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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**CULLOWHEE RIVER CLUB**

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Upon recording, please return to:

M. Maxine Hicks, Esq.  
DLA PIPER LLP  
Suite 2800  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
[www.dlapiper.com](http://www.dlapiper.com)

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<u>Exhibit</u>	<u>Subject Matter</u>
“A”	Land Initially Submitted
“B”	Additional Property
“C”	By-Laws of Cullowhee River Club Community Association, Inc.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### FOR

### CULLOWHEE RIVER CLUB

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Cullowhee River Club ("Declaration") is made as of the date set forth on the signature page hereof by Cullowhee River Club, LLC, a Delaware limited liability company (the "Declarant").

Declarant is the owner of the real property described on Exhibit "A," which is attached and incorporated by reference or, if Declarant is not the owner, such owner has consented to this Declaration. This Declaration imposes upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of Cullowhee River Club Community Association, Inc. to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (capitalized terms are defined in Article 1 below).

This Declaration sets forth the basic covenants, conditions and restrictions that will apply to the Properties. One of the anticipated objectives of the Cullowhee River Club master plan is to create a mixed-use community in which the Properties will be developed into Villages. This Declaration is designed to help implement the Cullowhee River Club master plan in order to, among other purposes, fulfill the following:

1. protect, enhance and preserve the values, amenities, desirability, and attractiveness of the Properties;
2. promote Cullowhee River Club as a well-integrated, high-quality community;
3. carry out the vision statement for and mission of Cullowhee River Club as set forth herein;
4. provide for design standards and architectural guidelines that respect the vernacular of the region;
5. preserve and protect the natural habitat and open spaces;
6. encourage creative and innovative land planning that is sensitive to sustainable community formation and existing environmental conditions; and
7. establish a procedure for the continued maintenance and operation of Common Areas, Exclusive Common Areas, and Area of Common Responsibility, including any Improvements located therein, in a cost-effective and administratively efficient manner.

Declarant hereby declares that all of the property described on Exhibit "A" and any Additional Property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties. Declarant further declares that this Declaration does not and is not intended to create a unit owners development pursuant to the North Carolina Unit Ownership Act, N.C.G.S.A. § 47A-1, *et seq.* or a condominium pursuant to the North Carolina Condominium Act, N.C.G.S.A. § 47C-1-101, *et seq.* Pursuant to and subject to the terms and provisions of the North Carolina Planned Community Act as set



forth in N.C.G.S.A. § 47F-1-101, *et seq.*, (the “Act”) Declarant hereby creates a planned community subdivision initially comprised of the property described in Exhibit “A”.

## **ARTICLE 1: DEFINITIONS**

The terms in this Declaration and in the exhibits to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 “Act”: Chapter 47F of the North Carolina General Statutes, which is also known as the North Carolina Planned Community Act as the same may be amended and revised from time-to-time. With respect to any specific references to sections of the Act contained herein, in the event that the Act is amended to cause a re-numbering of any existing sections which are referred to in this Declaration, the section references in this Declaration which correspond to the Act as existing on the date of this Declaration shall be deemed to apply to the re-numbered sections of the Act without the need for amendment to the Declaration caused solely because of the re-assigning of numbers to existing sections of the Act.

1.2 “Additional Property”: All of that certain real property which is more particularly described on Exhibit “B”, which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.3 “ARB”: The Architectural Review Board, as described in Section 9.2.

1.4 “Area of Common Responsibility”: The Common Area, together with any additional areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or other applicable covenant, contract, or agreement.

1.5 “Articles of Incorporation” or “Articles”: The Articles of Incorporation of Cullowhee River Club Community Association, Inc. as filed with the Secretary of State of the State of North Carolina, as they may be amended.

1.6 “Association”: Cullowhee River Club Community Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.7 “Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under North Carolina corporate law.

1.8 “Builder”: Any Person who purchases one (1) or more Lots for the purpose of constructing Improvements thereon for later sale to consumers or who purchases one (1) or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person’s business or who enters into a construction contract with an Owner of a Lot for the construction of a residential dwelling. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing Improvements for later sale to consumers.

1.9 “By-Laws”: The By-Laws of Cullowhee River Club Community Association, Inc. attached as Exhibit “C,” as the same may be amended from time to time.

1.10 “Common Area”: All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use, benefit, and enjoyment of the Owners. The term also shall include any Exclusive Common Area, as defined below. The Common Area may include, but not be limited to, the roads, shared driveways, streets, entrance ways, recreational areas, street lighting and signage located on property owned by the Association or made available for the use and enjoyment of the Owners.

1.11 “Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.12 “Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the ARB.

1.13 “Conservation Trust”: One or more nonprofit entities that may be designated by the Declarant that are qualified to hold conservation easements within or adjacent to the Properties pursuant to Section 170(h) of the Internal Revenue Code of 1986, as amended, or any successor statute.

1.14 “Cost Sharing Agreement”: Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, in the vicinity of, or within the Properties, including any Private Amenity, for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property.

1.15 “Cullowhee River Club”: That certain mixed use commercial and residential community located in Jackson County, North Carolina and commonly known and referred to as Cullowhee River Club.

1.16 “Days”: Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.17 “Declarant”: Cullowhee River Club, LLC, a Delaware limited liability company or any successor, successor-in-title, or assign who holds or takes title to any portion of the property described on Exhibits “A” or “B” for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) Person entitled to exercise the rights and powers of the “Declarant” hereunder at any time.

1.18 “Declarant-Related Entity”: Any Person or entity that is a parent, subsidiary or affiliate of the Declarant, and/or in which the Declarant or any parent, subsidiary or affiliate of the Declarant or any officer, director, shareholder, partner, member, manager or trustee of any of the foregoing, owns, directly or indirectly, not less than thirty-three percent (33%) of such entity.

1.19 “Design Guidelines”: The design, architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.20 “Development and Sale Period”: The period of time during which the Declarant owns any property which is subject to this Declaration, any Additional Property, or any Private Amenity, or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The

Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development and Sale Period by recording a written instrument in the Public Records.

1.21 “Exclusive Common Area”: A portion of the Common Area intended for the exclusive use or primary benefit of one (1) or more, but less than all, Villages or Lots, as more particularly described in Article 2.

1.22 “General Assessment”: Assessments levied on all Lots subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Sections 8.1 and 8.2.

1.23 “Governing Documents”: The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules and regulations of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be supplemented and amended from time to time.

1.24 “Improvement”: Any exterior structure or improvement, broadly defined to include, but not be limited to: dwellings and other buildings of a permanent or temporary nature (with temporary buildings being permitted only during the construction of other Improvements, subject to approval by the ARB); outbuildings or other roofed structures; gazebos or playhouses, swimming pools or hot tubs; construction, erection, placement or removal of any object or item, permanently or temporarily, on the outside portions of the Lot, whether such portion is improved or unimproved; exterior alteration of existing Improvements or changes in exterior color or shape; staking, clearing, excavation, grading and other site work; sediment control devices; underground installations; surface water drainage facilities; slope alterations; berms; installation or replacement of hardscape; streets, roads, driveways, walkways, alley ways, or parking areas or facilities; fences of any kind, including invisible fences, screening walls, retaining walls, walls and other enclosures; dog runs or animal pens; stairs; patios, decks, or balconies; windbreaks; artificial vegetation or sculptures; mailboxes; basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; wood piles; poles, signs, antennas and satellite dishes, utilities, water lines, sewer, electrical and gas distribution facilities, irrigation systems; heating, cooling and air circulation equipment and facilities, including window air conditioning units or fans; solar panels; exterior illumination; planting or removal of trees, shrubs, hedges, or other landscaping materials; and all other structures or landscaping improvements of every type and kind initially or at any time thereafter placed or constructed on any Lot.

1.25 “Legal Costs”: The costs which a Person (including without limitation the Association) entitled to reimbursement for “Legal Costs” under any provision of the Governing Documents incurs in pursuing legal action (regardless of whether suit is filed or whether arbitration or court action is taken) to enforce the Governing Documents, including, but not limited to, reasonable attorneys’ and paralegals’ fees, expert witness fees, and court costs at all tribunal levels.

1.26 “Lot”: A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any Improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, townhouse lots, cottages, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include property owned by the Association, any Village Association, or property dedicated to the public. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Lot.

In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Lot until such time as a subdivision plat or condominium plat is filed with respect to all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

1.27 “Majority”: Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.28 “Master Plan”: The land use plan or development plan for “Cullowhee River Club,” as such plan may be amended from time to time, which plan includes the property described on Exhibit “A” and all or a portion of the Additional Property described on Exhibit “B” that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit “B” from the Master Plan bar its later annexation in accordance with Article 7.

1.29 “Member”: A Person subject to membership in the Association pursuant to Section 3.1.

1.30 “Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.31 “Mortgagee”: A beneficiary or holder of a Mortgage.

1.32 “Occupant”: The Owner(s) or lessee(s) of any Lot and their respective guests, family members, tenants, agents, contractors, licensees and invitees or any other Person who either lawfully or unlawfully occupies or comes upon such Lot.

1.33 “Owner”: One (1) or more Persons who hold the record title to any Lot, including the Declarant and any Builders, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of such Owner.

1.34 “Person”: A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another person or any other legal entity.

1.35 “Plat”: Any subdivision plat of any portion of the Properties recorded in the Public Records and the recorded plat of any Additional Property made subject to the provisions of this Declaration pursuant to the provisions hereof, and any amendments or supplements thereto.

1.36 “Private Amenity”: Any real property and any improvements and facilities thereon that are located adjacent to, in the vicinity of, or within the Properties, designated by Declarant, and owned and operated, in whole or in part, by Persons other than the Association for recreational or other purposes. The use of the term “Private Amenity” shall not be construed to imply or require a private club. Private Amenities may be operated on a club membership, daily fee, use fee, public, or private basis or otherwise.

1.37 “Properties”: The real property described on Exhibit “A” as such exhibit may be amended or supplemented from time to time to reflect any additions or removal of property in accordance with Article 7.

1.38 “Public Records”: The Jackson County, North Carolina Register of Deeds or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.39 “Special Assessment”: Assessments levied in accordance with Section 8.5.

1.40 “Specific Assessment”: Assessments levied in accordance with Section 8.6.

1.41 “Supplemental Declaration”: An instrument filed in the Public Records which subjects Additional Property to this Declaration, designates Villages, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 3.4 which designates Voting Groups, any declaration of covenants, conditions and restrictions, and any declaration of condominium.

1.42 “Village”: A separately developed area within the Properties, whether or not governed by a Village Association (as defined below), in which the Owners of Lots may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, a grouping of single-family attached or detached dwellings may constitute a separate Village, or a Village may be comprised of more than one (1) housing type with other features in common and may include noncontiguous parcels of property. Village boundaries may be established and modified as provided in Section 3.3.

1.43 “Village Assessments”: Assessments levied against the Lots in a particular Village or Villages to fund Village Expenses, as described in Sections 8.1 and 8.3.

1.44 “Village Association”: Any owners association having concurrent jurisdiction with the Association over any Village.

1.45 “Village Expenses”: The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Village or Villages, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Village(s).

1.46 “Voting Group”: One (1) or more Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 3.4 of this Declaration.

## ARTICLE 2: PROPERTY RIGHTS

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and shall pass with the title to each Lot, subject to:

- (a) This Declaration and all other Governing Documents;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Association to rent, lease or reserve any portion of the Common Area to any Owner for the exclusive use of such Owner and his or her respective lessees, invitees, and guests upon such conditions, which conditions may include the payment of reasonable use fees, as may be established by the Board;

(e) The right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area and Exclusive Common Area pursuant to Section 4.3;

(f) The right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area;

(g) The right of the Board to permit the exclusive use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon such conditions, which conditions may include the payment of use fees, as may be established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(i) The right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(j) The rights of certain Owners to the exclusive use, access and enjoyment of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 2.3; and

(k) The right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot, except that an Owner who leases a garage apartment or similar accessory dwelling approved pursuant to Article 9 may extend such rights of use and enjoyment to the lessee of such accessory dwelling without relinquishing such rights for the benefit of the Occupants of the main dwelling on the Lot. Notwithstanding any assignment of such rights, the Owner shall remain responsible for payment of all assessments and other charges.

2.2 Private Streets. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Lot, subject to:

(a) This Declaration and all other Governing Documents;

(b) The right of the Declarant, so long as the Declarant owns the Private Streets, to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Declarant shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;

(c) The right of the Declarant to dedicate all or any part of Private Streets;

(d) The right of the Declarant to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and

(e) The rights of the Declarant and the Association to maintain the Private Streets.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable.

2.3 Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants of specified Lots or Villages. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, roads, shared driveways, landscaped medians and cul-de-sacs, ponds, and other portions of the Common Area within a particular Village or Villages. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed against the Owners of Lots to which the Exclusive Common Areas are assigned either as a Village Assessment or as a Specific Assessment, as applicable.

During the Development and Sale Period, any Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, or in this Declaration, or any Supplemental Declaration and/or on the subdivision Plat relating to such Common Area. Any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Lots and/or Villages during the Development and Sale Period. Following the termination of the Development and Sale Period, a portion of the Common Area may be assigned as Exclusive Common Area of particular Lots or a particular Village or Villages and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Members holding a Majority of the total Class "A" votes in the Association, including, if applicable, a Majority of the Class "A" votes within the Village(s) to which the Exclusive Common Area is assigned, if previously assigned, and within the Village(s) to which the Exclusive Common Area is to be assigned or reassigned. Any reassignment of an Exclusive Common Area shall be set forth in a Supplemental Declaration executed by the Declarant and/or the Board, as appropriate, or shall be shown on a revised subdivision Plat relating to such Exclusive Common Area.

The Association may, upon approval of a Majority of the Class "A" votes within the Village(s) to which any Exclusive Common Area is assigned, permit Owners of Lots in other Villages to use all or a portion of such Exclusive Common Area upon payment of reasonable use fees, which fees shall be used to offset the Village Expenses or Specific Assessments attributable to such Exclusive Common Area.

2.4 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration.

This Section shall not prohibit the Board from acquiring and disposing of other real property which may or may not be subject to this Declaration.

2.5 Condemnation. The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. Whenever any part of the Common Area shall be taken by or conveyed under threat of condemnation to any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance. The Board may convey Common Area under threat of condemnation only if approved by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development and Sale Period, the written consent of the Declarant. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

If the taking or conveyance involves a portion of the Common Area on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) Days after such taking, Members holding at least sixty-seven percent (67%) of the total Class "A" votes of the Association and, during the Development and Sale Period, the Declarant shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 6.1(d) regarding funds for the repair of damage or destruction shall apply.

If the taking or conveyance does not involve any Improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

Notwithstanding the foregoing, should a Lot or a part thereof, or part of the Common Area, or any part of the Properties be acquired by eminent domain, the provisions of Section 47F-1-107 of the Act or any other applicable law as such exists at the time of such taking, shall apply to the taking and to the extent that this Declaration may be inconsistent with the provisions of the Act, the Act shall govern and control.

2.6 View Impairment. Neither the Declarant nor the Association guarantees or represents that any view from Lots over and across the Common Area will be preserved without impairment. The Association shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole discretion, to add trees and other landscaping or to install Improvements or barriers (both natural and artificial) to the Common Area from time to time. In addition, the Declarant may, in its sole and absolute discretion, change the location, configuration, size and elevation of trees, landscaping, other Improvements and barriers (both natural and artificial) from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Each Owner, by acceptance of a deed, acknowledges that any view from the Lot as of the date of the purchase of the Lot may be impaired or obstructed by the natural growth of existing landscaping, the installation of additional trees, other landscaping or other types of Improvements or barriers (both natural and artificial) on the Common Area.

2.7 Subdivision Plats. Declarant reserves the right to record, modify, amend, revise and add to, at any time and from time to time, Plats setting forth such information as Declarant may deem necessary with regard to the Properties, including, without limitation, the locations and dimensions of the Lots, Common Area, Additional Property, roads, utility systems, drainage systems, utility easements, drainage easements, access easements, and set-back line restrictions.



### ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Lot. If a Lot is owned by more than one (1) Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(d) and in the By-Laws. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, manager, partner or trustee of such Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

3.2 Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Each Class "A" Member shall have one (1) equal vote for each Lot in which he or she holds the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.10. All Class "A" votes shall be cast as provided in Section 3.2(d) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all of the members of the Board of Directors until the first to occur of the following:

(i) when one hundred percent (100%) of the total number of Lots permitted by the Master Plan for the property described on Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Persons other than Declarant or Builders;

(ii) December 31, 2039; or

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

At such time, the Class "B" membership shall terminate, and the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns. After termination of the Class "B" membership, the Declarant shall have a right to disapprove actions of the Board, the ARB, and committees as provided in the Declaration.

(c) Additional Classes of Membership. The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article 7, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

(d) Exercise of Voting Rights. If there is more than one (1) Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one (1) Person seeks to exercise it. No vote shall be exercised on behalf of any Lot if any assessment for such Lot is delinquent.

