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20 Town Mountain Road, Ste. 100, Asheville, NC 28801

References: Book 818, Page 591
Book 972, Page 445

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

**AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS FOR
WATERFORD PLACE**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY
OF POLITICAL SIGNS.**

This AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS FOR WATERFORD PLACE (“Amended and Restated Declaration”) is made this the 15th day of May, 2023, by and between Waterford Place Property Owners Association, a North Carolina non-profit corporation, and the present and future Owners of Lots in that subdivision known as Waterford Place, located in Transylvania County, North Carolina, their heirs, successors, and assigns, as said Lots were subjected to that AMENDED AND RESTATED DECLARATION OF RESTRICTIVE COVENANTS FOR WATERFORD PLACE, recorded in Book 972, Page 445, Transylvania County Registry. This Amended and Restated Declaration shall replace in its entirety any and all previous versions of Declarations, or any amendments thereto, once applicable to property located within said Subdivision and described herein.

WITNESSETH:

WHEREAS, Waterford Place Partnership was the original developer of the Waterford Place Community; and

WHEREAS, Waterford Place Partnership created the Community by recording eight separate Declarations, each being identical in their form and effect:

In Deed Book 266, Page 743, Transylvania County Registry, a certain Declaration of Restrictive Covenants, for Lots 1A, 1-14, 28, 29, and 30 of Phase I of Waterford Place, (“Declaration A”), subsequently amended by an amendment thereto which was recorded in Deed Book 495, Page 291, Transylvania County Registry, and further amended by an amendment thereto which was recorded in Deed Book 528, Page 695, Transylvania County Registry;

In Deed Book 264, Page 24, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 15-19, Phase I of Waterford Place, (“Declaration B”), subsequently amended by an amendment thereto which was recorded in Deed Book 479, Page 751, Transylvania County Registry, and further amended by an amendment thereto which was recorded in Deed Book 528, Page 760, Transylvania County Registry;

In Deed Book 269, Page 172, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 20-27 and 31-37, Phase I of Waterford Place, (“Declaration C”), and subsequently amended by an amendment thereto which was recorded in Deed Book 506, Page 116, Transylvania County Registry;

In Deed Book 278, Page 401, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 38-43, Phase I of Waterford Place, (“Declaration D”), and subsequently amended by an amendment thereto which was recorded in Deed Book 514, Page 666, Transylvania County Registry;

In Deed Book 286, Page 707, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 44-53 and 86-90, Phase III of Waterford Place, (“Declaration E”), and subsequently amended by an amendment thereto which was recorded in Deed Book 528, Page 746, Transylvania County Registry;

In Deed Book 285, Page 277, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 56, 57, 58, 59A, and 59B of Phase III of Waterford Place, (“Declaration F”), and subsequently amended by an amendment thereto which was recorded in Deed Book 528, Page 733, Transylvania County Registry;

In Deed Book 314, Page 604, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 1200 and 1201, Phase I of Waterford Place, (“Declaration G”), and subsequently amended by an amendment thereto which was recorded in Deed Book 528, Page 713, Transylvania County Registry;

In Deed Book 336, Page 195, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 1300 and 1301, Phase I of Waterford Place, (“Declaration H”), and subsequently amended by an amendment thereto which was recorded in Deed Book 528, Page 723, Transylvania County Registry; and

WHEREAS, on September 22, 2017, an Amended and Restated Declaration of Restrictive Covenants and Conditions was recorded in Book 818, Page 591, Transylvania County Registry, which consolidated the previously recorded Declarations into one governing document; and

WHEREAS, on September 22, 2017, an Amended and Restated Declaration of Restrictive Covenants and Conditions was recorded in Book 818, Page 591, Transylvania County Registry, which consolidated the previously recorded Declarations into one governing document; and

