lot junked vehicles, or litter, refuse, or garbage, except in receptacles provided for such purposes.
- O. Concealment of Fuel Storage Tanks, Exterior Equipment, and Trash Receptacles. Fuel storage tanks and compost bins on any Lot shall be either buried below the surface of the ground or screened as approved by the A&E Committee. Every receptacle for ashes, rubbish or garbage shall be installed underground or be so placed and kept as not to be visible from any street, lake or Common Areas within the Community except on the day when refuse collections are made. Exterior equipment, including but not limited to HVAC units, emergency generators, and solar panels, shall be located or screened as approved by the A&E Committee.

- P. Restrictions on Temporary Structures. No travel trailer, mobile home, manufactured home, or tent shall be placed or erected on any Lot nor shall any overnight camping be permitted on any Lot.
- Q. Removal and Trimming of Trees. No tree may be trimmed or cut down on any Lot without the prior written consent of the A&E Committee.
- R. Limited Access. There shall be no access to any Lot on the perimeter of the Community except from designated streets or roads within the Community.
- S. Docks and Piers. No dock, pier or other similar structure shall extend more than 20 feet into any lake, nor shall any such structure be constructed without express written permission by the A&E Committee, which permission shall constitute a revocable license. Such docks are appurtenant to a Lot and an easement on a lake is not created through this permission.
- T. Ditches and Swales. Each Owner shall keep drainage ditches and swales located on a Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon a Lot as may be reasonably required for proper drainage.
- U. Resubdivision of Lots. No Lot shall be subdivided. This provision shall, however, not prohibit the replatting of two or more adjacent Lots owned together providing that the number of home sites may not be increased by such replatting.
- V. Drilling and Mining. No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot, with the exception of geothermal applications approved by the A&E Committee.
- W. Water and Sewage Disposal Services. While water coming from wells located on Common Areas belongs to the Association, in most parts, but not all, of the Community, water distribution and sewer services are provided by a privately-owned public utility corporation not affiliated nor connected in any way with the Association, and their fees are in accordance with a schedule of fees as approved by the North Carolina Public Utilities Commission. A home on a Lot which is not provided with a sewer hook-up must utilize a septic disposal system which shall be installed and maintained in accordance with public health laws and regulations of the State of North Carolina and of Transylvania County.

ARTICLE IV  
LAKES AND LAKEFRONT LOTS

- A. Ownership of Lakefront Lots. The boundary of any Lot shown on the Plat as being contiguous to a lake shall be the shoreline thereof as said shoreline would be if the water level in said lake were one vertical foot above the design elevation of the lake.

- B. Limitations of Water Rights. No Owner of a Lot contiguous to a lake or stream shall have any rights with respect to such lake or stream, the land thereunder, the water therein, its elevation, or use of conditions, nor shall such Owner have any riparian rights incident or appurtenant thereto. No Persons shall acquire title to any land in the Community by accretion, reliction, submergence, or changing water levels. It is prohibited for an Owner to pump out water from any lake without the written permission of the Association.
- C. Right to Remove Accretions. The Association shall have the right at any time to dredge or otherwise remove any accretion or deposit from the lakefront Lot in order that the shoreline of the lake to which Lot is contiguous may be moved inland toward or to the boundary of said Lot.
- D. Responsibility for Damages. The Association shall not be liable for damages caused by erosion, washing or other action of the water of any lake or stream.
- E. Right to Change Level of Lake. The Association shall have the right to raise and lower the water level of the lake in the Community; provided however, that such right shall not permit raising the water level over one vertical foot above the design elevation of the lake.