3.3 Villages. Every Lot shall be located within a Village; provided however, unless and until additional Villages are established, the Properties shall consist of one (1) Village. The Declarant, in its sole discretion, may establish Villages within the Properties by designation on Exhibit "A" to this Declaration, a Supplemental Declaration, or a Plat. During the Development and Sale Period, the Declarant may unilaterally amend this Declaration, any Supplemental Declaration, or any Plat from time to time to assign property to a specific Village, to redesignate Village boundaries, or to remove property from a specific Village.

The Owner(s) of a Majority of the total number of Lots within any Village may at any time petition the Board of Directors to divide the property comprising the Village into two (2) or more Villages. Such petition shall be in writing and shall include a survey of the entire parcel which indicates the proposed boundaries of the new Villages or otherwise identifies the Lots to be included within the proposed Villages. Such petition shall be deemed granted thirty (30) Days following the filing of all required documents with the Board unless the Board of Directors denies such application in writing within such thirty (30) Day period. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Villages. All applications and copies of any denials shall be filed with the books and records of the Association. The Owners requesting the division shall be responsible for any expenses incurred with respect to implementing a division of a Village, including but not limited to, a Supplemental Declaration or revised Plat, if the application is approved.

The Lots within a particular Village may be subject to additional covenants and/or the Lot Owners may be members of a Village Association in addition to the Association. However, a Village Association shall not be required except as required by law. Any Village which does not have a Village Association may, but shall not be obligated to, elect a Village Committee, as described in the By-Laws, to represent the interests of Owners of Lots in such Village. No Village Association or Village Committee shall be formed or otherwise established without the prior submission to and written approval of Declarant of all documents creating or establishing such Village Association or Village Committee, including without limitation, the submission of any declaration of condominium, articles of incorporation, by-laws and other organizational and governing documents.

Any Village may request that the Association provide a higher level of service or special services for the benefit of Lots in such Village and, upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Lots within the Village, the Association may, in its sole discretion, provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided any such administrative charge shall apply at a uniform rate per Lot to all Villages receiving the same service), shall be assessed against the Lots within such Village as a Village Assessment pursuant to Article 8 hereof.

Pursuant to Section 47F-3-110 of the Act, Owners of Lots within a Village may be permitted to vote on specific issues provided that the issue being voted on is of special interest solely to such Village Owners and all except a de minimis cost will be assessed solely against the Village Owners. Notwithstanding the foregoing, an issue to be voted upon only by Owners of Lots within a Village shall not be a special interest solely to such Village Owners if the issue being voted on substantially affects the overall appearance of Cullowhee River Club or substantially affects living conditions of Lot Owners not included within the subset of Village Owners.

3.4 Voting Groups. The Declarant may designate Voting Groups consisting of one (1) or more Villages for the purpose of electing directors to the Board. The designation of Voting Groups, if any, shall be to promote representation on the Board of Directors for various groups having dissimilar interests and to minimize the possibility that the Members from similar Villages are able, due to the

number of Lots in such Villages, to elect the entire Board of Directors, excluding representation of others. Following termination of the Class "B" membership, the number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Members within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Class "B" membership by filing with the Association and in the Public Records a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Lots within each Voting Group can easily be determined. Such designation may be unilaterally amended from time to time by the Declarant during the Development and Sale Period.

After expiration of the Declarant's right to amend any designation of Voting Groups as provided above, the Board shall have the right to file or amend any Supplemental Declaration for the purpose of designating Voting Groups. Neither recordation nor amendment of such Supplemental Declaration shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this Section. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

#### **ARTICLE 4:        RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

4.1    Function of Association.    The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all Improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of North Carolina.

4.2    Personal Property and Real Property for Common Use.    The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits "A" or "B," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Declarant shall not be required to make any Improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines, provided that the reconveyance has no material adverse effect upon the rights of the Owners.

The Association agrees that the Common Area, including all Improvements thereon, shall be conveyed in its "where is, as is" condition and without recourse, and Declarant disclaims and makes no representations, warranties or other agreements express or implied with respect thereto, including without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and representations or warranties regarding the conditions, design, construction, accuracy, completeness, adequacy of the size or capacity in relation to utilization or the future economic

performance or operations of the Common Area. No claim shall be made by the Association or any Owner relating to the condition, operation, or completeness of the Common Area or for incidental or consequential damages arising therefrom. Declarant will transfer and assign to the Association, without recourse, all warranties which it receives from manufacturers and suppliers relating to any of the Common Area which exist and are assignable.

Pursuant to Section 47F-3-112 of the Act and notwithstanding anything to the contrary contained herein, the Association may convey or encumber by security interest all or any portion of the Common Area if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to such action. In addition, Exclusive Common Area may be conveyed pursuant to the provisions set forth in Section 47F-3-112 (a) of the Act. Proceeds of the sale or financing of either Common Area or Exclusive Common Area shall be disbursed in accordance with the Act.

Pursuant to Section 47F-3-112 (b) of the Act, the Association, on behalf of the Owners may contract to convey the Common Area or the Exclusive Common Area or to subject the same to a security interest, but the contract shall not be enforceable against the Association until approved pursuant to Section 47F-3-112 (a) of the Act. Once such approval is obtained, the Association shall have all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any Lot Owner or the Association in or to the Common Area or Exclusive Common Area conveyed or encumbered, including the power to execute deeds or other instruments. Any purported conveyance, encumbrance, or other voluntary transfer of Common Area or Exclusive Common Area, unless made pursuant to this Section 4.2 and the Act shall be void. No conveyance or encumbrance of Common Area or Exclusive Common Area may deprive any Lot of its rights to access and support.

4.3 Enforcement. The Board or any committee established by the Board, with the Board's approval, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws. Such sanctions may include, without limitation:

- (a) imposing monetary fines which shall constitute a lien upon the Lot of the violator;
- (b) filing notices of violations in the Public Records providing record notice of any violation of the Governing Documents;
- (c) suspending an Owner's right to vote;
- (d) suspending any Person's right to use any recreational facilities within the Common Area and any part of the Exclusive Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and
- (e) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

In the event that any Occupant, guest or invitee of a Lot violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such Occupant, guest or invitee and/or the Owner of the Lot that the violator is occupying or visiting. If a fine is imposed, the fine may first be assessed against the Occupant; provided however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by exercising self-help (specifically including, but not limited to, the filing of liens in the Public Records for non-payment of assessments and other charges, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Governing Documents) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy Specific Assessments to cover all costs incurred in exercising self-help and in bringing a Lot into compliance with the terms of the Governing Documents.

The Association may also elect to enforce any provisions of the Governing Documents by suit at law to recover monetary damages or in equity to enjoin any violation or both without the necessity of compliance with the procedures set forth in the By-Laws.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, incurred in such action, regardless of whether suit is filed and including any appeals.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce county, township, state and federal laws and ordinances, if applicable, and permit local and other governments to enforce laws and ordinances on the Properties for the benefit of the Association and its Members.

Nothing in this Section 4.3, Section 8.8 hereinbelow or elsewhere in this Declaration shall contravene any rights granted to Owners by the Act or any other applicable federal, state, or local law or regulation. To the extent that anything in this Declaration is in conflict with any such legal requirement, this Declaration shall apply to the fullest extent possible in accordance with the Act or any other applicable law.

It is the intent of the provisions of this Declaration to comply with the Act, and, in the event of repeal of or amendment to the Act, the Association, and during the Development and Sale Period, the Declarant shall have the right to amend this Declaration to comply with the Act.

4.4 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5 Governmental Interests. During the Development and Sale Period, the Declarant may designate sites within the Properties for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. No membership approval shall be required for such designation. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so

directed by Declarant. The sites may include other property not owned by Declarant or the Association, provided the owner of such property consents.

4.6 Indemnification. The Association shall indemnify every officer, director, ARB member and committee member against all damages, liabilities, and expenses, including reasonable attorneys' fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB member or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and North Carolina law.

The officers, directors, ARB members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, ARB members, and committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB members or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, ARB member and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, ARB member or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements across portions of the Common Area to Jackson County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or to any public or private utility company.

4.8 Security. Each Owner and Occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system or measure cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. No representation or warranty is made that the lighting facilities or systems (including the placement thereof) will adequately illuminate or attempt to adequately illuminate all of the Common Areas, or that such facilities or systems will be designed with safety measures in mind. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Lot that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers or guarantors of safety and security within the Properties and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

4.9 Trails. The Declarant reserves for itself, its successors and assigns, and the Association, the right to designate certain areas within the Properties, including the Common Area, to be used as recreational bike, pedestrian and/or trails ("trail system"). The Declarant reserves the right to restrict the

use of certain pathways and trails to specific uses or to otherwise prohibit certain uses. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Properties may contain a trail system and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots adjacent to such trail system resulting from the use of the trail system by the Declarant, the Association, its Members, Occupants, their tenants, guests and invitees and the public.

4.10 Relationship With Tax-Exempt Organizations. The Declarant or the Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations, including but not limited to the Conservation Trust, for the benefit of the Properties. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget. For the purposes of this Section a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, including but not limited to, Sections 501(c)(3) or 501(c)(4) thereof.

4.11 Powers of the Association Relating to Village Associations. The Association may veto any action taken or contemplated by any Village Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also may require specific action to be taken by any Village Association to fulfill its obligations and responsibilities under any Governing Document. For example, the Association may require that specific maintenance or repairs or aesthetic changes be performed by the Village Association. If the Village Association fails to comply with such requirements within a reasonable time as specified in writing by the Association, the Association may effect such action on behalf of the Village Association and assess the Lots within such Village for any expenses incurred by the Association in taking such action. Such assessments may be collected as a Specific Assessment.

4.12 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or a Village Expense, depending on whether the service or facility is provided to all Lots or only the Lots within a specified Village. In addition, the Board shall be authorized to charge use and consumption fees for services and facilities through Specific Assessments or by requiring payment at the time the service or facility is provided. As an alternative, the Association may arrange for the costs of the services and facilities to be billed directly to Owners by the provider(s) of such services and facilities. By way of example, some services and facilities which may be provided include concierge services, landscape maintenance, garbage collection, pest control service, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Class "A" Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to the services and facilities, if any, which will be provided by the Association.

4.13 Rezoning. No Owner or any other Person may apply or join in an application to amend, vary or modify the existing zoning classification, if any, applicable to or rezone or apply for any zoning variance or waiver as to all or any portion of the Properties without the prior written consent of Declarant. Each Person that acquires any interest in the Properties acknowledges that Cullowhee River Club is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or challenge (a) changes in uses or density of property outside the Village in which such Person

owns a Lot, or (b) changes in the Master Plan relating to property outside the Village in which such Person owns a Lot. Declarant may apply for such rezoning as to any portion of the Properties owned by it at any time.

4.14 Presence and Management of Wildlife. Each Owner and Occupant, and each tenant, guest and invitee of any Owner or Occupant acknowledges that the Properties are located adjacent to and in the vicinity of wetlands, bodies of water and other natural areas. Such areas may contain wildlife, including without limitation, snakes. Neither the Association, the Board, the original Declarant, nor any successor Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence of such wildlife on the Properties. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of such wildlife and further acknowledges that the Association, the Board, the original Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the presence of such wildlife.

The Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, to engage in wildlife and fishery management plans and practices on the Properties to the extent that such practices are permitted by applicable state and federal law. The Declarant may assign these management rights to the Association in which event the expenses of such activities shall be funded by General Assessments.

4.15 Conveyance or Dedication of Common Area and/or Roads. The Association, or the Declarant during the Development and Sale Period, may dedicate or convey portions of any Common Area and/or roads within Cullowhee River Club to any local, state, or federal governmental or quasi-governmental entity without obtaining any membership approval. Any dedication of roadways or other property shall be made free and clear of all encumbrances, including but not limited to, this Declaration unless otherwise agreed to by the governmental or quasi-governmental entity. Notwithstanding the foregoing, each Owner, on behalf of itself and its Occupants agrees to comply with any and all use restrictions, rules, covenants, and restrictions established pursuant to the Governing Documents, including but not limited to provisions regarding vehicles, parking, street vending, and use of any dedicated roadways and other property.

4.16 Access by General Public. Certain facilities and areas within the Properties may be open for use and enjoyment of the public, whether by operation of law or by designation as provided in this Section. Such facilities and areas may include, by way of example, lodging facilities, recreational facilities, greenbelts, trails and paths, roads, sidewalks, medians, parks, and other village spots conducive to gathering and interaction. The Declarant may designate such facilities and areas as open to the public during the Development and Sale Period, or the Board may so designate at any time thereafter. Use of such facilities and areas shall be subject to the reasonable rules and regulations of the Association. Each Owner acknowledges, understands and covenants to inform the Occupants of such Owner's Lot, that the Properties may contain such public areas and that there may be certain inconveniences and loss of privacy associated with the ownership of Lots near or adjacent to such public areas resulting from the use of public areas by the Declarant, the Association, its Members, Occupants, their tenants, guests and invitees and the public. Notwithstanding anything to the contrary contained herein, the Association and each Owner and Occupant acknowledge that access to certain facilities has been granted as a personal privilege to certain individuals pursuant to the Operational Obligations Agreement (the "Operational Obligations Agreement") dated August 1, 2013, by and between Ben Haskew Battle, Jr., Trustee for the Ben Haskew Battle, Jr. Revocable Trust dated December 21, 2010, and Tracy Gerald Bailey, Trustee for the Tracy Gerald Bailey Revocable Trust dated December 21, 2010, and the Declarant.



4.17 Future Development. Each Owner acknowledges, understands and covenants to inform all Occupants of its Lot that the Properties and areas adjacent to the Properties are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction. Each Owner, on behalf of such Owner and the Occupants of such Owner's Lot, waives all claims with respect thereto. Each Owner acknowledges and agrees that if Owner or Owner's Occupants enter onto any area of construction, they do so at their own risk, and that the Declarant, the Association, and their respective contractors, agents or employees shall not be liable for any damage, loss or injury to such Persons.

Notwithstanding anything contained in any written letter, document or materials, or oral statement received by any Owner, each Owner acknowledges and agrees that the present plans and themes for the development of Cullowhee River Club may change and that such Owner has not relied on any representation, warranty, or assurance by any Person (a) that any Lots, or other property or facilities, will be added, modified, or eliminated within the Properties; or (b) as to the financial or other impact of such action on any Owner. Each Owner acknowledges and agrees that it is not entitled to rely upon and has not received or relied upon any representations, warranties, or guarantees whatsoever as to the current or future: (a) design, construction, completion, development, use, benefits, or value of property within Cullowhee River Club; (b) number, types, sizes, prices, or designs of any residential or non-residential Improvements built or to be built in any part of Cullowhee River Club; or (c) use or development of any property adjacent to or within the vicinity of Cullowhee River Club.

4.18 Opportunities for Community Interaction. The Association may provide or contract for services and facilities. The Association may make use of computers, the internet, and expanding technology to facilitate interaction and encourage participation in Association activities. For example, the Association may sponsor a Cullowhee River Club cable television channel, create and maintain a community intranet or internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and Occupants to interact and participate in Association-sponsored activities. To the extent North Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices electronically, hold interactive web conferencing Board or Association meetings permitting attendance and voting by electronic means, and electronically send and collect assessments and other invoices.

4.19 Community Education and Training. In recognition of the fact that Owners and other residents who are well-informed regarding their community's structure and governance and their rights and responsibilities in the community, have greater capacity to participate in civic life and in the affairs of the community, the Board may establish education, training, and orientation programs relating to community governance, including "continuing" education programs, for everyone in the Properties. The Board may utilize any appropriate method to achieve these education goals, including a community intranet, learning centers, computer centers, business centers, and coordinated activities with Association committees and Board members.

Community education may begin as early as the marketing stage or the point of sale of property within the Properties and may include orientation classes regarding community structure and governance; the nature, extent, and purpose of the covenants, rules, and regulations; and community-building issues such as the mission for Cullowhee River Club, opportunities to participate in and affect the community's evolution and growth, and general community orientation.

Community governance education is an essential component of living in the Properties. Educating Owners regarding ownership rights, voting privileges, property use restrictions, assessment responsibility, community development, developer turn over or transition, and community activities, should be an ongoing innovative process geared toward including residents of all ages. Governance

education may be offered in the form of seminars, simple question and answer pamphlets, audio/video recordings, through a community cable channel, or through an interactive website. The Board may also coordinate with nationally recognized organizations such as the Urban Land Institute or the Community Associations Institute to offer programs regarding community governance or coordinate with nationally recognized speakers in the field to provide community governance instruction and workshops.

4.20 Community Activities and Clubs. In recognition of the fact that volunteering activities benefit both Cullowhee River Club and the larger community, the Association may promote a volunteer ethic and encourage and facilitate the organization of volunteer organizations within Cullowhee River Club. To accomplish this end, the Association may grant incentives for volunteering, such as exemptions from specific program fees and public recognition of distinguished volunteers and their achievements. The Association also may cooperate with and support outside organizations, such as recreational leagues or cultural organizations, by making facilities available for the organization's use or sponsoring the organization's activities. Additionally, the Association may compile and maintain a data bank of Owners and Occupants interested in volunteering and make such data available to other volunteer organizations.

The Association, in its sole discretion, may establish or support the establishment of "charter clubs" to encourage or facilitate the gathering of people to pursue common interests or hobbies. A charter shall confer privileges and impose responsibilities on the club and its members. For example, the Association may grant privileges including financial support, material support, facility use privileges, either with or without charge, priority for facility use, administrative and technical support, and liability insurance coverage.