WHEREAS, in addition to the residential community, Waterford Place Partnership created four condominiums, each with a separate Declaration of Condominium, being Declaration of Unit Ownership of Waterford Place Condominium Eight, CB 4, Page 225; Declaration of Unit Ownership of Waterford Place Condominium Nine, CB 4, Page 362; Declaration of Unit Ownership of Waterford Place Condominium Ten, CB 4, Page 565; and Declaration of Unit Ownership of Waterford Place Condominium Eleven, CB 5, Page 1, with corresponding Condominium Associations for each. The four Condominiums merged in 1989 as evidenced by an Agreement of Merger recorded in CB 6, Page 215 to create the Waterford Place Condominiums of Brevard (the “Condominium(s)”); and

WHEREAS, Waterford Place Partnership also reserved in the Condominiums Declarations the right to create the Waterford Place Property Owners Association and provided that the Units shall be subject to the by-laws and rules of Waterford Place Property Owners Association; this same language was also contained in deeds to the Units; and

WHEREAS, historically the Condominiums have been treated as members of the Association and paid assessments for road maintenance and other Common Elements; and

NOW, THEREFORE, pursuant to G.S. 47F-2-117 of the NCPCA (Amendment of Declaration), and Section D-2 of most recent Amended and Restated Declaration, and for and in

exchange of the mutual covenants and promises given and made herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned for themselves and for their occupants, mortgagees, heirs, executors, administrators, successors, and/or assigns, hereby make and agree to be bound by the covenants, conditions, and restrictions set forth within this RAD including any Instruments incorporated herein by reference, as all may be validly amended or adopted from time to time hereafter.

ARTICLE I DEFINED TERMS AND INTENT

Each term defined in this Article, and as used within this RAD or any other Instruments (as that term is defined hereinbelow) whether capitalized or not, shall be deemed to have the definition set forth immediately thereafter, unless a contrary definition for such term is otherwise clearly established by: (i) any applicable law including but not limited to the NCPCA, (ii) an express statement within any Instrument that such term as used therein shall have a contrary definition, or (iii) the context in which any such term is used where the intent for such term to contain a contrary definition is clear and unambiguous. Terms are defined as follows:

A. **“Articles”** means the Articles of Incorporation of the HOA, originally filed on December 7th, 1983, as validly amended from time to time.

B. **“ARC”** or **“Architectural Review Committee”** shall mean the committee established by the Board of Directors to enforce Architectural Control pursuant to Article 3 A.

C. **“Assessment”** means and refers to all sums levied by the Association against any Lot and its Owners as common expense liabilities, special assessments, specific assessments, fines, late charges, interest, and attorney fees as set forth in this Declaration.

D. **“Association”** shall refer to the Waterford Place Property Owners Association, a North Carolina Nonprofit Corporation.

E. **“Board”** or **“Board of Directors”** means the executive board of the HOA.

F. **“Bylaws”** means the HOA's bylaws as validly amended from time to time.

G. **“Commercial Use”** means the use of a Lot with the objective being gain, profit, benefit, or advantage, either direct or indirect as defined in North Carolina General Statute 105-164.3.1k. Long-term rentals shall not be defined as a Commercial Use.

H. **“Common Elements or Common Property”** shall mean and refer to: (i) roadways and easements for public and private utilities and pedestrian and recreation easements; (ii) any real estate owned by the Association other than a Lot; (iii) any other property designated as such by the Association or this Declaration. or which the Association acquires and accepts as such.

I. **“Common Expenses”** mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. These include: i) Expenses of administration, maintenance, repair, or replacement of the common elements; ii) Expenses defined, referred to, or declared to be common expenses by the Documents or by the Act; (iii) Expenses agreed upon as common expenses by the Association; (iv) Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement, or addition to the common elements or any other real or personal property acquired or held by the Association; and (v) Expenses levied against or which may be allocated to any Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.

J. **“Common Expense Liability”** means the liability for common expenses allocated to each Lot as permitted by the Act, this Declaration, the Bylaws or otherwise by the law.

K. **“Condominium(s)”** shall mean the Waterford Place Condominium Association of Brevard, NC.

L. **“Declarant”** means Waterford Place Partnership, a North Carolina partnership.

M. **“Development”** means Lots 1-14, 28-30, 15-19, 20-27, 31-37, 38-43, 44-53, 86- 90, 56-59B, 1200-1201, and 1300-1301 of the Development of Waterford Place.