ARTICLE V  
ARCHITECTURAL AND ENVIRONMENTAL CONTROL

- A. General Powers. The Board shall have the authority to appoint an Architecture and Environment Committee to oversee architectural and environmental controls as set forth in the Declaration, the Bylaws, and Rules and Regulations. All Improvements constructed or placed on any Lot and any exterior changes to existing Improvements must first have the written approval of the A&E Committee. Such approval shall be granted only after written application has been made to the A&E Committee in the manner and form prescribed by it. The application, to be accompanied by two sets of plans and specifications, shall show the location of all Improvements, if any, existing upon said Lot, the location of the Improvement proposed to be constructed, the color and composition of all exterior materials to be used, proposed landscaping, and any other information which the A&E Committee may require, including but not limited to, reports, drawings and recommendations by registered architects or engineers for soil stabilization and retention, maximum slopes for driveways, walks or disturbed areas, contoured drawings, retaining walls and drainage facilities.
- B. A&E Committee Membership. The A&E Committee shall be composed of members appointed by the Board. A&E Committee members shall be subject to removal by the Board and any vacancies from time to time existing shall be filled by appointment of the Board. Actions by the A&E Committee shall need a majority approval of the members in attendance at meetings where actions are taken. A quorum of three members shall be required.



- C. Grounds for Disapproval. The A&E Committee may disapprove any application:
1. If such application does not comply with this Declaration;
  2. Because of the reasonable dissatisfaction of the A&E Committee with grading plans, location of the proposed Improvements on a Lot, finished ground elevation, color scheme, finish, design proportions, architecture, height of foundation, shape, height or style of the proposed Improvement, the materials used therein, the kind, pitch or type of roof proposed to be placed thereon; or
  3. If in the judgment of a majority of the A&E Committee reasonably exercised, the proposed Improvement will be inharmonious with the Community, or with the Improvements erected on other Lots.
- D. Rules and Regulations. The Board shall, from time to time, adopt written rules and regulations of general application governing the A&E Committee's procedures which shall include, among other things, provisions for the form and content of applications; required number of copies of plans and specifications; provisions for notice of approval or disapproval, including a reasonable time period for approval by reason of failure to disapprove; and otherwise as the Board deems appropriate.
- E. Variances. The A&E Committee may grant reasonable Variances from architectural and environmental requirements to accommodate construction of Improvements on Lots where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to Owners of other Lots.
- F. Certification of Compliance. At any time prior to completion of construction of an Improvement, the A&E Committee may require a certification, upon such form as it shall furnish, from the contractor, Owner, or a licensed surveyor that such Improvement does not violate any setback, ordinance or statute, nor encroach upon any easement or right-of-way of record or create drainage issues.
- G. Administrative Fees. As a means of defraying its expenses, the A&E Committee may institute and require a reasonable filing fee to accompany the submission of plans and specifications, which fee is subject to change with the approval by the Board.
- H. Other New Construction Fees. All Owners who apply to the A&E Committee for new construction, major renovation, and/or demolition with reconstruction understand, agree, and accept that, depending on the construction project, Owners shall pay other fees and charges as follows and as applicable: (a) new home impact fee; (b) major renovation, expansion, and/or demolition and reconstruction fee; and (c) amenities fee. Such fees shall be reasonably determined from time to time by the Board in its sole discretion.

- I. Liability. Notwithstanding the approval by the A&E Committee of plans and specifications or its inspection of the work in progress, neither it, the Association, nor any Person acting on behalf of them shall be responsible in any way for any defects in any plans or specifications or other material submitted to the A&E Committee, nor for any defects in any work done pursuant thereto. Each Person submitting such plans or specifications shall be, and shall agree to be, solely responsible for the sufficiency thereof and the adequacy of Improvements constructed pursuant thereto. The Association shall not be liable for damages caused by erosion, washing, other action of water, falling trees or limbs, wind, or any other natural causes.
- J. Appeals. Any applicant shall have the right to appeal to the Board any decision of the A&E Committee within 30 days after entry of such decision.
- K. Restriction on Construction of Model Homes. Model or exhibit homes shall be built only with the prior written permission of the A&E Committee and the Board.

ARTICLE VI  
THE CONNESTEE FALLS PROPERTY OWNERS ASSOCIATION, INC.

- A. General. The Association is a North Carolina nonprofit corporation organized to further and promote the common interests of property Owners in the Community. The Association shall have such powers in the furtherance of its purposes as are set forth in its Articles and Bylaws.
- B. Membership. The Association is a Membership corporation and shall have Members, and Non-Members as defined in the Articles.