The Association may grant charters to any group of individuals who share a particular field of interest. Any Owner or Occupant may submit a written request to the Association for a charter. In its sole discretion, the Association may grant or deny such request. The Association may fund the charter club as a Common Expense and/or require that club members pay use or consumption fees for materials, facilities use, or other club expenses.

The Association may use computer bulletin boards, websites, and publications to assist charter clubs and other community groups, religious groups, civic groups, youth organizations, and support groups in publicizing meetings, events, and the need for volunteer assistance. However, the Association may not fund the specific advertising or promotion of a charter club's events or another volunteer group's events, unless the Association, in its sole discretion, determines that such events or organizations benefit the entire community.

## **ARTICLE 5: MAINTENANCE**

### **5.1 Association's Responsibility.**

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

- (i) all Common Area;
- (ii) all landscaping and other flora, parks, ponds and other water bodies, structures, and improvements, including any entry features, private streets, shared driveways, parking areas, sidewalks, bike and pedestrian pathways/trails situated upon the Common Area, including, without limitation, the proposed riverfront park located adjacent to the river that shall be named "Ben H. Battle, Sr., Park";

(iii) all furnishings, equipment and other personal property of the Association;

(iv) any landscaping and other flora, parks, bike and pedestrian pathways/trails, sidewalks, buffers, entry features, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Cost Sharing Agreement, or any contract or agreement for maintenance thereof entered into by the Association;

(vi) all ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith unless such facilities are located within a Private Amenity and are maintained by the owner of the Private Amenity;

(vii) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and

(viii) the provision of snow removal on the Private Streets and shared driveways within the Properties so as to provide year-round access within Cullowhee River Club to the Lots and Private Amenities.

(b) Declarant may establish specific minimum standards for the maintenance, operation and use of any Area of Common Responsibility in the Governing Documents and/or in the deed or other instrument transferring the property to the Association. Such standards shall become part of the Community-Wide Standard. These standards may contain general provisions applicable to all of the Area of Common Responsibility, as well as specific provisions which vary from one portion of the Area of Common Responsibility to another depending upon the nature of any Improvements located thereon, intended use, location, and/or unique characteristics.

(c) The Association may, as a Common Expense, maintain other property and Improvements which it does not own, including, without limitation, property dedicated to the public, or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(d) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and during the Development and Sale Period the Declarant agree in writing to discontinue such operation.

(e) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to an Owner or a Village Association or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development and Sale Period except with the written consent of the Declarant.

(f) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Village Expense assessed as a Village Assessment solely against the Lots within the Village(s) to which the Exclusive Common Areas are assigned, or a Specific Assessment against the particular Lots to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder. If all Lots within a Village have similar Exclusive Common Areas, the Association may cumulate such expenses and assess the costs as Village Assessments against all Lots within such Village.

(g) In the event that the Association fails to properly perform its maintenance responsibilities hereunder and to comply with the Community-Wide Standard, the Declarant may, upon not less than ten (10) Days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

5.2 Owner's Responsibility. Each Owner shall maintain his or her Lot, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other Improvements on the Lot in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Village Association. In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 8.6(c). The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation. Entry under this Section shall not constitute a trespass.

5.3 Village's Responsibility. Upon resolution of the Board of Directors, the Owners of Lots within each Village shall be responsible for paying, through Village Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Village. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way and greenspace between the Village and adjacent public roads, private streets within the Village, any ponds within the Village, regardless of ownership or the Person performing the maintenance; provided however, all Villages which are similarly situated shall be treated the same.

Any Village Association having responsibility for maintenance within a particular Village pursuant to additional covenants applicable to such Village shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If it fails to do so, the Association may perform such responsibilities and assess the costs as a Specific Assessment against all Lots within such Village as provided in Section 8.6.

5.4 Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Neither the Association, any Owner nor any Village Association shall be liable for any damage or injury occurring on, or arising out of the condition of, property which such Person does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5 Party Walls and Similar Structures.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two (2) adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**ARTICLE 6: INSURANCE AND CASUALTY LOSSES**

6.1 Association Insurance.

(a) Required Coverages. Not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect such types of insurance as set forth in Section 47F-3-113 of the Act, which shall include provisions required by Section 47F-3-113 (c) of the Act, the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable Improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility

to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement costs of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other terms normally excluded from insurance policies. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured Improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6th) of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance.

In the event that any portion of the Common Area is or shall become located in an area identified by the Federal Emergency Management Agency ("FEMA") as an area having special flood hazards, a "blanket" policy of flood insurance on the Common Area must be maintained in the amount of one hundred percent (100%) of current "replacement cost" of all affected Improvements and other insurable property or the maximum limit of coverage available, whichever is less.

In addition, the Association may obtain and maintain property insurance on the insurable Improvements within any Village in such amounts and with such coverages as the Owners in such Village may agree upon pursuant to Section 3.3. Any such policies shall provide for a certificate of insurance to be furnished to the Village Association and to the Owner of each Lot insured upon request.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that (i) premiums for property insurance obtained on behalf of a Village shall be charged to the Owners of Lots within the benefitted Village as a Village Assessment; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Village Assessment of the Village(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Village Expense and assessed in the same manner as the premiums for

the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss resulted from the negligence or willful misconduct of one (1) or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.6.

The Association shall have no insurance responsibility for any portion of the Private Amenities.

(b) Policy Requirements. The Association shall arrange for periodic reviews of the sufficiency of insurance coverage by one (1) or more qualified Persons, at least one (1) of whom must be familiar with insurable replacement costs in the Jackson County, North Carolina area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member upon written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

(i) All insurance coverage obtained by the Board shall:

(1) be written with a company authorized to do business in the State of which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(2) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members; each Member shall be an insured person under the policy to the extent of the Member's insurable interest. Policies secured on behalf of a Village shall be for the benefit of the Owners of Lots within the Village and their Mortgagees, as their interests may appear;

(3) not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees individually;

(4) contain an inflation guard endorsement;

(5) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(6) require at least thirty (30) Days prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(7) provide that the insurer waives its rights to subrogation under the policy against any Owner or member of the Owner's household;

(8) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(9) provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

(ii) In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and manager, the Owners and their tenants, servants, agents, and guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one (1) or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(4) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(5) a cross liability provision; and

(6) a provision vesting the Board with the exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Disbursement of Proceeds. Any loss covered by the property policy described under this Section 6.1 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under the deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. Subject to the provisions of subsection (d) below, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

(d) Damage and Destruction. In the event of any insured loss covered by insurance held by the Association, only the Board or its duly authorized agent may file and adjust insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this subsection, means repairing or restoring the property to substantially the condition existing prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed promptly by the Association unless (i) the planned community is terminated; (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (iii) the Members holding at least eighty percent (80%) of the total Class "A" votes in the Association, including one hundred percent (100%) approval of Owners assigned to any affected Exclusive Common Area decide not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a Common Expense. If any portion of Cullowhee River Club is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of Cullowhee River Club; and (ii); the remainder of the proceeds shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all the Lots. Notwithstanding the above, Section 47F-2-118 of the North Carolina Planned Community



Act (termination of the planned community) governs the distribution of insurance proceeds if Cullowhee River Club is terminated.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable Improvements on his or her Lot, less a reasonable deductible, unless either the Village Association (if any) for the Village in which the Lot is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Lot and the Owner thereof pursuant to Section 8.6.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures or landscaping on or comprising his or her Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure or landscaping consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall also apply to any Village Association that owns common property within the Village in the same manner as if the Village Association were an Owner and the common property was a Lot. Additional recorded covenants applicable to any Village may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Village and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

6.3 Limitation of Liability. Notwithstanding the duty of the Association to maintain and repair portions of the Common Area, neither the Association, its Board of Directors, its successors or assigns, nor any officer or director or committee member, employee, agent, contractor (including the management company, if any) of any of them shall be liable to any Member or any member of a Member's immediate household for any injury or damage sustained in the Area of Common Responsibility, the Common Area or other area maintained by the Association, or for any injury or damage caused by the negligence or misconduct of any Members or their family members, guests, invitees, agents, servants, contractors or lessees, whether such loss occurs in the Common Area or in individual Lots.

Each Owner, by virtue of the acceptance of title to his or her Lot, and each other Person having an interest in or right to use any portion of the Properties, by virtue of accepting such interest or right to use, shall be bound by this Section and shall be deemed to have automatically waived any and all rights, claims, demands, and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed under this Section.

## ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1 Annexation by Declarant. Until twenty five (25) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the Additional Property. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Declarant intends to develop the Properties in accordance with the Master Plan, but reserves the right to modify the Master Plan and any Plat or any portion of the Properties from time to time in its discretion and at its option. Declarant shall not be required to follow any predetermined order of improvement and development within the Master Plan or Properties, and it may annex Additional Property and develop it before completing the development of the Properties. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

7.2 Annexation by Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development and Sale Period, the written consent of the Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the president and the secretary of the Association, and by the owner of the property being annexed, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3 Withdrawal of Property. The Declarant reserves the right to amend this Declaration during the Development and Sale Period for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. By way of example, and not limitation, of the foregoing, a removal of property for the purpose of (i) adjusting boundary lines, (ii) complying with any applicable governmental statute, rule, regulation or judicial determination, (iii) enabling any reputable title insurance company to issue title coverage regarding the Properties or on any portion thereof, (iv) enabling any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots, (v) satisfying the requirements of any local, state or federal governmental agency, or (vi) exempting any tracts of land, either designated now or in the future for nonresidential development, from the provisions of this Declaration, shall be deemed as a permissible withdrawal which is not inconsistent with the overall uniform scheme of development. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall execute a written consent to such withdrawal.

7.4 Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Village Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion, including but not limited to modifications to reflect the different character and intended use of such property.

7.5 Amendment. This Article shall not be amended during the Development and Sale Period without the prior written consent of Declarant.

## **ARTICLE 8: ASSESSMENTS**

8.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four (4) types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Village Assessments for Village Expenses benefitting only Lots within a particular Village or Villages; (c) Special Assessments as described in Section 8.5; and (d) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments and other charges, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment or charge is made until paid, as more particularly provided in Section 8.7. Each such assessment or charge, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Pursuant to Section 47F 3-118(b) of the Act, the Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer or designee setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Village Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment or leasing of such Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association or Board.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

Pursuant to Sections 47F-3-115 (d) - (f) of the Act, assessments to pay a judgment against the Association may be made only against the Lots that existed at the time the judgment was entered, with such assessment to be apportioned equally as provided for in this Declaration. If any expense in maintaining the Common Area or other expense of the Association required by the Governing Documents is caused by the negligence or misconduct of any Owner or Occupant, the Association may assess that expense exclusively against that particular Owner's or Occupant's Lot as a Specific Assessment pursuant to Section 8.6 hereinbelow. If the Association reallocates the apportionment of assessments to a different allocation than as set forth in this Declaration, assessments not yet due and payable shall be recalculated in accordance with such reallocation.

8.2 Computation of General Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4.

General Assessments shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including any reserves. In determining the level of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year, and any income or expense expected to be generated from any Cost Sharing Agreement.

At its option, the Board may include in the budget for the General Assessment, expenses the Association will incur for maintenance of entry features, or other expenses, which while attributable to particular Villages, are similar in nature and amount among the Villages. The base amount common to all Villages shall be paid as a General Assessment, with expenses in excess of the base amount, if any, to be paid as a Village Expense and funded through a Village Assessment.

During the Development and Sale Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future sums due from the Declarant, or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years unless otherwise provided in a written agreement between the Association and the Declarant.

In accordance with Section 47F-3-103(c) of the Act, within thirty (30) Days after adoption of any proposed budget, the Board shall provide to all Owners a summary of the budget and notice of the

meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) Days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless, at that meeting, Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association reject the budget or, during the Development and Sale Period, the Declarant rejects the budget. In the event the proposed budget is rejected, or if the Board fails for any reason to determine the budget for any year, then the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

Notwithstanding anything to the contrary contained herein, pursuant to Section 47F-1-105 of the Act, any extraterritorial common property taxed pursuant to N.C.G.S.A. 105-277.8 shall be assessed, pro rata, among the Owners based on the number of Lots in the Association.

8.3 Computation of Village Assessments. At least thirty (30) Days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Village Expenses for each Village on whose behalf Village Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, any Supplemental Declaration, or the By-Laws specifically authorizes the Board to assess certain costs as a Village Assessment. Any Village may request that additional services or a higher level of services be provided by the Association and, upon approval of Owners in accordance with Section 3.3, any additional costs shall be added to such budget. In addition, any excess expenses over and above the base amount for similar Village expenses paid through the General Assessment shall be added to such budget. Such budget may include a contribution establishing a reserve fund for repair and replacement of capital items maintained as a Village Expense, if any, within the Village. Village Expenses shall be allocated equally among all Lots within the Village(s) benefitted thereby and levied as a Village Assessment.

The Board shall cause a copy of such budget and notice of the amount of the Village Assessment for the coming year to be delivered to each Owner of a Lot in the Village at least thirty (30) Days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by Owners of a Majority of the Lots in the Village to which the Village Assessment applies and, during the Development and Sale Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Lots in such Village. This right to disapprove shall apply only to those line items in the Village budget which are attributable to services requested by the Village. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the Owners within any Village disapprove any line item of a Village budget, the Association shall not be obligated to provide the services anticipated to be funded by such line item of the budget. If the Board fails for any reason to determine a Village budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

All amounts which the Association collects as Village Assessments shall be expended solely for the benefit of the Village for which they were collected and shall be accounted for separately from the Association's general funds.

8.4 Reserve Budget. The Board may, in its sole discretion, annually prepare reserve budgets for both general and Village purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the general and Village budgets reserve amounts sufficient to meet the projected needs of the Association.

8.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against all Lots, if such Special Assessment is for Common Expenses, or against the Lots within any Village if such Special Assessment is for Village Expenses. Special Assessments shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes allocated to Lots which will be subject to such Special Assessment and, during the Development and Sale Period, by the Declarant. All other Special Assessments shall become effective upon approval by the Board. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for in the By-Laws, which petition must be presented to the Board within twenty (20) Days after the date of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or Occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and Occupants (which might include, without limitation, concierge services, landscape maintenance, garbage collection, cable, digital, satellite or similar television service, internet, intranet, and other computer related services, security, caretaker, fire protection, utilities and similar services and facilities), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner;

(b) to cover the costs associated with maintenance, repair, replacement and insurance of any Exclusive Common Area assigned to one (1) or more Lots; and

(c) to cover all costs incurred in bringing the Lot(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or Occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

In addition, fines levied by the Association pursuant to Section 4.3 shall constitute Specific Assessments.

The Association may also levy a Specific Assessment against the Lots within any Village to reimburse the Association for costs incurred in bringing the Village into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules; provided however, the Board shall give prior written notice to the Owners of Lots in the Village and an opportunity for such Owners to be heard before levying any such assessment.

8.7 Lien for Assessments. Any assessments or other charges which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate established by

the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association may file a lien of record against any Lot where there remains an assessment unpaid for a period of thirty (30) Days or longer. Said lien shall be filed in the Public Records in a manner provided therefor by Section 47F-3-116 of the Act. Such lien shall be superior to all other liens, except (i) liens and encumbrances (specifically including, without limitation, 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 and charges against the Lot. The Association may bring an action at law against any Owner personally obligated to pay any assessments, charges, interest or other costs. Costs and reasonable attorneys' fees for the prosecution of any such action shall be added to the amount due. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The registered agent of the Association shall be the trustee for all purposes of the foreclosure proceeding, and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the Lot subject to the lien at public action for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such sale and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by Chapter 45 of the North Carolina General Statutes. The trustee shall be authorized to retain an attorney to represent such trustee in such proceedings. The proceeds of the sale shall, after the trustee retains its commission, together with any additional attorneys' fees incurred by the trustee, be applied to the costs of the sale, including but not limited to costs of collection, taxes, assessments, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the Lot, and any advancements made by the Association in the protection of the security.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.9, including such acquirer, its successors and assigns.

8.8 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the date which the Lot is conveyed to a Person other than a Builder or Declarant or the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The obligation to pay assessments shall commence as to each Lot conveyed by Declarant to a Builder on the date which is eighteen (18) months after the date the Lot is conveyed to the Builder or the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. Once assessments have commenced upon any Lot, the obligation to pay assessments with respect to such Lot shall not be suspended or terminated unless the Lot is reacquired by Declarant, except as otherwise provided herein. The first annual General Assessment and Village Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot and shall be due and payable at closing. The first annual General Assessment and Village Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

8.9 Obligation for Assessments. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all assessments levied in accordance with the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of 18% per annum or the maximum rate permitted by law, whichever is less), late charges as determined by Board resolution, and legal costs, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Special Assessments, if any, on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempted from liability for assessments by non-use of Common Area, abandonment of such Owner's Lot, or any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or for any other reason.