N. **“Director”** means a member of the Board.

O. **“HOA”** means the Waterford Place Property Owners Association, a North Carolina nonprofit corporation, formed and serving pursuant to G.S. 47F-3-101 as the lot owners’ association to manage and administer the entire Development of Waterford Place as a single Planned Community in accordance with the NCPCA and the Declaration.

P. **“Instruments”** means without limitation all of the following: This Declaration, the Articles, the Bylaws, the Rules and Regulations, the Plats, the Plans, any exhibits or other documents attached to or incorporated within any of the foregoing as all the same are validly adopted or amended from time to time. All of the Instruments are and shall be incorporated herein by reference.

Q. **“Lease”** means any lease, use, tenancy, sublease, rental contract, or other occupancy agreement for a Lot whether oral or written.

R. **“Long Term Rental”** means the rental of a Dwelling or Lot for a continuous period of 30 days or more in duration as a permanent residence or for vacation, leisure, or recreation purposes by a person who has a place of permanent residence to which he or she intends to return. Long Term Rental is not a “commercial use” as that term is used in Declaration.

S. **“Lot”** shall mean and refer to any parcel of land within the Subdivision, designated for separate ownership or occupancy by an Owner and submitted either by the Declarant; the Owner; or the Owners’ predecessors in title to the provisions contained in this Declaration.

S1. “Condominium Unit(s)” shall be governed by the Declarations of Condominium for Waterford Place Condominium Association of Brevard, NC. The definition of a "Lot" applies to Condominium Unit Owners' rights and interests as Members of the Association for purposes of voting for members of the Board of Directors, voting on amendments to the Bylaws of the Association, paying Common Expense assessments, for the use of the Common Elements subject to common restrictions thereon, and for enjoying all the rights and privileges of members as set forth in the description of community services enumerated in the Waterford Place Rules. One Board seat on the Board of Directors of WPPOA shall be held whenever possible by a Condominium Unit owner. A Condominium Unit owner shall not be entitled to participation in any matter related to the use restrictions contained in this Declaration or to any modification or amendment thereof. This Declaration shall have no impact on the Condominium Declarations or on the separate area or maintenance of the Condominiums.

T. **“Majority”** means greater than fifty percent (50%) in any context, unless a different percentage is expressly required by any applicable Instrument or by law.

U. **“Member”** means an Owner of a Lot.

V. **“NCPCA”** means the North Carolina Planned Community Act as codified in Chapter 47F of the North Carolina General Statutes, as amended from time to time.

W. **“Nuisance”** shall be a term defined by the RRs validly adopted, promulgated, or amended by the Board from time to time.

X. **“Occupant”** means any Person(s), including, without limitation, any guest, invitee, tenant, lessee or licensee of any Owner, occupying, using or otherwise visiting a Lot.

Y. **“Officer”** means an officer of the Board of the Directors of the HOA.

Z. **“Owner”** means an owner of a Lot.

A1. **“Person”** means without limitation a natural person, corporation, trust, estate, partnership, association, joint venture, government, or any other legally recognized entity.

A2. **“Planned Community”** pursuant to the NCPCA means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the declaration. [G.S. 47F-1-103(23)].

A3. **“Plats and Plans”** mean those Plats and/or Plans of the Development validly prepared and recorded by the Declarant or the HOA pursuant to the Acts or other state law in the Transylvania County Registry.

A4. **“Rules and Regulations”** or **“RRs”** means the rules and regulations of the Development validly adopted, promulgated, or amended by the HOA from time to time.

A5. **“RAD”** means this Restated and Amended Declaration, together with any prior Declarations, identified hereinabove as Declarations A-H, and any and all subsequent amendments.

A6. **“Short Term Rental”** means the rental of a Dwelling, Lot, or any part thereof for vacation, leisure, or recreation purposes for fewer than 30 days by a person who has a place of permanent residence to which he or she intends to return. Short Term Rentals are further defined as a “commercial use” and “nuisance” as that term is used in this Declaration.