ARTICLE VII  
ASSESSMENTS AND FEES

- A. General. The Board shall have the power to levy Common Expense annual Assessments against all Lots based on the budget. Assessments for Common Expenses are also authorized and provided for in Section 47F-3-115 of the Planned Community Act. The Common Expense annual Assessments shall be levied against Improved Lots and Unimproved Lots as determined by the Board and the Finance Committee; however, the annual Assessment for Unimproved Lots shall be not less than 44% or more than 60% of the annual Assessment for Improved Lots. The Board also has the power to levy fees and charges including, but not limited to, a fee for the impact of construction and renovation of homes upon the Community, tenant fees for the use of the Community's Amenities such as the golf course, tennis courts, swimming pool, pickleball, parks, lakes, and clubhouse facilities, for individual services provided to Members and Guests, and for the registration of Tenants. Such charges and fees are the personal obligation of the Owner, Member or Guest who incurs such charge or fee.

1. If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Lot.
2. Any Common Expense or portion thereof benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited.
3. The costs of insurance may be assessed in proportion to risk and the costs of utilities may be assessed in proportion to usage. The Board in its sole discretion may determine that the activities of one or more Owners cause more risk and thus higher insurance premiums for the Association. In such event, those Owners will be responsible for paying any increase in premium caused by their activities.
4. Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against an Owner pursuant to the Planned Community Act, the Declaration, the Bylaws and Rules and Regulations are enforceable as Common Expense Assessments.

B. Lien for Assessments.

1. Any Assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Transylvania County in the manner provided in Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the NCGS. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by NCGS §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with NCGS § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the NCGS. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to Sections 47F-3-102 (11) and (12), 47F-3-107 (a) and (b), 47F-3-107.1, and 47F-3-115 of the Planned Community Act, the Declaration, the Bylaws, and Rules and Regulations, are enforceable as Assessments under this Section.
2. The lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.
3. A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

4. This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (A) creates a lien or prohibits the Association taking a deed in lieu of foreclosure.
  5. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.
  6. Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the Assessments against such Lot which became due prior to acquisition of title to such Lot by such purchaser. Such unpaid Assessments shall be deemed to be Common Expenses collectible from all Owners including such purchaser, and its heirs, successors and assigns.
- C. Personal Liability of Owners. Each Owner at the time any Common Expense Assessment or portion thereof is due and payable is personally liable for such Assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described above, the Association has the right to bring a separate collection action to enforce the personal liability of Owners to pay Assessments.
1. The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid Assessments against the latter for a proportionate share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.
  2. Assessments shall be paid in such manner and on such dates as may be fixed by the Board in its discretion. Unless otherwise provided, the annual Assessment installment payments shall be late and the Owner in default if not paid on or before the tenth (10th) day such installment becomes due.
- D. No Waiver of Liability for Common Expenses. No Owner may be exempted from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot against which the Assessments are made.
- E. Special Assessments. The Board may levy Special Assessments for capital Improvements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such Special Assessment shall be approved by the affirmative vote of a majority of valid ballots cast by Voting Members via a written ballot ordered for that purpose.
- F. Interest, Late Charges and Payments. In accordance with NCGS 47F-3-115(b), the Association hereby establishes that any past due Common Expense Assessment or installment thereof, past due Special Assessments, fines, or other past due charges shall bear interest at not more than 18% per annum.

1. The Board shall set a late charge to be assessed against Owners for late payment of any Common Expense Assessments or installment thereof, Special Assessments, fines, or any other charges.
  2. Any payments received by the Association in the discharge of the obligation of an Owner may be applied to the oldest balance due unless specifically requested otherwise by the payor and accepted by the Board.
- G. Proof of Payment. Upon request, the Association shall furnish a statement certifying that all Assessments then due have been paid or indicating the amount then due.
- H. Suspension. The Association shall not be required to transfer Membership on its books from an Owner to a buyer or other third party or to allow the exercise of any Rights or Privileges of Membership to any Persons claiming them unless or until all Assessments, fees, and charges to which they are subject have been paid in full and all violations have been cured or resolved as determined by the Association.
- I. Annual Assessment. The annual Common Expense Assessments shall be used for the maintenance, Improvement, care, operation, upkeep, preservation, and protection of the Common Areas, common properties, and other real, personal, or intangible properties owned by the Association and, furthermore, may be used to advance, protect and secure, through any means authorized by the Board, the interest of the Association, including, but not limited to, insurance, repair, replacement, renovation, Improvement, of all Common Areas, common property and other real, personal, or tangible property owned by the Association and all legal expenses, accounting expenses, staff expenses, fees for management and supervision of the Association's affairs, office expenses, and overhead, security, utility charges in connection with the property not separately metered or charged to individual Members, and the establishment and maintenance of reasonable reserve funds.
- J. Liquor license. The Association holds a State of North Carolina license to buy, store, and sell alcoholic beverages; fees, procedures, and regulations relating thereto shall be determined by the Board.