Pursuant to Section 47F-3-118(b) of the Act, the Association shall, upon written request, furnish to any Owner liable for any type of assessment, or the Owner's authorized agent, a written statement signed by an Association officer setting forth the amount of unpaid assessments and other charges against the Lot. Such statement shall be furnished within the (10) business days after receipt of the request and shall be binding on the Association, the Board, and every Owner. Except in circumstances where the written request pertains to unpaid assessments or other charges, the Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

8.10 Exempt Property. The following property shall be exempt from payment of General Assessments, Village Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;



(b) Any property dedicated or otherwise conveyed to and accepted by any governmental authority or public utility;

(c) Any property that is owned by a charitable nonprofit corporation or public agency whose primary purposes include the acquisition and preservation of open space for public benefit and held by such agency or organization for such recreational and open space purposes; and

(d) Property owned by any Village Association, or by the members of a Village Association as tenants-in-common, for the common use and enjoyment of all members within the Village.

8.11 Contributions by Declarant. In accordance with Section 8.2, the Declarant may support the Association by funding operating deficits during the Development and Sale Period. At the sole election of Declarant, Declarant may recoup from the Association all such payments, which amounts may be paid from the operating account of the Association but not from capital reserves. Regardless of whether the Declarant recoups any other deficit amounts, it is not the intention of the Declarant to forfeit refundable reserves or deposits paid by Declarant, nor to pay for deficits created by the nonpayment of assessments by other Owners. It is also not the intention of Declarant to pay for expenses which are otherwise covered in the annual budget of the Association, but which, due to the requirement of an advance payment, create temporary or seasonal deficits. Accordingly, Declarant shall be reimbursed for all amounts paid by Declarant in the funding of deficits caused by the nonpayment of assessments by Owners which, if not sooner paid, shall be paid to Declarant at the time the unpaid assessment is collected. In addition, if not sooner paid, Declarant shall be reimbursed for any refundable deposit upon the Association's receipt of the same.

All deficits shall be collectible by Declarant at any time from excess funds not designated for capital reserves. The Declarant shall have the right to pursue the collection of any unpaid assessments on behalf of the Association, as well as the right to act on behalf of the Association (if necessary) in obtaining refunds of all deposits paid for by Declarant. The Board of Directors, specifically including members of the Board appointed by the Declarant, shall be authorized to execute a promissory note or notes on behalf of the Association to evidence the repayment obligation of the Association; provided however, the failure to execute such a note shall in no way diminish such obligation.

8.12 Responsibility and Assessment for Damages. Pursuant to Section 47F-3-107 of the Act, the following provisions apply: (a) if an Owner is legally responsible for damage inflicted on any Common Area or Exclusive Common Area, the Association may direct such Owner to repair such damage or the Association may itself cause the repairs to be made and to recover the cost of such repairs and any other damages from the responsible Owner through a Specific Assessment pursuant to Section 8.6 above; and (b) if damage is inflicted on any Lot by an agent of the Association in the scope of the agent's activities as such agent, the Association is liable to repair such damage or to reimburse the Owner for the cost of repairing such damage. The Association shall also be liable for any losses to the Owner.

When a claim under either instance in the paragraph immediately hereinabove is less than or equal to the jurisdictional amount established for small claims by N.C.G.S.A. Section 7A-210, any aggrieved party may request that a hearing be held before an adjudicatory panel appointed by the Board to determine if an Owner is responsible for damages to any Common Area or the Association is responsible for damages to any Lot. If the Board fails to appoint an adjudicatory panel to hear such matters, hearings under this Section shall be held before the Board. Such panel shall accord to the party charged with causing damages notice of the charge, opportunity to be heard and to present evidence, and notice of decision. This panel may assess liability for each damage incident against each Owner charged or against the Association not in excess of the jurisdictional amount established for small claims by N.C.G.S.A. Section 7A-210. When the claim under either instance in the paragraph immediately hereinabove exceeds

the jurisdictional amount established for small claims by N.C.G.S.A. Section 7A-210, liability of any Owner charged or the Association shall be determined as otherwise provided by law. Liabilities of Owners determined by adjudicatory hearing or as otherwise provided by law shall be assessments secured by lien under Section 47F-3-116 of the Act and Section 8.7 of this Declaration. Liabilities of the Association determined by adjudicatory hearing or as otherwise provided by law may be offset by the Owner against sums owing to the Association, and if so offset, shall reduce the amount of any lien of the Association against the Lot at issue.

The Association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the Properties.

## **ARTICLE 9:       ARCHITECTURAL STANDARDS**

9.1     General. No exterior structure or Improvement shall be placed, erected, installed or made upon or removed from any Lot or any other portion of the Properties except in compliance with this Article, and with the prior written approval of the appropriate reviewing body under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.3(b).

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer approved pursuant to Section 9.4.

This Article shall not apply to the activities of the Declarant nor to Improvements to the Common Area by or on behalf of the Association nor to Improvements to any Private Amenity made by or on behalf of the owner of such Private Amenity. This Article may not be amended during the Development and Sale Period without the Declarant's written consent.

9.2     Architectural Review. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties acknowledges that, as the developer of the Properties, Declarant has a substantial interest in ensuring that all structures and Improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease any portion of the Properties or the Additional Property. Therefore, the Declarant may, on its behalf, establish an ARB to be responsible for administration of the Design Guidelines and review of all applications for construction and modifications under this Article. In addition, the Board may establish the MC as set forth below. The ARB and the MC are sometimes referred to herein collectively as the reviewing bodies. The reviewing bodies shall consist of one (1) or more Persons who may, but are not required to, be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The reviewing bodies may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. In addition, the reviewing bodies may require deposits while construction is pending on any Lot to ensure completion without damage to the Properties.

(a)     Architectural Review Board. The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. Until one hundred percent (100%) of the Properties have been developed and conveyed to Owners other than Builders and the Declarant and initial construction on each Lot has been completed in accordance with the Design Guidelines, the Declarant retains the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by

Declarant. Upon the expiration or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee ("MC"), all of whom shall be appointed by and shall serve at the discretion of the Board. If established, the MC shall have jurisdiction over modifications, additions, or alterations of Lots, including existing structures and landscaping, after completion of initial construction on the Lot. The MC may delegate its authority as to a particular Village to the Village Association, if any, so long as the MC has determined that such Village Association has in force review and enforcement practices, procedures, and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. The ARB shall have the right to veto any action taken by the MC or a Village Association which the ARB determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the ARB. Upon expiration of the Declarant's right to appoint the members of the ARB, the MC may be eliminated and its duties assumed by the ARB.

### 9.3 Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one (1) portion of the Properties to another depending upon the location, unique characteristics, and intended use. For example, by way of illustration but not limitation, the Design Guidelines may impose stricter requirements on those portions of the Properties adjacent to or visible from any Private Amenity or any pond, river, stream or other body of water. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the reviewing bodies in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the reviewing bodies and compliance with the Design Guidelines does not guarantee approval of any application.

The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only. There shall be no limitation on the scope of amendments to the Design Guidelines except that no amendment shall require the modification or removal of any structure previously approved once the approved construction or modification has commenced. The ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The ARB shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties.

The MC may promulgate detailed procedures and standards governing its area of responsibility, consistent with those set forth in the Design Guidelines and subject to review and approval or disapproval by the ARB. Any architectural guidelines and standards adopted by the MC may be more restrictive than the Design Guidelines, but under no circumstances shall they be inconsistent with the Design Guidelines.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and Improvements shall be submitted to the appropriate reviewing body for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, grading, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the reviewing bodies may consider the quality of workmanship and design, harmony of external design with

existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations.

Each application to the ARB shall be deemed to contain a representation and warranty by the Owner that use of the plans submitted does not violate any copyright associated with the plans. Neither the submission of the plans to the ARB, nor the distribution and review of the plans by the ARB shall be construed as publication in violation of the designer's copyright, if any. Each Owner submitting plans to the ARB shall hold the members of the ARB, the Association and the Declarant harmless and shall indemnify said parties against any and all damages, liabilities, and expenses incurred in connection with the review process of this Declaration.

In reviewing and acting upon any request for approval, the ARB shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary over time. The ARB shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and whether proposed Improvements are consistent with Design Guidelines.

In the event that the ARB or MC fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to Section 9.8.

Notwithstanding the above, the ARB may adopt a streamlined application and review process if an Owner elects to utilize certain pre-approved plans and specifications prepared by a pre-selected and designated architect and/or contracts with a pre-selected and designated Builder for the construction of the Improvements. Furthermore, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, modifications to the interior of screened porches, patios, windows, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(c) Delinquent Assessments and Other Charges. Notwithstanding the provisions of subsection (b) above, any application for the approval of plans and specifications as set forth in this Article shall be deemed to be disapproved unless and until any and all delinquent assessments and other charges permitted by this Declaration have been paid current by the Owner submitting such plans and specifications for approval.

Subsequent to the approval of plans and specifications pursuant to this Article, if the Owner shall become delinquent in the payment of assessments or other charges permitted by this Declaration at any time during the prosecution of the approved work, the Owner shall be deemed to be in violation of such approval and shall be subject to any means of enforcement set forth in Section 9.10 and Section 4.3.

9.4 Architect, Builder and General Contractor Approval. In order to ensure that appropriate standards of construction are maintained throughout the Properties, all architects, Builders and general contractors must be approved by the ARB prior to engaging in any construction activities within the Properties. The ARB may implement an approval process utilizing established criteria and requiring the

submission of a written application for approval. Approval of any plans may be withheld until such time as the Owner's architect, Builder or contractor has been approved by the ARB. Approval of an architect, Builder or general contractor may be conditioned upon an agreement with the ARB to maintain certain insurance coverages required by the ARB, pay construction deposits to ensure completion of a project without damage to the Properties, and pay fees determined by the ARB, from time to time. Both the criteria and the application form are subject to change in the sole discretion of the ARB. The ARB may maintain a list of certain architects, Builders or contractors that have been pre-selected and designated by the ARB. Approval of architects, Builders and contractors may not be construed as a recommendation of a specific architect, Builder or contractor by the ARB or the Declarant, nor a guarantee or endorsement of the work of such architect, Builder or contractor. The criteria and requirements established by the ARB for approval of architects, Builders and contractors are solely for the Declarant's protection and benefit and are not intended to provide the Owner with any form of guarantee with respect to any approved architect, Builder, or contractor. Owner's selection of an architect, Builder, or contractor shall be conclusive evidence that the Owner is independently satisfied with any and all concerns Owner may have about the qualifications of such architect, Builder or contractor. Furthermore, Owner waives any and all claims and rights that Owner has or may have now or in the future, against the ARB or the Declarant.

9.5 Specific Guidelines and Restrictions. In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the reviewing body shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the appropriate reviewing body. The ARB may, but is not required to, adopt additional specific guidelines as part of the Design Guidelines.

(a) Signs. No sign of any kind (including, without limitation political signs) shall be erected by an Owner or Occupant without the prior written consent of the appropriate reviewing body, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size deemed reasonable by the ARB in its sole discretion. Unless in compliance with this Section, no signs shall be posted or erected by any Owner or Occupant within any portion of the Properties, including the Common Area, any Lot, any structure or dwelling located on the Common Area or any Lot (if such sign would be visible from the exterior of such structure or dwelling as determined in the reviewing body's sole discretion) or within any Private Amenity.

The Declarant and the ARB reserve the right to prohibit signs and to restrict the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(b) Tree Removal. No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the appropriate reviewing body; provided however, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees needing to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the appropriate reviewing body. The appropriate reviewing body may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(c) Lighting. Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Lot; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; (6) front house illumination of model homes; or (7) any additional lighting as may be approved by the appropriate

reviewing body. All lights shall be installed or aimed so that they do not present a disabling glare to drivers or pedestrians or create a nuisance by projecting or reflecting objectionable light onto a neighboring property.

(d) Temporary or Detached Structures. Except as may be permitted by the ARB during initial construction, or the MC thereafter, no temporary house, dwelling, garage or outbuilding shall be placed or erected on any Lot. No mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Lot as a temporary or permanent dwelling.

(e) Accessory Structures. With the approval of the ARB, detached accessory structures may be placed on a Lot to be used for a playhouse, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Lot. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the ARB, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot or in a location approved by the ARB. All accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(f) Antennas and Satellite Dishes. No transmission antenna, except for customer-end antennas that receive and transmit fixed wireless signals, may be erected anywhere on the Properties without written approval of the ARB. No direct broadcast satellite ("DBS") antenna or multi-channel multi-point distribution service ("MMDS") larger than one meter (39.37") in diameter shall be placed, allowed, or maintained upon any portion of the Properties, including but limited to any Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may be installed only in accordance with Federal Communications Commission ("FCC") rules and any requirements of the ARB and the Association that are consistent with the rules of the FCC, as they may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as otherwise provided by this subsection, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Properties, whether attached to a structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

(g) Utility Lines. Overhead utility lines, including lines for cable television, are not permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(h) Standard Mailboxes. The ARB reserves the right to approve the style, design, color and location prior to any original installation or replacement of any mailbox. Application shall be made to the ARB prior to installation or replacement of a mailbox. By accepting a deed to a Lot, each Owner agrees that the ARB may remove any nonapproved mailbox in a reasonable manner; all costs for same shall be paid by Owner of such Lot, and all claims for damages caused by the ARB are waived.

(i) Minimum Dwelling Size. The Design Guidelines may establish a minimum square footage of enclosed, heated and cooled living space for residential dwellings, which minimum may vary from one (1) Village to another. Upon written request of an Owner, the ARB may waive the minimum square footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the overall appearance, scheme, design, value and quality within the Properties.

(j) Solar Collecting Panels or Devices. The Declarant recognizes the benefits to be gained by permitting the use of solar energy as an alternative source of electrical power. At the same time, the Declarant desires to promote and preserve the attractive appearance of the Properties and the Improvements thereon, thereby protecting the value generally of the Properties and the various portions thereof. Subject to prior approval of the plans by the ARB, solar collecting panels and other active solar devices may be placed, constructed or maintained upon a Lot so long as such solar collecting panels and devices are placed, constructed and maintained in such location(s) and with such means of screening or concealment as the ARB may deem appropriate to limit, to the extent possible, the visual impact of such solar collecting panels and devices when viewed from any street or from any other property (whether within or outside the Properties).

(k) Flags. No flags or banners of any kind shall be erected, maintained, or displayed by or on behalf of an Owner or Occupant without the prior written consent of the appropriate reviewing body. The Design Guidelines or the ARB, by resolution, may exempt certain flags and banners from the application and approval requirements of this Article. This provision shall not be construed to prohibit, nor shall the Design Guidelines or the ARB prohibit, the display of the United States flag or the flag of the State of North Carolina of a size no greater than four feet by six feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended, governing the display and use of the flag of the United States. In addition, the Design Guidelines may establish requirements regarding the time, place, or manner of display of the United States flag consistent with the requirements of applicable law, including but not limited to the Freedom to Display the American Flag Act of 2005, as such law may be amended from time to time.

(l) Building Restriction. No structure shall be permitted or constructed within one hundred seventy-five (175) feet of the residence of Ben Haskew Battle, Jr., and Tracy Gerald Bailey, as such residence exists as of the date of the Operational Obligations Agreement on property adjacent to the Properties and owned by Ben Haskew Battle, Jr., Trustee for the Ben Haskew Battle, Jr. Revocable Trust dated December 21, 2010.

9.6 Construction Period. After commencement of construction, each Owner shall diligently continue construction to complete such construction in a timely manner. The initial construction of all structures must be completed within one (1) year after commencement of construction, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the appropriate reviewing body at the time the project is approved by the reviewing body.

For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Lot by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued for a dwelling on the Lot by the appropriate jurisdiction.

9.7 No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.8 Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes

of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship requiring the issuance of a variance.

9.9 Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and neither the Declarant, the Association, the Board, the ARB nor the MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Neither the Declarant, the Association, the Board, the ARB or MC or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.10 Enforcement. The Declarant, any member of the ARB, the MC or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether any structure or Improvement is in violation of this Article. Any structure, Improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written notice from the ARB, MC or the Board, Owners shall, at their own cost and expense, cure any violation or nonconformance or remove such structure or Improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore the property as required, any authorized agent of Declarant, the ARB, MC or the Board shall have the right to enter the property, cure or remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, the ARB and the MC by any means of enforcement described in Section 4.3. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Specific Assessment pursuant to Section 8.6.

Unless otherwise specified in writing by the reviewing body granting approval, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment pursuant to Section 8.6.

Neither the ARB, MC or any member of the foregoing nor the Association, the Declarant, or their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB and MC.



9.11 Stop Work Orders. During special events, including but not limited to, educational, cultural, entertainment, promotional, charitable, sporting and other similar events, held, hosted or otherwise conducted within Cullowhee River Club, including but not limited to the Properties, the ARB may, and upon request of the Declarant shall, issue "stop work" orders. "Stop work" orders may prohibit the commencement of or suspend the work on any architectural change, construction, addition, alteration, change, maintenance, repair, reconstruction or other work that is visible or audible from outside a Lot or that may cause an increase in traffic flow, from being performed by an Owner or Builder within the Properties. Any stop work order shall be set forth in writing, shall identify the Lot or Lots subject to the stop work order (if not applicable to all of the Properties), shall set forth the scope of the prohibited and suspended activities and shall specify the start and stop dates for such stop work order, which period of time shall not exceed seven (7) consecutive Days.