ARTICLE II RESIDENTIAL AREA COVENANTS

A. LAND USE AND BUILDING TYPE:

Residential Use. All Lots shall be, and the same hereby are, restricted exclusively to single family residential use, and the occupancy thereof shall be subject to such restrictions found herein. Commercial use, as defined in this Declaration, is expressly prohibited. The Board of Directors is given full and complete judgment in its sole discretion, as to whether a proposed use is in violation of the restrictions set forth herein. The Board shall be vested with the authority to grant individual waivers to the foregoing restriction upon such terms and conditions as the Board deems necessary. In no event shall the HOA or any member of the Board have any liability for any judgment or decision made reasonably and in good faith under this paragraph. No building shall be erected, altered placed or permitted to remain on any lot other than one detached, single-family dwelling, and an attached private garage or carport in which personal cars may be stored. Boats and trailers may also be stored in garages so long as the garage doors remain closed so that such boats and trailers are not visible from the street or from adjoining lots. No vehicle, recreational vehicle, travel trailer, shed, container, or tent may be used as residence at any time.

B. SUBDIVISION PROHIBITED:

No subdivision. No lot shall be subdivided.

C. DWELLING SIZE:

Dwelling Size. The ground floor of the main structure of any dwelling erected or placed on any lot, exclusive of one story open porches and garages, which is in existence after June 1, 2009, shall be not less than 1,450 square feet of enclosed living space for one story dwellings, nor less than 2,600 square feet of enclosed living space for a structure of more than one story. Structures completed prior to June 1, 2009 shall be grandfathered under the prior size restrictions and shall not be considered to be in violation of this covenant.

D. BUILDING LOCATION:

Building Location. With the exception of those buildings which were in existence on October 1, 2022, no building shall be located on any lot nearer to the front lot line or nearer to the side lot line than the minimum building setback line shown on the recorded plat. In any event no building which is erected or placed on any lot after October 1, 2022, shall be located on any lot nearer than thirty (30) feet to the front lot line or six (6) feet of the edge of the road right of way.

E. EASEMENTS:

1. **Common Element Easements.** There shall exist the following easements from each Lot Owner subject to this Declaration to the Association for the benefit of the Association and each other Lot Owner (as the case may be):
 - a. **Across Common Elements.** Easements through the common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of the Documents; and
 - b. **Across Lots.** Easements through the Lots, and common elements for maintenance, repair, and replacement of the common elements. Use of these easements, however, for access to the Lots shall be limited to reasonable hours, except that access may be had at any time in case of emergency; and
 - c. **Utilities.** Easements through the Lots and through the common elements for all facilities for the furnishing of utility services, which facilities shall include, but not be limited to, conduits, drainage, plumbing, and wiring.
2. **Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all the Planned Community for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewers, storm drainage and storm water collection facilities, gas, telephones, and electricity. An easement is further granted to all police, fire protection, ambulance, and all similar persons to enter upon the common elements in the performance of their duties. Further, an easement is hereby granted to the Association, its respective officers, agents, and employees, and to any management company selected by the Association to enter in or to cross over the common elements provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, drains, electrical lines, water lines, or other utilities may be installed or relocated on said property except as approved by the Board. Should any utility company furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on the Planned Community.
3. **Platted Easements.** Any other easement shown on any recorded plat of the Subdivision.

F. NUISANCES:

1. **Nuisance.** It shall be the responsibility of each lot owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her lot. No lot 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 plant, substance, animal, thing, device or material be kept upon any lot that will be noxious, noisy, dangerous, unsightly, or unpleasant or which will emit foul or obnoxious odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Development. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, except in areas specifically designated by the

Association, or in containers specifically designated for such purpose, nor shall any odors be permitted, so as to render any portion of the Development unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Development.

2. **Offensive Activities.** Noxious or offensive activities shall not be carried on upon any portion of the Development or within any dwelling or other building located thereupon, or in any part of the Common Elements. Each Owner and Occupant shall refrain from any act or use of their Lot or the Common Elements which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the other Owners and Occupants, or which would result in the cancellation of insurance on any portion of the Common Elements, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on the Development. The right to determine whether any animal, substance, thing, device, material, or activity is noxious or offensive within the meaning of this section is reserved exclusively to the Board of Directors of the Association.