#### ARTICLE VIII EASEMENTS

- A. Reservations. The following easements over each Lot or Parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to:
1. Utilities. A five-foot-wide strip running along the inside of all Lot lines except those Lot lines coincident with street right-of-way lines in which case such strip shall be 10 feet wide, for the installation, maintenance and operation of utilities, including radio and TV transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation.

2. Shoreline Maintenance. A 15-foot-wide strip running along the inside of all Lot lines coincident with the shoreline of any lake or watercourse in the Community for the purpose of shoreline maintenance.
  3. Access. An easement for access for Board members, A&E Committee members and Association employees in connection with administration, oversight, and enforcement of architectural and environmental controls, including but not limited to the Rules and Regulations.
  4. Slope and Drainage. A 20-foot-wide easement running along the inside of all Lot lines coincident with street right-of-way lines for the purpose of cutting, filling, drainage and maintenance of slopes and drainage courses.
  5. Flooding Easement. A flowage and flooding easement running along the inside of all Lot lines coincident with the shoreline of any lake equal to the lakefront building setback line for such Lot as herein set forth.
  6. Private Streets. An easement on, over, and under all streets in the Community for the purpose of installing, maintaining and operating utilities thereon or thereunder; for purposes of drainage control; for access to any Lot or Parcel; and for purposes of maintenance of said streets.
  7. Other Easements. Easements not specifically stated if they are shown on a recorded Plat for the Association.
- B. Maintenance of Easement Areas. Maintenance of all easement areas of any Lot shall be the responsibility of the Owner with the exception of those areas for which a public authority or utility company is responsible. Improvements made in easement areas, in the form of plantings or otherwise, shall be allowed if they do not damage or interfere with the use of said easements herein set forth, including the necessity of frequent access by maintenance and utility vehicles relative to the shoreline Lots. Any Owner who constructs or places any structure or other Improvement within a recorded easement does so at such Owner's sole risk that such encroachment could be removed or demolished.
- C. Liability for Use of Easements. No Owner shall have any claim or cause of action against the Association or its licensees arising out of the exercise or failure to exercise of any easement reserved hereunder or shown on the Plat except in cases of willful or wanton misconduct.

## ARTICLE IX ADDITION OF LAND

- A. Property To Be Added. The Association may, from time to time, add or submit to the Community other real property which is contiguous to or adjacent to the Community with the approval of a majority of all valid ballots cast by Voting Members in good standing via a written ballot ordered for that purpose.

- B. Manner of Addition. The Association shall effect such addition by recording a Plat of the real property to be added and by recording a Supplemental Declaration which shall:
1. Describe the real property being added and designate the permissible uses thereof;
  2. Set forth any new or modified restrictions or covenants which may be applicable to such additional property, including limited or restrictive uses of Common Areas; and
  3. Declare that such additional property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration. Upon the recording of such Plat and Supplemental Declaration, the additional area shall become a part of the Community, as fully, as if such area were part of the Community on the date of recording of this Declaration.

#### ARTICLE X ENFORCEMENT POWERS

- A. Rules Making Authority. The Community shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the Common Areas, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed with the approval of a majority of all valid ballots cast by Voting Members in good standing, via a written ballot ordered for that purpose.
- B. Fining Powers. Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Judicial Committee, having been authorized by the Board, shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an Assessment against the Lot in accordance with Article VII hereof, and become a personal obligation of the Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the Common Areas; and to suspend a Member's Right to vote. In the event that any occupant of a Lot violates the Planned Community Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Judicial Committee, the Owner shall pay the fine upon notice from the Association. The failure of the Judicial Committee to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Judicial Committee to do so thereafter. Additionally, Owners shall waive and release any defense that enforcement is or may be selective.