## ARTICLE 10: USE RESTRICTIONS

10.1 General. This Article sets out certain use restrictions which must be complied with by all Owners and Occupants of any Lot. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices for Declarant and/or Builders designated by Declarant, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits "A" or "B," offices for any property manager retained by the Association, business offices for the Declarant or the Association and related parking facilities) consistent with this Declaration and any Supplemental Declaration.

10.2 Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by Members holding a Majority of the total Class "A" votes in the Association, and, during the Development and Sale Period, the written consent of the Declarant.

10.3 Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

10.4 Leasing. In order to protect, enhance and preserve the values, amenities, desirability, and attractiveness of the Properties, to protect the equity of the individual Owners, to implement the Cullowhee River Club Master Plan, to preserve the character of community as a blend of short term rental properties and predominantly Owner-occupied homes, and to prevent the Properties from assuming the character of a predominantly renter-occupied community, leasing of Lots shall be governed by the restrictions imposed by this Section. Improved Lots may be leased for residential purposes only. Each Owner acknowledges that the use of improved Lots is primarily intended for single families and is not intended for student rentals. For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, without limitation, a fee, service, or gratuity.

Certain Lots within the Properties may be designated by the Declarant in this Declaration or a Supplemental Declaration as "Resort Lots." Improved Resort Lots may be rented on a short term basis in accordance with rules and regulations adopted by the Board. Prior to the commencement of any short term lease, the Owner shall notify the Board of the lease and provide such information as the Board may

reasonably require, which may include, but shall not be limited to, the name, address, and telephone number of the Lot's Owner and of the tenant; and the date the tenant's occupancy commences and ends.

All leases of improved Lots, except Resort Lots, must be for an initial term of no less than six (6) months. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the lease and the name of the tenant and all other people occupying the Lot.

The Board shall have the power to make and enforce reasonable rules and regulations, to require the inclusion of standard lease term provisions, and to fine, in accordance with the Governing Documents, in order to enforce the provisions of this Section. Any transaction which does not comply with this Section shall be voidable at the option of the Board of Directors.

All leases shall contain a restriction prohibiting occupancy from exceeding two (2) Persons per bedroom in the dwelling on the Lot both as permanent residents or as overnight guests. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Governing Documents. The lease shall also obligate the tenant to comply with the foregoing. The Owner shall be responsible for making a copy of the Governing Documents available to the tenant prior to execution of the lease and shall monitor enforcement and compliance with the Governing Documents by the tenant and all Occupants of the leased Lot. The tenant shall comply with all provisions of the Governing Documents and shall control the conduct of all other Occupants and guests of the leased Lot in order to ensure compliance with the foregoing.

The Owner shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any violation of the Governing Documents. In the event that the tenant, or a person living with the tenant, violates the Governing Documents and a fine is imposed, notice of the violation shall be given to the Owner and the tenant, and such fine may be assessed against the tenant or the Owner in accordance with the Governing Documents. Unpaid fines shall constitute a lien against the Lot.

In addition, the Association shall have the right to enforce the covenants, conditions, and restrictions set forth in the Governing Document against the Owner, the tenant, and/or any Occupant of the Lot, individually or collectively. The Association shall not be bound by any provision in the lease or other agreement between Owner and such Owner's tenant, including, without limitation, those requiring prior notice or imposing other conditions on the rights of the Association. Any violation of the Governing Documents by the tenant, any Occupant, or any person(s) living with the tenant, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the tenant in accordance with North Carolina law. The Association shall be deemed a third party beneficiary of all leases of Lots, and the Owner of each Lot hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the tenant for breaches resulting from the violation of the Governing Documents, including the power and authority to evict the tenant as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the tenant, any costs, including attorneys' fees, court costs and other legal fees, associated with the eviction shall be an assessment and lien against the Lot. Notwithstanding the foregoing, the Association's failure to object to any term or condition of a lease or occupancy arrangement shall not be deemed to be consent or approval of any term or condition of the lease, nor shall the Association have any obligation whatsoever for the performance of any obligation of Owner or tenant contained in the lease or otherwise.

10.5 Residential Use. Lots may be used only for residential purposes of a single family and for ancillary business or home office uses. The maximum occupancy, on either a temporary or permanent

basis, shall not exceed two (2) Persons per bedroom. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the activity conforms to all zoning requirements for the Properties; (c) the activity does not involve regular visitation of the Lot by clients, customers, employees, suppliers, or other invitees or door-to-door solicitation of residents of the Properties; (d) the activity does not increase traffic or include frequent deliveries within the Properties; and (e) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

No other business, trade, or similar activity shall be conducted upon a Lot without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties. In addition, the construction and use of Improvements that would permit multi-generational families to have separate living areas within a Lot shall be deemed to be consistent with single family use of a Lot; provided that such Improvements are constructed in compliance with the requirements of Article 9.

**10.6 Occupancy of Unfinished Dwellings.** No dwelling erected upon any Lot shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed.

**10.7 Parking.** Vehicles shall be parked only in the garages or in the driveways, if any, serving the Lots or in appropriate spaces or areas designated by the Board. Vehicles shall be subject to such reasonable rules and regulations as the Board may adopt, including, without limitation, restrictions limiting or prohibiting overnight parking. The Declarant and/or the Association may designate certain parking areas for visitors or guests. Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery to a Lot or the Common Area. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Governing Documents.

**10.8 Streets.** All Owners and Occupants acknowledge and agree that the use of all public streets and any Private Streets within Cullowhee River Club shall be subject to the provisions of this Declaration regarding use of Common Area, including but not limited to Sections 2.2, 4.15 and 10.7. Specifically, Owners, Occupants and other permitted users of the public streets and any Private Streets shall be obligated to refrain from any actions which would deter from or interfere with the use and enjoyment of the public streets and/or any Private Streets by other authorized users of the streets. Prohibited activities shall include without limitation, violation of parking rules and obstruction of any of the public streets or Private Streets.

**10.9 Use of Common Area.** There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association. With the prior written approval of the Board of Directors, and subject to any restrictions

imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

10.10 Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All permitted pets shall be reasonably controlled by the owner whenever outside a dwelling and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.3. This provision shall not be construed to interfere with any provision under the Americans with Disabilities Act or any similar applicable federal, state or local law, ordinance or regulation. Service animals in active use shall be permitted on the Properties.

10.11 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might, in the sole discretion of the Board, disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property.

No noxious or offensive activity shall be conducted within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Properties. In order to preserve the character of community as a blend of short term rental properties and predominantly Owner-occupied homes and to prevent the Properties from assuming the character of a renter-occupied community, the Board may adopt reasonable rules and regulations regarding disruptive behavior and events. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Lot unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically.

The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or Occupant.

10.12 Storage of Materials, Garbage, and Dumping. All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances in any pond, drainage ditch or stream within the Properties or on

any Common Area, except that fertilizers may be applied to landscaping on Lots provided care is taken to minimize runoff.

Each Owner shall maintain its Lot in a neat and orderly condition throughout initial construction of a residential dwelling and not allow trash or debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Lot shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, shared driveways, easements, swales, and other portions of the Properties clear of silt, construction materials and trash from its activities at all times. Trash and debris during initial construction of a residential dwelling shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Lots and shall not be buried or covered on the Lot. Any Lot on which construction is in progress may be policed prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Lot upon reasonable notice by Declarant in preparation for special events.

10.13 Combustible Liquid. There shall be no storage of gasoline, kerosene, propane, heating or other fuels, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Lot for emergency purposes and operation of lawn mowers, grills, and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.14 Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines and exercise other enforcement remedies as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop any such discharge.

10.15 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed after a subdivision Plat including such Lot has been approved and filed in the Public Records without the Declarant's prior written consent during the Development and Sale Period, and the prior written consent of the ARB thereafter. In addition, no home shall be subdivided or partitioned to create housing for more than a single family, except as set forth in Section 10.5. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots which it owns. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.16 Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped, improved and maintained so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem.

10.17 Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No Improvements, obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties or any Private Amenities with excessive water flow from its Lot. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Lots. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Lot.

(d) Use of any areas designated as "drainage easement areas" on any recorded subdivision Plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the Declarant to enter upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) No Person shall alter the grading of any Lot without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent.

(f) All Persons shall comply with any and all applicable erosion control ordinances and regulations in construction of Improvements on any Lot and in conducting any activity within non-disturbance buffer zones.

10.18 Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor any ponds, or other body of water within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.19 Streams. No streams which run across any Lot may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.20 Wetlands. All areas designated on a recorded Plat as "wetlands" shall be generally left in a natural state, and any proposed alteration of the wetlands must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Lot, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

10.21 Conservation Area. All portions of the Properties designated as conservation areas or conservation easements on a record Plat, if any, shall be known as "conservation areas" and shall be generally left in their natural state. Any proposed alteration of a conservation area, including the removal of fallen limbs, dead trees or other natural debris, shall require the written consent of the ARB, and during the Development and Sale Period, the written consent of the Declarant.

10.22 Mobile Vending. Selling, or offering for sale, or operating any motor vehicle, push cart, catering or food truck for sale of, or conducting any business for the purpose of causing the sale of, goods, merchandise and/or food from any motor vehicle, push cart, or catering or food truck parked, stopped, or standing upon any portion of the Properties or any dedicated roadways or other public property within

Cullowhee River Club shall require the prior approval of the Board. Such approval shall be granted or withheld in the sole discretion of the Board. Prior to any approval, the Board may require submittal of information, the issuance of permits, the payment of fees, and compliance with any rules and operational guidelines adopted by the Board. The approval of the Board shall not supersede any requirement for approval by or permits from any governmental authority and shall not serve as a representation or warranty by the Association that such approvals and permits may be obtained from such governmental authority.

10.23 Public Protests. Picketing, protest marches, sit-in demonstrations, protest speeches, and other forms of public protest or conduct, including, without limitation, displaying signs or placards on a Lot or any vehicle, apparatus or otherwise within public view in the Properties, which tends to vilify, ridicule, denigrate, or impugn the character of Declarant, a Declarant-Related Entity, the Association, their respective officers, directors or employees, or any Owner or Occupant shall be prohibited. Each Owner, by acceptance of the deed to any Lot, shall be deemed to have accepted the foregoing prohibitions as reasonable limitations on such Owner's constitutional right of free speech.

10.24 Site Plan Approval. The Declarant shall have the right to review and approve any subdivision of any portion of the Properties, including the right to approve all preliminary or final site plans and subdivision Plats, Lot lay-outs and street locations. The Declarant shall also have the right to approve the size, density and configuration of any subdivided parcels within the Properties.

10.25 Private Amenities. Owners, Occupants and their pets shall refrain from any actions which would distract from the use of the Private Amenity. Such prohibited activities shall include, but shall not be limited to, burning materials where the smoke will cross a Private Amenity, maintenance of dogs or other pets which interfere with use of Private Amenities due to their loud barking or other actions, or playing of loud radios, televisions, stereos or musical instruments, running, bicycling, skateboarding, walking or trespassing in any way on a Private Amenity.

10.26 Timesharing. No Lot shall be made subject to or be operated as a timesharing, fraction sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in a program on a fixed or floating time schedule over a period of years; provided however, the Declarant may exempt certain Villages from this prohibition and by Supplemental Declaration create a timesharing, fraction sharing, or similar program and supplement, create exceptions to, or modify the terms of this Declaration as it applies to such Villages in order to reflect the different character and intended use of such property.

10.27 Real Estate Sales Offices. During the Development and Sale Period, any real estate brokerage firm designated by Declarant in its sole and absolute discretion shall have the exclusive rights to maintain an office for the sale, rental or management of real estate within the Properties. No part of the Properties may be used as an office for any form of business involving real estate and/or real property, including but not limited to sales, rental, management, development or appraisal of property without the prior written consent of Declarant, which consent may be withheld in the sole and absolute discretion of Declarant. This provision shall inure to the benefit of the designated brokerage firm and shall not be amended by the Association or its Members without the prior written consent of Declarant which may be given or withheld in Declarant's sole and absolute discretion.

## **ARTICLE 11: EASEMENTS**

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, the Owners, and the owners of any Private Amenities, and their successors-in-title.

11.1 Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Lots, between each Lot and any adjacent Common Area, between Common Area and any adjacent Private Amenity, and between each Lot and any adjacent Private Amenity due to the unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2 Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development and Sale Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable, digital or similar television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, shared driveways, walkways, pathways and trails; ponds, wetlands, irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, septic, sewer, telephone, gas, and electricity systems, lines and meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

Declarant may assign to the local water supplier, sewer service provider, electric company, telephone company, natural gas supplier, internet service provider, cable television/satellite service provider or any utility sub-metering company, the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

The Properties are subject to that certain SEPTIC FIELD EASEMENT AGREEMENT made on August 1, 2013, and recorded at Book 2001, Page 319, of the Public Records, by and between Declarant, as Grantor, and BEN HASKEW BATTLE, JR., AS TRUSTEE FOR BEN HASKEW BATTLE, JR., REVOCABLE TRUST DATED DECEMBER 21, 2010, and TRACY GERALD BAILEY, AS TRUSTEE FOR TRACY GERALD BAILEY REVOCABLE TRUST DATED DECEMBER 21, 2010, collectively as Grantee.

(b) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development and Sale Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, and the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" or "B."

(c) Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. Nothing contained herein shall obligate the Declarant, the Association or the Board to pursue legal recourse against any Person damaging a Lot or any portion thereof as a result of the exercise of this easement. The exercise of these easements shall not extend to permitting entry into the



structures on any Lot, nor shall it unreasonably interfere with the use of any Lot, and except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3 Easement for Slope Control, Drainage and Waterway Maintenance. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements, for itself, the owner of any Private Amenity and the Association, and their respective representatives, successors and assigns, contractors and agents, over, across, under, through and upon each Lot for the purposes of:

(a) controlling soil erosion, including grading and planting with vegetation any areas of any Lot which are or may be subject to soil erosion;

(b) drainage of natural or man-made water flow and water areas from any portion of the Properties or any Private Amenity;

(c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Lot or Common Area;

(d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and

(e) installing such pipes, lines, conduits or other equipment as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties or any Private Amenity.

11.4 Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, the owners of Private Amenities, successors-in-title, agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.5 Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant easements for the Association to enter upon any Lot for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement includes the right to enter any Lot to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

#### 11.6 Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, appurtenant rights and easements for the Association to enter all portions of the Properties, including each Lot but excluding the interior of any residential dwelling, to (i) perform its maintenance responsibilities under Section 5.1, and (ii) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

(b) The Association may also enter a Lot, excluding the interior of any residential dwelling, to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, may be assessed against the violator as a Specific Assessment.

(c) Entry under this Section shall not constitute a trespass, and prior notice to the Owner shall not be required except as provided in Section 5.2.

11.7 Easement for Walking Trail Access. Declarant hereby reserves, creates, establishes, promulgates and declares perpetual, non-exclusive easements for itself, its successors, assigns and designees, the Association and the Owners, over and across any areas designated as "walking trails", or "paths" on any recorded subdivision Plat of the Properties regardless of whether such trails or paths are located on Lots or Common Area. Use of such walking trails or paths shall be governed by reasonable rules and regulations promulgated by the Association and those rights set forth in Section 2.1.

11.8 Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Lot, and any Improvement which contributes to the lateral support of another portion of the Common Area, of another Lot, or of a Private Amenity for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.9 Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive appurtenant easement over the Common Area for the purpose of conducting or allowing its designees to conduct educational, cultural, entertainment, promotional or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.10 Rights to Stormwater Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees, including but not limited to the owner of any Private Amenity, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent.

#### 11.11 Easement for Greenbelt Maintenance.

(a) Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon greenbelts, buffer zones and nondisturbance areas located within Cullowhee River Club to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be automatically transferred to the Association at the expiration of the Development and Sale Period or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of greenbelt, buffer zone or nondisturbance area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over, or across greenbelts, buffer zones and nondisturbance areas shown on any recorded subdivision Plat of the Properties is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with Article 9 herein. All Persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

(d) Declarant reserves unto itself the right to designate additional buffers as Declarant deems appropriate or as required by applicable regulations. Declarant hereby reserves a 25' trout buffer and 30' watershed buffer as shown on the Plats.

11.12 Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, the Association, their successors or assigns, including without limitation the owner(s) of any Private Amenities, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision Plat for the Properties, except in cases of willful or wanton misconduct.