G. TEMPORARY STRUCTURES:

Temporary Structures Prohibited. No motor vehicles or structures of a temporary character, including, but not limited to, any trailer, tractor trailer, single-wide or double-wide mobile home/ manufactured home (except for that manufactured home which is currently existing as of the date of this amendment), recreational vehicle(s), tent, shack, garage, carport, shed or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

H. SIGNS:

Signs. With the exception of such reasonable and appropriate signs which the Association may place on property which is owned by the Association (the Common Elements), and one "For Sale" sign not to exceed 18" by 24" in size which each lot owner shall be entitled to place on such owner's lot advertising the lot for sale, no signs shall be placed on any lot. However, each lot owner shall have the right to erect a mailbox on his or her lot with the property address inscribed thereon provided that the type of mailbox, the manner that the property address has been inscribed thereon and the support post for such mailbox has been approved by the ARC.

I. LIVESTOCK, PETS AND POULTRY:

1. **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, fish, caged birds, or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes and that whenever such dogs and cats are not inside of the single-family dwelling or garage on the lot on which they are kept, dogs must be restrained by leashes or invisible fences. Livestock (horses, ponies, cows, sheep, goats, chickens and ducks), exotic and unconventional animals, wild animals, and pets potentially hazardous to neighbors are not allowed to be kept by owners on their lot as pets.
2. **Pet Limits.** Pets shall be limited to two per household. Pets for the purpose of this rule are defined as dogs and cats.
3. **Pet Control and Noise.** In general, pets should be managed so as not to be a nuisance to one's neighbors. Dogs shall be kept under the owner's control and shall be on a leash when off the owner's property. Cats shall be kept under the owner's control and not become a nuisance to other residents. Pets shall also not cause any excessive noise which disturbs the neighboring properties.
4. **Pet Waste.** Pet litter (feces) shall be removed by the owner from residential areas and community property.

5. **Feeding Wild Animals.** The presence of wild animals and Canada geese in our neighborhoods affects the safety of residents and requires the following limitations. It is permissible to feed wild birds (except Canada geese), squirrels, rabbits, and ground squirrels. However, if feeding these permitted creatures encourages other non-permitted creatures such as skunks, raccoons, bears, and deer to feed as well, then such activity shall be considered a nuisance and therefore not permitted.

J. GARBAGE AND REFUSE DISPOSAL:

1. **Garbage.** No lot shall be used or maintained for a garbage dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. No garbage incinerators shall be permitted, nor shall any outdoor burning of trash or waste of any kind, including yard waste, be allowed.
2. **Collection.** The Association may, but is not required to, choose to provide a weekly contract service for Waterford residents for trash removal. Any such service will be subject to the rules and regulations of Waterford Place.

K. FIREARMS, HUNTING, AND TRAPPING

1. **Hunting.** There shall be no hunting of animals and birds within the boundaries of the Waterford Place development.
2. **Firearms.** There shall be no discharge of firearms within the boundaries of the Waterford Place development, unless in the event of self-defense.
3. **Trapping.** Residents shall not trap or capture uncontrolled animals within the boundaries of Waterford Place, unless such action is approved by the WPPOA Board of Directors.
4. **Exceptions.** The WPPOA Board of Directors is authorized to approve exceptions to the above hunting, firearms, and trapping rules under extraordinary circumstances, if allowed by the State of North Carolina and Transylvania County and no legal liabilities will be incurred by the WPPOA, its Board of Directors, or individual officers of the association.

L. MAINTENANCE OF LOTS:

Maintenance. All lots whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent them from becoming unsightly, unsanitary, unsafe or a hazard to health. If not so maintained, the Association shall have the right, after complying with the notice provisions of the Bylaws, through its agents, employees and contractors to do so, the cost of which shall be levied as an assessment against the owner of the lot. Neither the Association, nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work.

M. PARKING AND/ OR STORAGE OF RECREATIONAL VEHICLES:

Parking Restriction. No recreational vehicles shall be parked or stored on any lot or road in the Development other than in such areas, if any, which may be designated by the Association as being suitable for the parking and/or storage of such vehicles. As with all provisions of this Declaration, the Board of Directors shall be vested with the authority to grant written waivers. Any waiver issued by the Board of Directors shall be temporary and, unless otherwise provided in the waiver, its duration shall be twenty-four hours.