- C. Abatement and Enjoinment of Violations. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the Common Areas to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard before the Judicial Committee. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.
- D. Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of Assessments.
- E. All remedies provided in this Article are cumulative.

#### ARTICLE XI ENFORCEMENT PROCEDURES

In accordance with Section 47F-3-107.1 of the Planned Community Act and the Rules and Regulations, the Judicial Committee shall not impose a fine or charge for damages against a an Owner unless and until the following procedure, is followed:

- A. Demand. Written demand to cease and desist from an alleged violation of the Declaration, the Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if such violation is a continuing one or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's sole determination, pose a danger or nuisance to safety or property.

Notice. Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Judicial Committee may impose a fine by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation; (ii) the amount of the fine; (iii) that the violator will have the opportunity to be heard at a hearing before the Judicial Committee to contest the fine; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and that the violation may be represented.



- B. Hearing. If the hearing is requested, it shall be held before the Judicial Committee and the violator shall be given a reasonable opportunity to be heard. The Judicial Committee shall render its final decision regarding imposition of the fine no later than five (5) days after the hearing.
- C. Appeal to Board. An Owner may appeal a decision of the Judicial Committee to the Board by delivering written notice of the appeal to the Board within fifteen (15) days after the date of the decision. The Board, represented by at least a quorum, may affirm, vacate, or modify the prior decision of the Judicial Committee. The Board may make its decision based on a review of the record without any further hearing.

ARTICLE XII  
GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any Lot or Parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, Rights, powers, Privileges and immunities of the Association. By such acceptance such grantee or purchaser shall for himself, heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with the Association and the grantee or purchaser of each other Lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

ARTICLE XIII  
SEVERABILITY

Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

ARTICLE XIV  
CAPTIONS

Paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

ARTICLE XV  
PROHIBITION OF TIME-SHARES

- A. General Intent and Purpose. The purpose of this Article is to prohibit the use of any Lot, Common Areas, Improvement, Parcel, Single-family Housing Unit, Multi-family Housing Unit, or any other property or land within the Community, for Time-Share Programs or Time-Share Use, taking into account the impact of the development of such a program on the existing development within the Community that is not subject to any Time-Share Programs. In addition, the further intent of this Article is to preserve the character of Connestee Falls as a residential community of low intensity use with minimum disturbance to its occupants.

- B. Time share-like arrangements including but not limited to multi-party purchasing and use schemes but which do not fit within the definition of time-shares, are likewise prohibited at Connestee Falls. By way of illustration but not limitation, an Owner is prohibited from setting up a timeshare arrangement in which one Owner is on the deed but that Owner arranges dates of separate occupancy and use for other individuals. It is furthermore prohibited for multiple Owners as tenants in common to divide up the occupancy of the unit on any time-based formula. If an Owner devises a time share-like arrangement that does not meet the North Carolina statutory definition of a time-share, this arrangement could still be considered a time-share in the sole discretion of the Association and therefore be prohibited.
- C. Prohibition of Time-Share Program. Time-Share Programs, Time-Share Use, and Time-Share-like arrangements are expressly prohibited in any respect within the Community.
- D. Miscellaneous.
1. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a Single-Family Housing Unit nor Multi-Family Housing Unit, but instead shall be considered solely in accordance with the terms of this Article.
  2. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a “residential use” under the terms of this Declaration, but instead shall be solely considered in accordance with the terms of this Article.
  3. Despite anything to the contrary, notwithstanding under the terms of the Declaration, no Person shall have any right whatsoever to add to the Community any real property used or to be used as Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use.
  4. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, or word in this Article, or any part hereof is for any reason held by any court of competent jurisdiction to be unconstitutional, invalid, ineffective or otherwise unenforceable, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Association and its membership, by adoption hereof does hereby declare that it has enacted each section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this Article irrespective of the enactment of any other and irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or words be declared unconstitutional, invalid, ineffective or otherwise unenforceable.

ARTICLE XVI  
TERM

The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Community until January 1, 2010, after which time the same shall be extended for successive periods of 10 years each, unless voted to the contrary by 90% of the valid votes cast by Voting Members in good standing via a written ballot ordered for that purpose.