11.13 Easements Reserved on Plats. Plats of all or any portion of the Properties recorded by, or with the approval of, the Declarant may contain and reflect the locations of specific utility, drainage, ingress and egress, non-access and other easements ("Platted Easements"). With respect to any Platted Easement, Declarant hereby reserves for itself, its successors, assigns and designees, as well as the Association, and any of its designees, such easement for the purpose of exercising any right or performing any obligation thereto. The Declarant shall have the unrestricted right, without the approval or joinder of any other Person, to designate the use and to alienate, release, or otherwise assign any Platted Easement, unless such easement has been previously conveyed or dedicated. Such Platted Easements may include, without limitation, easements to construct, maintain, and operate water mains, drainage ditches, sewer lines, and other suitable installations for drainage and sewage disposal as well as easements to install, maintain, transmit, and use electricity, gas, telephone, telecommunications, cable systems, and other utilities, whether or not such easements are shown on the Plat to be for drainage, utilities, or any other purposes. The Owner of any Lot subject to a Platted Easement shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under any such Platted Easement area. The Owner of a Lot subject to any Platted Easement shall not construct any Improvements on such Platted Easement areas, nor alter the flow of drainage, nor landscape such areas with hedges, trees, or other landscape items that might interfere with the exercise of such Platted Easement rights. If any Owner constructs any Improvements or installs any landscaping on any Platted Easement area, the Owner of the Lot shall remove, at the Owner's expense, the Improvements or

landscape items upon written request of Declarant, the Association, or the grantee of such Platted Easement. If the Owner fails to promptly remove any Improvements or landscaping located within the Platted Easement area, the Declarant, the Association, or the grantee of the Platted Easement may enter the Lot and remove such Improvements or landscaping at the expense of the Owner, who shall reimburse the cost of removal within fifteen (15) days of demand. The party removing the Improvements or landscaping shall not be responsible for any damage caused by the removal and shall not be required to restore any portion of the Lot damaged by the removal.

## **ARTICLE 12: MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Lot or the Owner or Occupant which is not cured within sixty (60) Days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

12.2 No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

12.4 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5 Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or North Carolina law for any of the acts set out in this Article.

## ARTICLE 13: DECLARANT'S RIGHTS

13.1 Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2 Development and Sales. The Declarant, Declarant-Related Entities and Builders authorized by Declarant may maintain and carry on the Properties such activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant, Declarant-Related Entities and authorized Builders shall have easements over the Properties for access, ingress and conducting such activities.

In addition, the Declarant, Declarant-Related Entities and Builders authorized by Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Lots, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development and Sale Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant, Declarant-Related Entities and authorized Builders shall have easements over the Properties for access, ingress, and egress and use of such facilities.

Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3 Improvements to Common Areas. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such Improvements to the Common Area as it deems appropriate in its sole discretion.

13.4 Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 7.4, may conflict with the Declaration, By-Laws or Articles.

13.5 Right of the Declarant to Disapprove Actions. Until two (2) years following the termination of the Class "B" membership, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant, any Declarant-Related Entity, or Builders under the Governing Documents, or interfere with development of, construction on, or marketing of any portion

of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Governing Documents:

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address the Declarant has registered with the secretary of the Association, which notice complies with the By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at such meeting. The Declarant may waive its right to receive notice in the same manner as provided in the By-Laws.

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Declarant exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

13.6 Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines shall be effective without prior notice to and the written consent of the Declarant, during the Development and Sale Period. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

13.7 Inspection of Common Areas. Declarant hereby reserves the right, in addition to other rights and remedies, at all times after conveyance of the Common Area to the Association, to exercise all rights and easements reserved hereby, including but not limited to, the right to create easements over the Common Area pursuant to Article 11 and to enter the Common Area, without prior notice, and to inspect the condition thereof and the Improvements and facilities thereon, if any. If Declarant determines, in its sole discretion, that the Association has failed to maintain any portion of the Common Area in a manner consistent with the Community-Wide Standard, it may so notify the Association, in writing, and the Association shall promptly perform the required maintenance or repairs. Failure of the Association to maintain the Common Area in a manner consistent with the Community-Wide Standard shall relieve Declarant and any predecessor Declarant of any liability to the Association or to any Member for any condition of the Common Area. Declarant shall have the right to make a record of its inspections by any

means available, including, but not limited to, photographing, filming, and/or videotaping the Common Area, and shall have the right to perform tests or examinations to determine the condition of the Common Area. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Area owned by the Association, and the Association shall not be relieved of its obligation to maintain the Common Area because of the election of Declarant or any predecessor Declarant to inspect or not to inspect or report to the Association the condition of the Common Area.

13.8 Right to Notice or Design of Construction Claims. No Person, including the Association, shall retain an expert for the purpose of inspecting the design or construction of any Improvements within the Common Areas in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing and given an opportunity to meet with the Person and conduct an inspection.

13.9 Liability for Association Operations. The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant and any predecessor Declarant (including, without limitation, their respective Declarant-Related Entities, successors, and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, legal costs), which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Area of Common Responsibility and the collection of assessments.

#### **ARTICLE 14: PRIVATE AMENITIES**

14.1 General. Private Amenities shall not be a portion of the Common Area, and neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities, including any roads, pathways, trails, lodging facilities, or recreational facilities, will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use, extent of use privileges, and number of users; and to require the payment of a purchase price, membership contribution, initiation fee, membership deposit, dues, use charges and other charges for use privileges; and to change, eliminate or cease operation of any or all of the facilities; and to reserve use rights; and to terminate use rights altogether, subject to the terms of any written agreements.

14.2 Conveyance of Private Amenities. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, any Declarant-Related Entity, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenities may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one (1) or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, any Village Association, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

14.3 Limitations on Amendments. In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenities, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity, may be made without the written approval of the owner(s) of the affected Private Amenity. The foregoing shall not apply, however, to amendments made by the Declarant.

## **ARTICLE 15: GENERAL PROVISIONS**

### **15.1 Duration.**

(a) Unless terminated as provided in this Section, this Declaration shall have perpetual duration. If North Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided herein.

(b) Pursuant to §47F-2-118 of the Act the planned community may be terminated by agreement of Lot Owners to which at least eighty percent (80%) of the votes in the Association are allocated. The agreement shall be drafted, executed or ratified, and recorded pursuant to the terms of §47F-2-118 of the Act.

(c) Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### **15.2 Amendment.**

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing. In addition, during the Development and Sale Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. The failure of an amendment to apply uniformly to all Lots shall not constitute a material adverse effect upon the rights of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Owners (i) to correct scrivener's errors and other mistakes of fact, (ii) to remove provisions creating impediments to the implementation, use and operation of advancements in technology or products within the Properties; and (iii) for the purposes of bringing any provision contained herein into compliance with the Fair Housing Amendments Act of 1988, as more fully set forth in Section 15.4, provided that amendments under this provision have no material adverse effect on the title to any Lot unless the Owner of such Lot consents. During the Development and Sale Period, any such amendments shall require the written consent of the Declarant.



(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development and Sale Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Further, amendments to this Declaration that are required by the Act to be recorded by the Association shall be prepared, executed, and certified in accordance with the Act.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant, any Declarant-Related Entity or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, the Declarant-Related Entity or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

15.3 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

15.4 Fair Housing Amendments Act. The provisions of the Governing Documents shall be subordinate to the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, et seq., (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Governing Documents and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Members or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA. Furthermore, notwithstanding Section 2.3 hereof, the Board shall have the unilateral right to assign portions of the Common Area as Exclusive Common Area or to reassign Common Area previously assigned as Exclusive Common Area to one (1) or more Lots to one (1) or more Owner(s) or Occupant(s) should such action be required in order to make a reasonable accommodation under the FHAA.

15.5 Dispute Resolution. Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and to resolve the dispute in an amicable fashion and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) Days from the date of receipt of the notice of hearing by the person requesting the hearing.

15.6 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Members holding eighty percent (80%) of the total Class "A" votes in the Association. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

15.7 Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

15.8 Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants and reservations of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted or reserved in this Declaration.

15.9 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional recorded covenants, restrictions, and declarations applicable to any Village, and the Association may, but shall not be required to, enforce the covenants, restrictions and declarations applicable to any Village; provided however, in the event of a conflict between or among this Declaration and such covenants, restrictions or declarations, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail over those of any Village. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants, restrictions and declarations applicable to any portion of the Properties from containing additional covenants, restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

15.10 Use of "Cullowhee River Club" Name and Logo. No Person shall use the words "Cullowhee River Club" or the logo for "Cullowhee River Club" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Cullowhee River Club" in printed or promotional matter where such terms are used solely to specify that particular property is located within Cullowhee River Club, and the Association and any other community association located in Cullowhee River Club, the Declarant, Declarant-Related Entities and the owner of any Private Amenity shall each be entitled to use the words "Cullowhee River Club" in their names.

15.11 Compliance. Every Owner and Occupant of any Lot shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association, the Declarant, or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy

available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

15.12 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Lot shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. After the transfer of title, the transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board as required pursuant to the By-Laws, notwithstanding the transfer of title.

15.13 Compliance with the Act. It is the intent of the provisions of the Governing Documents to comply with the provisions of the Act, and nothing in the Governing Documents shall contravene or be inconsistent with the Act, or any other applicable federal, state or local law or regulation. To the extent that anything in the Governing Documents conflict with any such legal requirement, the Governing Documents shall comply to the fullest extent possible in accordance with all applicable law. In the event of an amendment of the Act, the Association, and during the Development and Sale Period, the Declarant, shall have the right to amend the Governing Documents to comply with the Act, as required, or, at the Declarant's option, to otherwise exercise any newly created rights to benefit the Association, or during the Development and Sale Period, the Declarant, which result from amendment to the Act or to any other applicable law.

15.14 Exhibits. Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 15.2. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

[Signature on following page]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 17<sup>TH</sup> day of JUNE, 2014.

DECLARANT:

Cullowhee River Club, LLC, a Delaware limited liability company

By: Newell Land Group, LLC, a Georgia limited liability company, its Manager

By: [Signature]  
Name: Tim Newell  
Its: Authorized Signatory

STATE OF North Carolina  
COUNTY OF Jackson

On this 17 day of June, 2014, Tim Newell, personally appeared before me, and acknowledged that he is the Authorized Signatory of Newell Land Group, LLC, a Georgia limited liability company, the Manager of Cullowhee River Club, LLC, a Delaware limited liability company (the "Company") and that by the authority duly given, he executed the foregoing instrument on behalf of and as the act of the Company.

WITNESS my hand and notarial seal at office, this 17 day of June, 2014.

[Signature], Notary Public  
K. Anne Masson  
Print Name here

NOTARY SEAL:

My Commission expires: 11-26-16



**EXHIBIT "A"**

**Land Initially Submitted**

All those certain lots, tracts or parcels of land situate, lying and being in Jackson County, North Carolina, as shown on that certain plat entitled "Final Subdivision Plat of Cullowhee River Club, LLC" (the "Phase 1 Plat") prepared by Joel Johnson Land Surveying, Inc., bearing the seal and certification of R. Joel Johnson, North Carolina Registered Land Surveyor No. L-3882, dated May 28, 2014, recorded May 30, 2014, in Plat Book 20, Slide 425-426, in the Office of the Register of Deeds for Jackson County, North Carolina.

All Lots shown on the Phase 1 Plat are hereby designated by Declarant as Resort Lots.

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**EXHIBIT “B”**

**Additional Property**

All those tracts or parcels of land lying and being within two (2) mile of the perimeter boundary of the land described in Exhibit “A” and located in Jackson County, North Carolina.

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**EXHIBIT "C"**  
**BY-LAWS**  
**OF THE**  
**CULLOWHEE RIVER CLUB COMMUNITY ASSOCIATION, INC.**

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**BY-LAWS**  
**OF**  
**CULLOWHEE RIVER CLUB COMMUNITY ASSOCIATION, INC.**

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**BY-LAWS  
OF  
CULLOWHEE RIVER CLUB COMMUNITY ASSOCIATION, INC.**

**Article I  
Name, Principal Office, and Definitions**

1.1. Name.

The name of the nonprofit corporation is Cullowhee River Club Community Association, Inc. (the “**Association**”).

1.2. Principal Office.

The Association’s principal office shall be located in the State of North Carolina in such location as the Board of Directors (the “**Board**”), determines or as the Association’s affairs require.

1.3. Definitions.

The words used in these By-Laws shall have their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for Cullowhee River Club as it may be amended, or amended and restated, from time to time (“**Declaration**”), unless the context indicates otherwise.

**Article II  
Membership: Meetings, Quorum, Voting, Proxies**

2.1. Membership.

The Association initially shall have two (2) classes of membership, Class “A” and Class “B” as more fully set forth in the Declaration. The Declarant may establish additional classes of membership as set forth in the Declaration. Provisions of the Declaration pertaining to membership are incorporated herein by this reference.

2.2. Change of Membership.

Change of membership in the Association shall be established by recording a deed or other instrument conveying record fee title to any Lot. The grantee named in such instrument shall, by acceptance of such instrument, become a Member of the Association, and the membership of the prior Owner shall terminate. The new Owner shall deliver a copy of the conveyance instrument to the Association within fourteen (14) Days after the conveyance and the new Owner shall not be entitled to voting privileges until the same has been received by the Association. The foregoing shall not, however, limit the Association’s powers or privileges and the new Owner shall be liable for accrued and unpaid fees and assessments attributable to the Lot acquired.

### 2.3. Place of Meetings.

The Association shall hold meetings at its principal office or at such other place as the Board may designate. Meetings may be conducted electronically (*i.e.*, via the Internet, intranet, or teleconference) if and to the extent permitted by law.

### 2.4. Annual Meetings.

The Association shall hold its first meeting, whether a regular or special meeting, within one (1) year after the date of the Association's incorporation. The Board shall set the date and time of subsequent regular annual meetings to occur each year thereafter.

### 2.5. Special Meetings.

The President may call a special meeting of the Association. It also shall be the President's duty to call a special meeting if so directed by Board resolution or upon written petition of Members representing at least ten percent (10%) of the total Class "A" votes in the Association describing the purpose or purposes for which the special meeting is to be held. If the President does not call a special meeting pursuant to this Section within thirty (30) Days after the date such written petition is delivered to the Association's Secretary, any Member signing the petition may set the time and place of the special meeting and give the Association notice pursuant to Section 2.6.

### 2.6. Notice of Meetings.

The Association's Secretary shall cause written notice stating the place, day, and hour of any Association meeting to be given in any manner permitted by applicable law. If permitted by law, notice may be published in a newspaper, or by radio, television, or other form of public broadcast communication in Jackson County, delivered by hand delivery, or sent by facsimile, electronic mail, or other electronic communication device, or such other manner which is reasonably calculated, as the Board determines in its discretion, to provide personal notice to Members. Notice shall be given at least ten (10) Days and, in any event, not more than sixty (60) Days before the date of the meeting, by or at the direction of the President, the Secretary, or the officers or Persons calling the meeting.

The notice of any meeting shall also state the items on the agenda, including, without limitation, the general nature of any proposed amendment to the Governing Documents, any budget changes, and any proposal to remove a director or officer. No other business shall be transacted at a special meeting except as stated in the notice for the special meeting. Unless one-third (1/3) or more of the votes entitled to be cast in the election of directors are represented in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice.

If mailed, the notice of a meeting shall be deemed given when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail, or other electronic communication device, notice shall be deemed delivered when transmitted to the Member at his or her address, e-mail address, or telephone or fax number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

#### 2.7. Waiver of Notice.

Waiver of lack of proper notice of an Association meeting shall be the equivalent of proper notice. Any Member may waive, in writing, lack of proper notice of any Association meeting, either before or after such meeting. A Member's attendance at a meeting shall be deemed a waiver by such Member of lack of proper notice of the meeting, unless the Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of lack of proper notice of all business transacted at the meeting, unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### 2.8. Adjournment of Meetings.

If the Association cannot hold a meeting because a quorum is not present, or if the Members otherwise elect (with the approval of the Declarant during the Development and Sale Period), a Majority of the Members who are present may adjourn the meeting to a time at least five (5) but not more than thirty (30) Days from the date called for the original meeting. Notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Association shall give the Members notice of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

#### 2.9. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference. The Board may adopt policies and procedures regarding the methods of casting votes, such as written ballots, secret ballots or computer access.

#### 2.10. List for Voting.

After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of each Member and the number of votes each is entitled to cast at the meeting. The list for voting shall be made available for inspection in accordance with North Carolina law.

#### 2.11. Proxies.

On any matter as to which a Member is entitled personally to cast the vote for his or her Lot, such vote may be cast in person or by proxy, subject to applicable law.

Every proxy shall be in writing specifying the Lot(s) for which it is given, signed by the Member or his or her duly authorized attorney-in-fact, dated, and filed with the Association's Secretary or person presiding over the meeting prior to or during the roll call for the meeting for which it is to be effective. In accordance with Section 55A-7-24 of the North Carolina Nonprofit Corporation Act, a Member may deliver one (1) or more proxies by an electronic mail message or other form of electronic, wire, or wireless communication that provides a written statement appearing to have been sent by the Member. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, the later, if the timing of the execution thereof can be determined, shall prevail, otherwise both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot(s) for which it was given; (b) the receipt of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is an individual by the Secretary or the person presiding over a meeting of the Association; (c) ninety (90) Days from the meeting date for which the proxy was originally given, unless the proxy specifies a shorter period; or (d) eleven (11) months after the date of the proxy, unless the proxy specifies a shorter period.

2.12. Quorum.

Except as these By-Laws or the Declaration otherwise provide, Members or their proxies entitled to cast ten percent (10%) of the total Class "A" votes in the Association and the Class "B" Member, if such Member exists, shall constitute a quorum at all Association meetings. If no quorum is present at a meeting, the meeting may be adjourned and reconvened on a later date by the affirmative vote of a Majority of those Members present in person or by proxy. At such reconvened meeting, the quorum requirement shall be five percent (5%) of the total Class "A" votes in the Association and the Class "B" Member, if such Member exists. The quorum shall continue to be reduced by fifty percent (50%) from that required at the previous meeting as previously reduced, until such time as a quorum is present and business can be conducted.