N. RENTAL AND PROHIBITION AS TO SHORT TERM RENTAL:

1. **Leasing.** A Lot Owner may rent or lease their property provided that the lease is for not less than thirty (30) days. An Owner renting or leasing their property must assure that any tenants abide by the provisions of this Declaration and any rules and regulations promulgated by the Association, and the owner of any property shall be responsible for his or her tenant's violation of the same.

2. **Short Term Rental Prohibition.** To assure that the community retains its single-family residential character and to protect the value of the Lots of Owners who are financially invested in and committed to preserving the current residential character and the scheme of the development for the community, short-term rental of any property in the Waterford Place Subdivision is prohibited. For the purposes of this Declaration, and as the same has or shall be subsequently amended, “Short-term Rental” is defined as renting for a period of less than thirty (30) days. Those Owners renting their property at the time that this Declaration is recorded shall be “grandfathered in” and shall not be subject to this provision until such time as their property is conveyed to subsequent owners.

ARTICLE III AESTHETIC PROVISIONS

A. ARCHITECTURAL CONTROL:

1. **Architectural Review Committee.** The Board shall carry out the functions of architectural review and control. The Board shall appoint an Architectural Review Committee (ARC) to conduct architectural review and control. The ARC shall be composed of members of the Association and may include Board members.
2. **Architectural Review.** No building, fence, wall, retaining wall or other structure shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition to or change or alteration therein, including, without limitation, be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association. Landscaping plans shall also be required for approval of new construction. All proposed plans and specifications shall be submitted to the ARC or to the Board who shall approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it by the Lot Owner. If such plans are not disapproved within said thirty (30) day period, they shall be deemed to have been approved. In passing upon such plans, the ARC or the Board may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the Lot involved. The ARC or Board may base approval or disapproval of the plans and specifications on any grounds including purely aesthetic consideration, but approval shall not be unreasonably withheld. No alterations in the external appearance of any structure shall be made without approval by the Association as provided herein. No changes in landscaping which divert or increase stormwater or could contribute to erosion shall be made without ARC approval. Any denial by the ARC shall be immediately appealable for a vote by the full Board of Directors. Notice of the appeal shall be delivered to the ARC within ten days upon receipt of the denial. The decision shall be final upon the passage of ten days. In the event of an appeal, the Board of Directors shall hold a hearing to determine if the denial will stand. A majority vote of the Board is required to overturn a decision by the ARC.
3. **Time of Completion.** Construction of improvements on any lot, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days or which have been partially or totally destroyed and not rebuilt within ninety (90) days, shall be deemed nuisances. After complying with the notice provisions of the Bylaws of the Association by giving any lot owner who violates this provision of these restrictions notice in the manner provided for therein and affording such owner the opportunity to appear before the Board or to present in writing any evidence which such owner might cite as justification for such owner’s failure to comply with this provision of these covenants, the Board shall

take one or more of the following actions: (1) grant a variance from this requirement allowing such owner an additional period not to exceed 90 days in which to either remove any such nuisance or complete such improvements in full, (2) take any of the actions authorized under the Bylaws, (3) remove any such nuisance, or (4) repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