ARTICLE XVII  
AMENDMENT

This Declaration may be amended at any time by the affirmative vote of a majority of the valid ballots cast by Voting Members in good standing via a written ballot ordered for that purpose. Any amendments to the Declaration will become effective upon recordation and the president of the Association shall certify that the required affirmative vote was obtained and the secretary of the Association shall attest to the certification.

ARTICLE XVIII  
RENTING OR LEASING OF LOTS

- A. In order (a) to protect the equity of the Owners in the Association, (b) to carry out the purpose for which the Community was formed by preserving the character of the Community as a residential community of Owner-occupied homes and by preventing the Community from assuming the character of a renter-occupied apartment complex, and (c) to comply with the eligibility requirements for financing in the secondary mortgage market in so far as such criteria provide that the Community shall be substantially Owner-occupied, Lots may be leased only in their entirety; no fraction or portion may be leased. No transient Tenants shall be permitted. No Lots may be subleased.
- B. Occupancy of a residence by a Guest shall be deemed a lease if the Owner is not present at the residence and the Guest is deemed a Tenant and is liable for and required to pay Tenant fees. Even if the Owner is present, any Guest who remains more than thirty (30) days may be deemed to be a Tenant, and in which case is liable for and required to pay Tenant fees.
- C. All Tenants are required to pay Tenant fees as determined and set from time to time by the Board. These Tenant fees give Tenants access to all Amenities as if they were Members. If the Tenant does not pay Tenant fees, then the Owner is responsible and those fees will be assessed against the Owner.
- D. All leases and lessees are subject to the provisions of the Declaration, Bylaws, and Rules and Regulations. The Owner shall make available to the Tenant copies of the Declaration, Bylaws, and Rules and Regulations.

- E. Any lease of a Lot in the Community shall be deemed to contain the provisions of the form lease attached as Exhibit "A" to the Declaration, whether or not expressly therein stated, and each Owner covenants and agrees that if such language is not incorporated into a lease document it shall be deemed to be so incorporated by the existence of this covenant on the Lot. Any lessee, by occupancy in a Lot, agrees to the applicability of this covenant and incorporation of those provisions into the lease.
  
- F. All Owners shall register any and all changes in the status of a rental/leased Lot with the Association, including but not limited to, vacancies, the renewal of leases and new Tenants, within fourteen (14) days. All Owners who lease their Lot(s) at the time of recording this amendment shall register information regarding each Lot with the Association within fourteen (14) days of the recording of this Amendment with the Transylvania County Registry of Deeds. In order to properly register a rental/leased Lot with the Association, the Owner of a rental/leased Lot must provide the Association, through the Board, or their designated representative, the name(s) of the Tenants in the rental/leased Lot, a telephone number by which the Tenant(s) may be contacted by the Association if the need arises and the term of the lease.
  
- G. The failure of any Owner to comply with this section shall be considered a violation of the Declaration. The Association may, after providing the Owner with notice and opportunity to be heard, impose fines up to one hundred dollars (\$100.00) a day pursuant to NCGS 47F-3-107.1 for such a violation.

IN WITNESS THEREOF the undersigned Board of Directors of the Connestee Falls Property Owners Association, hereby adopts and approves the aforesaid amended Declaration of the Connestee Falls Property Owners Association which were duly adopted and approved by the Voting Members of the Association by a majority of votes cast in person or represented by proxy at a meeting duly called for the purpose of amending the Declaration of Connestee Falls Property Owners Association, Inc. this fifteenth day of September, 2016.

(Seal)

Connestee Falls Property Owners Association, Inc.

By:

\_\_\_\_\_  
Carl H. Burkhart, President

Attest:

\_\_\_\_\_  
Michael H. Sanders, Secretary

STATE OF NORTH CAROLINA  
COUNTY OF TRANSYLVANIA

I, Sharon M. Jenkins, Notary Public for said County and State, certify that Michael H. Sanders personally came before me this day and acknowledged that he is secretary of Connestee Falls Property Owners Association, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its president, sealed with its corporate seal, and attested by him as its secretary.

Witness my hand and official seal, this the fifteenth day of September, 2016.

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Sharon M. Jenkins, Notary Public

My commission expires: 11-28-2017.