2.13. Conduct of Meetings.

The President shall preside over all Association meetings at which he or she is present, and the Secretary shall keep (or cause to be kept) the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.14. Action Without a Meeting.

Any action that may be taken at any annual, regular, or special meeting of the Association may be taken without a meeting if: (i) the Association delivers a written or electronic ballot to every Member entitled to vote on such matter; (ii) without holding a meeting pursuant to Sections 2.4 or 2.5, Members may take any action that applicable law requires or permits the Members to take at a meeting (subject to any limitations in the Governing Documents), if the action is approved by Members representing at least the minimum number of votes in the Association necessary to authorize such action at a meeting, assuming the number of votes cast by written or electronic ballot satisfies equals or exceeds the quorum requirements set forth in Section 2.12; and (iii) at least a Majority of the votes required to constitute a quorum approve such proposed action. Such approval shall be evidenced by one (1) or more written consents specifically authorizing the proposed action, dated and signed by Members holding the requisite votes. A written or electronic ballot shall: (i) set forth each proposed action; (ii) provide an opportunity to vote for or against each proposed action; (iii) indicate the number of responses needed to meet the quorum requirements; (iv) state the percentage of approvals necessary to approve each matter other than election of directors; and (v) specify the time by which a ballot must be received by the Association in order to be counted. Except as provided herein, no written or electronic ballot may be revoked. The Association need not give prior notice before soliciting such consent. Members shall sign, date, and deliver such consents to the Association within sixty (60) Days after the Association's receipt of the earliest dated consent. The Association's Secretary shall file (or cause to be filed) such consents with the Association's minutes and the consents shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the Secretary shall give (or cause to be given) written notice to all Members entitled to vote, fairly summarizing the material features of the authorized action.

2.15. Order of Business.

The order of business at all annual meetings of the Members shall be as follows: (a) roll call to determine whether a quorum is represented; (b) proof of notice of the meeting or waiver of notice; (c) reading of (or waiver of reading) minutes of the preceding annual meeting; (d) reports of officers, if any; (e) reports of committees, if any; (f) election of inspector(s) of election if an election is to be held; (g) election of Class "A" Directors if applicable; (h) unfinished business, if any; and (i) new business.

**Article III**

**Board of Directors: Selection, Meetings, Powers**

A. Composition and Selection.

3.1. Governing Body; Composition.

The Board shall govern the Association's affairs. Each director shall have one (1) vote. Directors must be Members or residents within the Properties, except in the case of directors that the Class "B" Member appoints. A director must be at least eighteen (18) years old. No more than one (1) representative of any Member which is a legal entity, nor more than one (1) occupant of any Lot, shall serve on the Board at a time, except in the case of directors that the Class "B" Member appoints.

3.2. Number of Directors.

The initial Board shall consist of the three (3) directors identified in the Articles of Incorporation. The Board may, by resolution, increase or decrease the number of directors.

3.3. Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. Nominations for election to the Board also may be made by a nominating committee. The nominating committee, if any, shall consist of a Chairman, who shall be a Member, and two (2) or more Members or representatives of Members, all appointed by a Majority of the Board. The nominating committee, if any, may make as many nominations for election to the Board as it shall in its discretion determine. The Board shall also permit nominations from the floor at any election meeting.

The Board shall give each candidate a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. A Member may cast the vote(s) assigned to the Lot(s) which he or she owns for each position to be filled at an election. Cumulative voting is not allowed. That number of candidates equal to the number of positions to be filled who receive the greatest number of votes shall be elected.

#### 3.4. Election and Term of Office.

Notwithstanding any other provision of these By-Laws, at the first Association annual meeting occurring after the termination of the Class "B" membership, or whenever the Class "B" Member earlier determines, two (2) of the directors appointed by the Declarant shall resign and an election shall be held at which the Members shall be entitled to elect two (2) directors. The director receiving the most votes shall serve a term of two (2) years, and the remaining director (or directors if the Board increases the number of directors pursuant to Section 3.2 above) shall serve a term of one (1) year.

Until termination of the Development and Sale Period, the Declarant shall be entitled to appoint, remove and replace one (1) director. Upon termination of the Development and Sale Period, the director appointed by the Declarant shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two (2) years.

Notwithstanding the stated length of any term, directors shall hold office until their respective successors have been elected. Directors elected by the Class "A" Members are hereafter referred to as the **"Class "A" Directors."**

At all elections, each Member may cast all votes assigned to his or her Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

Upon expiration of the term of each Class "A" Director elected pursuant to this subsection and thereafter, a successor shall be elected for a term of two (2) years.

#### 3.5. Removal of Directors and Vacancies.

Any Class "A" Director may be removed, with or without cause, by the vote of Class "A" Members holding a Majority of the votes entitled to be cast for the election of such Class "A" Director. Any Class "A" Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Class "A" Director, a successor shall be elected by the Class "A" Members entitled to elect the Class "A" Director so removed to fill the vacancy for the remainder of such Class "A" Director's term. Class "A" Directors may not be removed by the Class "B" Member.

Any Class "A" Director who has three (3) consecutive unexcused absences from Board meetings, or who is more than sixty (60) Days delinquent (or occupies or represents a Lot for which assessments are so delinquent) in the payment of any assessment or other charge due the Association may be removed by a Majority vote of the Board, excluding the Class "A" Director at issue. If the Class "A" Director is removed, the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members entitled to fill such directorship may elect a successor for the remainder of the term. If they fail to do so, the Board may appoint another director to fill the vacancy until filled by election. Any director that the Board appoints shall be selected from among Members and residents within the Voting Group represented by the director who vacated the position.

This Section shall not apply to directors the Class "B" Member appoints nor to any director serving as Declarant's representative. Such directors may be removed and replaced only by the Class "B"



Member or Declarant. The Class "B" Member or Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.6. Organizational Meetings.

Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.7. Regular Meetings.

The Board may hold regular meetings at such time and place as the Board shall determine, but the Board shall hold at least one (1) such meeting during each fiscal year.

3.8. Special Meetings.

The Board shall hold special Board meetings when called by written notice signed by the President, Vice President, or any two (2) directors.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone (either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director); or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address, each as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least seven (7) Days before the time set for the meeting, except in the event of an emergency. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least seventy-two (72) hours before the time set for the meeting.

(b) Except for emergency meetings, notice of a Board meeting shall be posted in a conspicuous place within the Properties at least forty-eight (48) hours in advance of the meeting or provided in any other manner reasonably anticipated to provide notice to all Members, including, without limitation, publication in an Association newsletter with community-wide circulation, posting on a community cable television channel, or posting on a community Internet or intranet page. In lieu of notice of each regular Board meeting, the Board may post or publish a schedule of upcoming Board meetings.

(c) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the meeting's purpose. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### 3.10. Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a Board or committee meeting by means of telephone or other electronic means, through which all persons participating in the meeting can converse with each other. Participation in this manner shall constitute presence at the meeting for all purposes. Participants attending by electronic means may vote by electronic transmission.

### 3.11. Quorum of Board.

At all Board meetings, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue, notwithstanding the withdrawal of directors, if at least a Majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, the meeting may be adjourned and reconvened on a later date by the affirmative vote of a Majority of those Board members present in person or by proxy. At such reconvened meeting, the quorum requirement shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of quorum. The quorum shall continue to be reduced by fifty percent (50%) from that required at the previous meeting as previously reduced, until such time as a quorum is present and business can be conducted.

### 3.12. Conduct of Meetings.

The President shall preside over all Board meetings at which he or she is present, and the Secretary shall keep (or cause to be kept) a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

### 3.13. Open Meetings; Executive Session.

Subject to the provisions of Section 3.14, all Board meetings shall be open to all Members. However, attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak, and the Board concurs. In such case, the President (or other officer conducting the meeting) may limit the time any such individual may speak. Notwithstanding the foregoing, the Board shall provide Owners an opportunity to attend a portion of a meeting and to speak to the Board about their issues and concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

Notwithstanding the above, the President may call a special Board meeting, or adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss with the Association's attorney matters relating to pending or threatened litigation which are protected by the attorney-client privileges, or to discuss among the Board any other matter of a sensitive nature, if applicable law permits. In such cases, no recording will be permitted.

### 3.14. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all directors sign a consent in writing, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.15. Powers.

The Board shall have all of the powers and duties necessary for administering the Association's affairs and for performing all of the Association's responsibilities and exercising all of the Association's rights as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or applicable law require to be done and exercised exclusively by the membership generally, such as, by way of example and not limitation those items set forth in Section 47F-3-103(b) of the Act.

3.16. Duties.

The Board's duties shall include, without limitation:

- (a) those obligations set forth in the Declaration and elsewhere in these By-Laws;
- (b) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, however, that any reserve funds may be deposited, in the Board's business judgment, in depositories other than banks;
- (c) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association if, in the exercise of its business judgment, it deems it prudent to do so;
- (d) keeping books with detailed accounts of the Association's receipts and expenditures; and
- (e) maintaining, and retaining for the time periods required, the "official records" of the Association, as provided in Chapters 47F and 55A, North Carolina General Statutes, or such other applicable law.

3.17. Compensation.

The Association shall not compensate a director for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf if approved by a Majority of the other directors. In addition, nothing herein shall prohibit the Association from compensating a director for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, which contract or agreement is approved as provided in Section 3.24. The foregoing also applies to any entity with which a director is affiliated.

3.18. Management.

The Board may employ a professional managing agent or agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize and as are otherwise within the scope of the Board's authority. The Board may delegate such powers as are necessary to perform the manager's duties, but shall not delegate policy-making authority or the obligation to adopt a budget. The Board may contract with or employ Declarant or any Declarant-Related Entity as managing agent or manager.

The Board may delegate to one (1) or more of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

### 3.19. Accounts and Reports.

The following management standards of performance shall be followed unless the Board specifically determines otherwise:

(a) Commencing at the end of the quarter in which the first Lot is sold and closed, the Board may prepare financial reports for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on a cash or accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(b) An annual financial report consisting of at least the following shall be prepared within seventy-five (75) Days (or such longer period as is permitted by law) after the close of the fiscal year: (i) a balance sheet showing actual receipts and expenditures; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

The Association shall provide each Owner or its authorized agent a copy of the annual financial report within five (5) Days following receipt of a written request for same. In addition, if applicable law requires, the Association shall send a copy of the annual financial report to each Member by mail or personal delivery following the close of the fiscal year.

The Association, upon written request, shall furnish to an Owner or the Owner's authorized agent a statement setting forth the amount of unpaid assessments and other charges against a Lot. The statement shall be furnished within ten (10) business Days after receipt of the request and shall be binding upon the Association, the Board, and every Owner.

### 3.20. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations.

### 3.21. Fines and Sanctions.

The Association may impose fines, in such amounts as permitted by law, for any violation of the Governing Documents except with regard to assessments. To the extent the Declaration or applicable law specifically requires, the Board shall comply with the following procedures prior to imposition of sanctions:

(a) Notice. The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than fourteen (14) Days within which the alleged violator may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the alleged violator challenges the violation within fourteen (14) Days of the notice. If a timely request for a hearing is not made, or if otherwise permitted by the Governing Documents and applicable law, the sanction stated in the notice shall be imposed. The Board or Covenants Committee may suspend any proposed sanction if the violation is cured, or if a diligent effort is being made to cure, within the fourteen (14)-Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and/or rules by any Person. If a violator repeats the violation, or engages in a similar violation, for which notice was given within twelve (12) months after the date of the first notice, the Board shall have the discretion to impose the proposed sanctions if the alleged violations were one continuous violation without the need to serve the alleged violator with additional notice. The Board may adopt a schedule of sanctions for violations of the Governing Documents; provided, however, that the Board shall not impose a fine that exceeds the limits prescribed by § 47F-3-107.1 of the Act.

(b) Hearing. If the alleged violator requests a hearing within the allotted fourteen (14)-Day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Proof of proper notice shall be placed in the minutes of the meeting. A copy of the notice, together with a statement of the date and manner of delivery signed by the officer, director, or agent who delivered such notice shall be considered adequate proof of notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. A written statement of the results of the hearing and the sanction, if any, imposed shall be filed with the minutes of the Covenants Committee's meetings.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, subject to any limitations set forth in the Declaration, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the Declaration's dispute resolution procedures, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including, without limitation, reasonable Legal Costs actually incurred.

### 3.22. Board Training Seminar.

The Board may provide, or provide for, as a Common Expense, seminars and continuing educational opportunities designed to educate and inform directors of their responsibilities as directors. Such programs may include instruction on applicable corporate and fiduciary law principles, other issues relating to administering the Association's affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, including property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected director and each re-

elected director may be required to complete a training seminar within the first six (6) months of assuming the director position.

### 3.23. Board Standards.

In performing their duties, directors and officers shall act in accordance with § 55A-8-30 of the North Carolina Nonprofit Corporation Act (the “**business judgment rule**”) and are entitled to insulation from liability as provided for directors and officers of corporations by applicable law and as otherwise provided by the Governing Documents.

A director or officer acting in accordance with the business judgment rule shall not be personally liable to the Association or its Members for errors in judgment made in the director’s or officer’s capacity as such. Unless the Governing Documents require that specific action be taken, the failure to take such specific action shall not, without further showing that the Board acted in violation of the business judgment rule, be deemed a violation of a Board duty.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

### 3.24. Conflicts of Interest; Code of Ethics.

Unless otherwise approved by a Majority of the other directors, no Class “A” Director may transact business with the Association or a contractor engaged by the Association during his or her term as director. A Class “A” Director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A Class “A” Director’s failure to make such disclosure shall be grounds for removal by a Majority vote of the other Board members. The Board may void any contract which creates a prohibited conflict of interest.

Notwithstanding the above, the directors appointed by the Class “B” Member may be employed by or otherwise transact business with Declarant or any Declarant-Related Entity, and Declarant and Declarant-Related Entities may transact business with the Association or its contractors.

## **Article IV** **Officers**

### 4.1. Officers.

The Association’s officers shall include a President, Vice President, Secretary, and Treasurer. The officers may, but need not, be Board members, Owners, or residents within the Properties; provided, however, that so long as there is a Class “B” membership, the appointment of officers who are not residents within the Properties shall require the prior written consent of the Class “B” Member. The Board may appoint such other officers, including, without limitation, one (1) or more Assistant Vice Presidents, Assistant Secretaries or Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each Association annual meeting. Officers shall serve until their successors are elected.

4.3. Removal and Vacancies.

Any officer may be removed with or without cause by a vote of at least a Majority of the directors. The Board shall appoint a replacement to fill any vacancy in any office for the unexpired portion of the term.

4.4. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.5. Agreements, Contracts, Deeds, Leases, Checks, and Amendments.

All agreements, contracts, deeds, leases, checks, membership-approved amendments to the Governing Documents, and other Association instruments shall be executed by an officer, unless the Board provides otherwise, or by such other person or persons as the Board may designate by resolution.

4.6. Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.17.

4.7. Powers and Duties.

The Association's officers each shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose.

4.8. President.

The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board at which he or she is present. He or she shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including, but not limited to, the power, subject to the provisions of Article V, to appoint committees from among the Members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board, have general supervision, direction, and control of the business of the Association. The President shall be ex-officio a member of all standing committees, and shall have such other powers and duties as may be prescribed by the Board or these By-Laws.

4.9. Vice President.

The Vice President shall take the place of the President and perform his or her duties whenever the President is absent, disabled, or refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim

basis. The Vice President shall also perform such other duties as shall from time to time be conferred upon him or her by the Board or these By-Laws.

#### 4.10. Secretary.

The Secretary shall keep (or cause to be kept) the minutes of all meetings of the Board and the minutes of all meetings of the Association at the Association's principal office or at such other places as the Board may order. The Secretary shall keep (or cause to be kept) the seal of the Association in safe custody and shall have charge of such books and papers as the Board may direct. The Secretary shall, in general, perform (or cause to be performed) all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notice of meetings of the Members of the Association and of the Board required by these By-Laws or by law to be given. The Secretary shall maintain (or cause to be maintained) a book of record Owners, listing the names and addresses of the Owners furnished by the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot is presented to the Secretary. The Secretary shall perform such other duties as may be prescribed by the Board or these By-Laws. The Secretary may delegate all or a part of such duties to the managing agent.

#### 4.11. Treasurer.

The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records, and business transactions of the Association, including accounts of all assets, liabilities, receipts, and disbursements in books belonging to the Association. The Treasurer shall supervise the preparation of the Association's budget. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board, in accordance with the Declaration and these By-Laws, shall render to the President and the directors, upon request, an account of all of his or her transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these By-Laws. The Treasurer may delegate all or any part of such duties to a finance committee, the managing agent, or both.

### **Article V** **Committees**

#### 5.1. General.

The Board may create such committees and appoint its members, as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution.

Committees shall exercise only such authority as granted by Board resolution; provided, however, that the Board may elect not to follow a committee's advice on any matter. Committees may not act without specific Board authority and may not bind the Association contractually or financially.