4. **Architectural Standards and Guidelines.** In addition to the requirements contained in this Declaration, the ARC may propose and establish additional standards and guidelines necessary to uphold the architectural standards of the Subdivision, which shall then be considered in the approval or denial of any submission, pursuant to Section III A 2, above.
5. **Impact and Water & Sewer Hookup Fee.** Prior to commencing construction, a one-time impact fee and water hook-up fee shall be paid to the Association and is non-refundable. The fee may be adjusted over time by the Association, *currently the fee is five thousand dollars (\$5,000.00)*. The owner is responsible for contacting association to determine the amount of the fee being charged prior to commencing construction.
6. **Limitation of the Association's Liability.** Neither the Board, the Association nor any representative(s) thereof, nor its or their successors or assigns, shall be liable in damages to anyone submitting specifications for approval, or to any Lot Owner, by reason of any mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve any such plans and specifications. Every person, corporation, partnership, or organization which submits plans and specifications to the Board or the Association for approval agrees, by such act, and every Lot Owner agrees by acquiring title to any Site or an interest therein, that it will not bring any action, proceeding or suit against the Board, the Association, or any representative to recover any such damages. The Board and Association's approval of any plans, specifications, landscaping or elevations or any other approvals or consents are given solely to protect and preserve the appearance of the Property, and shall not be deemed a warranty, representation, or covenant that the proposed work complies with any applicable laws, rules or regulations or any standard of due care regarding structural design.
7. **Repainting.** No permission or approval shall be required to repaint in accordance with an originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her residence or to paint the interior of his or her residence any color desired.
8. **Residential Appearance.** Residents are expected to maintain their lot in an attractive condition to themselves and to their neighbors. Litter shall not be allowed to accumulate. Recognizable fire and safety hazards shall be eliminated.
9. **Duplex Porch and Entryway Areas.** In consideration of the neighboring Condominium Units, ground areas under the porches and entryways of duplex units shall be kept tidy and non-offensive in appearance to duplex owners.
10. **Outside Lighting.** Outside lighting will be maintained near the entrance of each residential unit to illuminate residential entry walkways. Such lights shall be activated by a photoelectric cell, similar sensor, or timing device that turns the light on at dusk and turns it off in the morning. The location and design of entrance lights may be specified in the Waterford Place Development Guidelines.
11. **Storage, and Duplex Entryways.** Entrance areas of duplexes shall be kept clean, clear of litter, and shall not be used as storage areas for the residences.

12. **Storage, Rear Areas of Duplexes and Clubhouse.** The storage areas beneath the rear porches of the duplexes shall be kept in an attractive condition. Storage of materials and supplies used in construction and other large objects shall be screened from neighbors' view by lattice material or shrubbery. Flammable materials such as fuel for lawn care equipment and propane containers shall be stored safely. The Waterford Place Board of Directors shall ensure that the visible storage areas at the back of the Clubhouse are kept in a neat condition.
13. **Residential Entrances.** Sidewalks, driveways, and entrance walkways to residences shall not be obstructed or encumbered or used for any other purpose than ingress and egress to and from the premises. Such areas shall not be used for storage purposes.

B. PARKING

1. **General.** Vehicles in the residential and common areas of Waterford Place shall be safely parked and not impede the flow of traffic on streets and in cul-de-sacs, not block driveways, not block mailboxes and mail delivery, not block the pickup of trash on trash days, and not obstruct parking by maintenance and delivery vehicles. Residents should park in their own residential parking spaces such as driveways, garages, parking pads, and on the street in front of their own residence. If unusual parking situations develop, not covered, or anticipated by the preceding guidelines, use common sense and be considerate of your neighbors.
2. **Special Vehicles.** One RV, boat, trailer, or motor home per residence may be parked in Waterford Place for up to three days without special permission where space is available. Parking for more than three days must be approved by the Waterford Place Board of Directors. To prevent nuisance noise at night, parked RV's, trailers, and motor homes shall not operate their engines, motor generators, or auxiliary power units between the hours of 11 PM and 7 AM.
3. **Clubhouse.** Parking spaces in the Waterford Clubhouse parking lot, adjacent to the front door, are reserved for Clubhouse users or visitors. This parking area shall not be used for residential or long-term parking.
4. **Overflow Parking.** A overflow parking area is located at the foot of Canvasback Court, near the entrance to Waterford Place. This area is for use by Waterford Place owners and guests only.
5. **Parking in Community Emergencies.** In the event of snow, fire, or any other condition that impairs free movement within the community, the President is authorized to declare a community emergency. In the event of a declared community emergency, all on-street parking is prohibited except in the marked spaces at the intersection of Waterford Drive and Canvasback Court.