#### 5.2. Covenants Committee.

The Board shall, from time to time, appoint a Covenants Committee consisting of three (3) persons to serve as a hearing tribunal pursuant to Section 3.21. The Covenants Committee shall be comprised of Members of the Association who are not directors, officers, or employees of the Association or the spouse, parent, child, brother, or sister of a director, officer, or employee.



### 5.3. Village Committees.

In addition to any other committees appointed as provided above, each Village which has no formal organizational structure or Village Association may elect a Village Committee to determine the nature and extent of services, if any, to be provided to the Village by the Association in addition to those provided to all Members of the Association in accordance with the Declaration. A Village Committee may advise the Board on any issue but shall not have the authority to bind the Board. Such Village Committee, if elected, shall consist of three (3) Members; provided, however, that if approved by the vote of at least a Majority of the Owners of Lots within the Village, the number may be increased to five (5).

Village Committee members shall be elected for a term of one (1) year or until their successors are elected. Any director elected to the Board from a Village shall be an *ex officio* member of the Village Committee. The members of the Village Committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

In the conduct of its duties and responsibilities, each Village Committee shall conduct itself in accordance with the notice, participation, and quorum requirements applicable to the Board under Sections 3.7, 3.8, 3.9 and 3.10. Meetings of a Village Committee shall be open to all Owners of Lots in the Village and their representatives. Members of a Village Committee may act by unanimous written consent in lieu of a meeting.

### 5.4. Other Committees.

In addition to the above, the Board may create additional committees, as it deems necessary and useful. The following are examples of types of committees, along with their purpose, which the Board may create:

(a) Finance Committee – to assist the Board, the Treasurer, and the Association’s managing agent, if any, in preparing the Association’s budget.

(b) Physical Maintenance Committee – to assist the Board with maintenance of the Common Maintenance Areas.

(c) Dispute Resolution Committee – to assist in the mediation of disputes concerning the interpretation of use restrictions, rules, and other Governing Document provisions and advise the Board on initiating litigation involving the Association (as provided in the Declaration); provided, however, that the Dispute Resolution Committee shall not preside over matters relating to the collection of assessments or other fees and charges. Each member of the Dispute Resolution Committee shall attend a Board-approved course on dispute resolution, if the Board so requires.

The Board may establish by resolution the specific scope and limitations on the authority of the above committees.

## **Article VI** **Miscellaneous**

### 6.1. Fiscal Year.

The Association’s fiscal year shall be the calendar year unless otherwise established by Board resolution.

6.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (the edition published on the date closest to the meeting) shall govern the conduct of Association proceedings when not in conflict with applicable law or the Governing Documents.

6.3. Conflicts.

Conflicts between or among the Governing Documents and applicable law shall be resolved as directed in the Declaration.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at reasonable times: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board may establish reasonable rules with respect to: (i) notice to be given to the custodian of the records; (ii) hours and days of the week when such an inspection may be made; (iii) payment of the cost of reproducing documents requested; and (iv) such other matters as the Board deems appropriate. Records shall be made available within five (5) Days of the receipt of a written request by an Owner or his or her authorized agent, or as otherwise required by law.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense. The Board shall provide for such inspection to take place at the Association's office, the managing agent's office, or at a place within the Properties as the Board shall designate.

6.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by applicable law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, by facsimile, electronic mail or other electronic communication device with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; however, if such delivery is refused or if the intended recipient has contracted with the private carrier to leave any deliveries without obtaining a signature evidencing receipt, the notice shall be deemed duly given and effective if the attempt to deliver was timely made;

(iii) if sent by facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

#### 6.6. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, the Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not materially and adversely affect the title to any Lot unless the Owner shall consent thereto in writing. In addition, during the Development and Sale Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any substantive right of any Member.

(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of the Members (i) to correct scriveners' errors and other mistakes of fact, or (ii) to remove provisions creating impediments to the implementation, use and operation of advancements in technology, provided that any amendments under this provision have no material adverse effect on the substantive rights of the Members. During the Development and Sale Period, any such amendment shall require the written consent of the Declarant.

(c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development and Sale Period, the written consent of the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

**CERTIFICATION**

I, the undersigned, do hereby certify:


That I am the duly elected and acting Secretary of Cullowhee River Club Community Association, Inc., a North Carolina nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of the Association, as duly adopted by resolution of the Board of Directors thereof held on the \_\_\_\_ day of \_\_\_\_\_, 2014.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Secretary

[CORPORATE SEAL]

  
Doc ID: 005379370004 Type: DECLAR  
Recorded: 09/05/2017 at 02:47:55 PM  
Fee Amt: \$26.00 Page 1 of 4  
Jackson County, NC  
Joe Hamilton Register of Deeds  
BK **2196** PG **1345-1348**

Upon recording return to:  
M. Maxine Hicks, Esq.  
DLA Piper LLP (US)  
One Atlantic Center  
1201 West Peachtree Street  
Suite 2800  
Atlanta, GA 30309-3450

Cross Reference:  
Book 2037, Page 555  
Book 2195, Page 1774

**SECOND SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CULLOWHEE RIVER CLUB**

THIS SECOND SUPPLEMENTAL DECLARATION is made this \_\_\_\_ day of August, 2017, by Cullowhee River Club, LLC, a Delaware limited liability company (the "Declarant").

**W I T N E S S E T H:**

WHEREAS, Declarant prepared and filed of record that certain Declaration of Covenants, Conditions and Restrictions for Cullowhee River Club at Book 2037, Page 555, *et seq.* in the public land records of Jackson County, North Carolina (the "Declaration"), as supplemented by the Supplemental Declaration of Covenants, Conditions and Restrictions for Cullowhee River Club recorded at Book 2195, Page 1774, aforesaid records (the "Supplemental Declaration");

WHEREAS, pursuant to the terms of Section 7.1 of the Declaration, the Declarant may submit certain additional property described on Exhibit "B" of the Declaration to the terms of the Declaration;

WHEREAS, Declarant is the owner of the real property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Additional Property");

WHEREAS, the Additional Property is a portion of that property described on Exhibit "B" to the Declaration; and

WHEREAS, the Declarant desires to submit the Additional Property to the terms of the Declaration.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit "A" hereof to the provisions of the Declaration and this Supplemental Declaration, which shall apply to such Additional Property in addition to the provisions of the Declaration. Such Additional Property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration and the Declaration, both of which shall run with the title to such Additional Property and shall be binding upon all persons having any right, title, or any interest in such Additional Property, their respective heirs, legal representatives, successors, successors-in-title and assigns. The provisions of this Supplemental Declaration shall be binding upon Cullowhee River Club Community Association, Inc. in accordance with the terms of the Declaration.

## **ARTICLE 1**

### **Definitions**

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference.

## **ARTICLE 2**

### **Amendment to Supplemental Declaration**

This Supplemental Declaration may be amended in accordance with Article 15.2 of the Declaration.

## **ARTICLE 3**

### **Declaration**

Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration the day and year first above written.

**DECLARANT:**

**CULLOWHEE RIVER CLUB, LLC**, a Delaware limited liability company

By: Newell Land Group, LLC, a Georgia limited liability company, its Manager

By: 

Name: Tim Newell

Title: Authorized Signatory

[CORPORATE SEAL]

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

On this 5<sup>th</sup> day of ~~August~~<sup>September</sup>, 2017, Tim Newell, personally appeared before me, and acknowledged that he is the Authorized Signatory of Newell Land Group, LLC, a Georgia limited liability company, the Manager of Cullowhee River Club, LLC, a Delaware limited liability company (the "Company") and that by the authority duly given, he executed the foregoing instrument on behalf of and as the act of the Company.

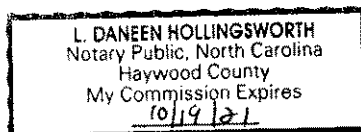
WITNESS my hand and notarial seal at office, this 5<sup>th</sup> day of ~~August~~<sup>September</sup>, 2017.

 \_\_\_\_\_, Notary Public

L. Daneen Hollingsworth  
Print Name here

NOTARY SEAL:

My Commission expires: 10/19/21





**EXHIBIT "A"**

**Additional Property**

All those certain lots, tracts or parcels of land situate, lying and being in Jackson County, North Carolina, as shown on that certain plat entitled "Plat of Survey for Cullowhee River Club, LLC" (the "Plat") prepared by Joel Johnson Land Surveying, Inc., bearing the seal and certification of R. Joel Johnson, North Carolina Registered Land Surveyor No. L-3882, dated August 24, 2017, recorded August 29, 2017, in Plat Cabinet 22, Slide 230, in the Office of the Register of Deeds for Jackson County, North Carolina.

All lots shown on the Plat are hereby designated by Declarant as Resort Lots.



Doc ID: 005885910003 Type: AMEND  
Recorded: 02/12/2020 at 09:45:23 AM  
Fee Amt: \$26.00 Page 1 of 3  
Jackson County, NC  
Joe Hamilton Register of Deeds

BK **2260** PG **1617-1619**

Record and Return to:  
M. Maxine Hicks, Esq.  
DLA Piper LLP (US)  
1201 West Peachtree Street  
Suite 2800  
Atlanta, Georgia 30309

Cross-Reference to:  
Book 2037, Page 555,  
Book 2195, Page 1774,  
Book 2196, Page 1345,  
Book 2200, Page 1741,  
Jackson County, North Carolina  
records

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR CULLOWHEE RIVER CLUB**

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CULLOWHEE RIVER CLUB is made this 20th day of January, 2020, by Cullowhee River Club, LLC, a Delaware limited liability company, (hereinafter referred to as “**Declarant**”).

**WITNESSETH:**

WHEREAS, Declarant prepared and filed of record that certain Declaration of Covenants, Conditions and Restrictions for Cullowhee River Club in Deed Book 2037, Page 555, as supplemented in Deed Book 2195, Page 1774, and further supplemented in Deed Book 2196, Page 1345, and further supplemented in Deed Book 2200, Page 1741, in the Office of the Register of Deeds of Jackson County, North Carolina (as supplemented, herein referred to as the “**Declaration**”);

WHEREAS, pursuant to Article 15, Section 15.2(a) of the Declaration, the Declarant may unilaterally amend the Declaration, at any time and from time to time, for any purpose until the termination of the Class “B” membership;

WHEREAS, the Class “B” membership is still in existence as of the date of this Amendment; and

WHEREAS, Declarant deems it appropriate to amend the Declaration for the purposes set forth herein;

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

**ARTICLE I**  
**DEFINITIONS**

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference.

**ARTICLE II**  
**UTILITY METERS AND IMPACT FEES**

Article 10 of the Declaration is amended by adding the following Section 10.28 thereto:

“10.28 Utility Meters and Impact Fees. To the extent that any leasing activity related to an Improved Lot, including any Resort Lot, results in the requirement to install a separate utility meter, such installation shall be the responsibility of the Owner of such Lot, and such Owner shall be responsible for all costs and expenses, including any impact fees, associated therewith. All leasing activity shall be required to comply with the requirements set forth in Section 10.4 of the Declaration.”

**ARTICLE III**  
**SEPTIC FEES**

Article 10 of the Declaration is amended by adding the following Section 10.29 thereto:

“10.29 Private Sewer System. In conjunction with the construction of a residential dwelling on a Lot, the Owners shall be required to install a Septic Tank Effluent Pumping (“STEP”) system that will pre-treat effluent and pump it to the central collection system. Such system shall be installed on the Lot in compliance with the requirements set forth in the Design Guidelines. The cost for the STEP system shall be included in the estimated construction cost of the Improvements on Lots. All maintenance and inspection costs associated with the sewer disposal system will be the responsibility of the Owner. Such cost may be incurred by the Association and charged as a Specific Assessment to the Owner with an installed STEP system on the Improved Lot.

**ARTICLE IV**  
**DECLARATION**

Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

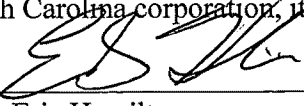
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Amendment to the Declaration the day and year first above written.

**DECLARANT:**

**CULLOWHEE RIVER CLUB, LLC**, a Delaware limited liability company

By: CRC Management, Inc.,  
a North Carolina corporation, its Manager

By:   
Name: Eric Hamilton  
Title: President

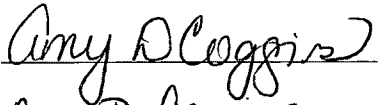
[CORPORATE SEAL]

STATE OF North Carolina

COUNTY OF Jackson

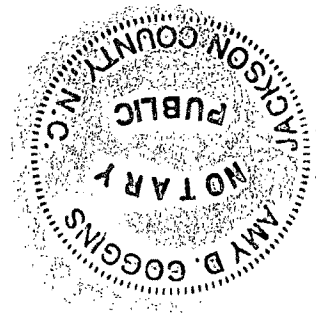
On this 20 day of January, ~~2019~~ <sup>2020</sup>, Eric Hamilton, personally appeared before me, and acknowledged that he is the Authorized Signatory of CRC Management, Inc., the Manager of Cullowhee River Club, LLC, a North Carolina limited liability company (the "Company") and that by the authority duly given, he executed the foregoing instrument on behalf of and as the act of the Company.


WITNESS my hand and notarial seal at office, this 20 day of January, ~~2019~~ <sup>2020</sup>.

, Notary Public  
Amy D. Coggins  
Print Name here

NOTARY SEAL:

My Commission expires: 3-12-2021



  
Doc ID: 005372010004 Type: DECLAR  
Recorded: 08/25/2017 at 04:07:15 PM  
Fee Amt: \$26.00 Page 1 of 4  
Jackson County, NC  
Joe Hamilton Register of Deeds  
BK 2195 PG 1774-1777

Upon recording return to:  
M. Maxine Hicks, Esq.  
DLA Piper LLP (US)  
One Atlantic Center  
1201 West Peachtree Street  
Suite 2800  
Atlanta, GA 30309-3450

Cross Reference:  
Book 2037, Page 555

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR CULLOWHEE RIVER CLUB**

THIS SUPPLEMENTAL DECLARATION is made this 24th day of August 2017, by Cullowhee River Club, LLC, a Delaware limited liability company (the "Declarant").

**W I T N E S S E T H:**

WHEREAS, Declarant prepared and filed of record that certain Declaration of Covenants, Conditions and Restrictions for Cullowhee River Club at Book 2037, Page 555, *et seq.* in the public land records of Jackson County, North Carolina (the "Declaration");

WHEREAS, pursuant to the terms of Section 7.1 of the Declaration, the Declarant may submit certain additional property described on Exhibit "B" of the Declaration to the terms of the Declaration;

WHEREAS, Declarant is the owner of the real property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Additional Property");

WHEREAS, the Additional Property is a portion of that property described on Exhibit "B" to the Declaration; and

WHEREAS, the Declarant desires to submit the Additional Property to the terms of the Declaration.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit "A" hereof to the provisions of the Declaration and this Supplemental Declaration, which shall apply to such Additional Property in addition to the provisions of the Declaration. Such Additional Property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration and the Declaration, both of which shall run with the title to such Additional Property and shall be binding upon all persons having any right, title, or any interest in such Additional Property, their respective heirs, legal representatives, successors, successors-in-title and assigns. The provisions of this Supplemental Declaration shall be binding upon Cullowhee River Club Community Association, Inc. in accordance with the terms of the Declaration.

## **ARTICLE 1**

### **Definitions**

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference.

## **ARTICLE 2**

### **Amendment to Supplemental Declaration**

This Supplemental Declaration may be amended in accordance with Article 15.2 of the Declaration.

## **ARTICLE 3**

### **Declaration**

Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration the day and year first above written.

**DECLARANT:**

**CULLOWHEE RIVER CLUB, LLC**, a Delaware limited liability company

By: Newell Land Group, LLC, a Georgia limited liability company, its Manager

By: [Signature]  
Name: Tim Newell  
Title: Authorized Signatory

[CORPORATE SEAL]

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

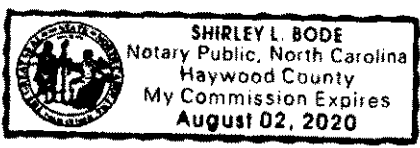
On this 25<sup>th</sup> day of August, 2017, Tim Newell, personally appeared before me, and acknowledged that he is the Authorized Signatory of Newell Land Group, LLC, a Georgia limited liability company, the Manager of Cullowhee River Club, LLC, a Delaware limited liability company (the “Company”) and that by the authority duly given, he executed the foregoing instrument on behalf of and as the act of the Company.

WITNESS my hand and notarial seal at office, this 25<sup>th</sup> day of August, 2017.

Shirley L. Bode, Notary Public

Shirley L. Bode  
Print Name here

NOTARY SEAL:



My Commission expires: August 2<sup>nd</sup>, 2020

**EXHIBIT "A"**

**Additional Property**

All those certain lots, tracts or parcels of land situate, lying and being in Jackson County, North Carolina, as shown on that certain plat entitled "Plat of Survey for Cullowhee River Club, LLC" (the "Plat") prepared by Joel Johnson Land Surveying, Inc., bearing the seal and certification of R. Joel Johnson, North Carolina Registered Land Surveyor No. L-3882, dated May 22, 2015, recorded May 26, 2015, in Plat Cabinet 20, Slide 972, in the Office of the Register of Deeds for Jackson County, North Carolina.

All Lots shown on the Plat are hereby designated by Declarant as Resort Lots.