C. ANTENNAS.

Antennas. Privately owned antennas, including dish antennas, for the purpose of receiving video programming signals from direct broadcast satellites, broadband radio service providers, and television broadcast stations, or receiving and transmitting fixed wireless signals via satellite, are permitted as long as they do not exceed one meter (39.37 inches) in diameter or diagonal measurement. This restriction is intended to comply with the permissible restrictions detailed in the Federal Communications Commission Over-the-Air Reception Devices (OTARD) rule. Such antennas will be located to be as unobtrusive as possible. Requests for exceptions and special antenna requirements must be submitted to the Architectural and Landscape Review Committee and WPPOA Board of Directors for approval.

D. TREE REMOVAL, SITE CLEARING, UNDER-BRUSHING AND BURNING:

1. **No Removal of Trees.** No trees shall be removed from any lot without prior approval by the Grounds Committee of Waterford Place Property Owners Association, Inc. This provision shall not apply to trees that are less than four (4) inches in diameter at a height four (4) feet above the ground; nor shall it apply to trees severely damaged by adverse weather conditions or disease, to dead trees or to trees that constitute a safety hazard.
2. **Grounds Committee.** The Grounds Committee shall consist of Members who are appointed by the Board of Directors, and serve at the pleasure of the Board. The Board may remove any

Grounds Committee member at any time for any reason. In the event that there are not enough Committee members to serve on the Grounds Committee, the Board may carry out the powers given the Grounds Committee in this Declaration.

3. **Remediation.** The Grounds Committee and/or the Board may require a one for one replacement of any trees removed in violation of this Article. Such replacement shall be of a like kind in both size and species. In the event the Owner refuses to replant, the Association may enter the property and replant with the cost of the remediation, including any attorney and/or arborist fees, being assessed against the Lot as a Limited Common Expense Assessment and subject to the same lien rights and enforcement powers as with any other assessment. In the event that a tree is removed, with approval by the Grounds Committee; under any provision in the Article; or improperly without permission, the Grounds Committee may also require an Owner to plant additional ground cover, as determined by the Grounds Committee, to prevent erosion from occurring.

ARTICLE IV PROPERTY OWNERS' ASSOCIATION

A. THE ASSOCIATION:

2. **Association Authority.** The Association shall manage and administer the Community and shall have all powers and duties granted to it in the Act and the Documents and delegated to it by the Lot Owners subject to this Declaration.
3. **Powers and Duties.** Pursuant to Section 47F-3-102 of the Act, and acting by and through its Board and/or its membership in accordance with the provisions of the Documents, the Association shall have the following powers and duties necessary for the administration of the affairs of the Planned Community which shall include, but not be limited to, the following:
 - a. Adopt and amend bylaws and rules and regulations;
 - b. Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from Lot Owners;
 - c. Hire and discharge managing agents and other employees, agents, and independent contractors;
 - d. Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Planned Community;
 - e. Make contracts and incur liabilities;
 - f. Regulate the use, maintenance, repair, replacement, and modification of common elements;
 - g. Cause additional improvements to be made as a part of the common elements;
 - h. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that Common Elements may be conveyed or subjected to a security interest only pursuant to Section 47F-3-112 of the Act;
 - i. Grant easements, leases, licenses, and concessions through or over the common elements; impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to Lot Owners;
 - j. Impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer;
 - k. After notice and an opportunity to be heard, impose reasonable fines, or suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the declaration, bylaws, and rules and regulations of the Association;

- l. Impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;
- m. Provide for the indemnification of and maintain liability insurance for its officers, Board, directors, employees, and agents;
- n. Assign its right to future income, including the right to receive common expense assessments;
- o. Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and
- p. Exercise any other powers necessary and proper for the governance and operation of the Association.

B. MEMBERSHIP:

1. **Members.** Every person (or entity) who/which is the record owner of a fee or undivided fee interest in any Lot, including Condominium Units, which are subject to this Declaration shall be deemed to have a membership in Waterford Place Property Owners Association, Inc., and be subject to its duly enacted bylaws and rules and regulations. Membership shall be appurtenant to and may not be separated from such ownership. No owner, whether one or more persons, shall have more than one membership per lot owned. In the event that the owner of a lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in this Declaration, the bylaws, and the rules and regulations of the Association including the obligation to pay dues of the Association, and such assessments for lot maintenance, road maintenance and other proper expenditures as shall be levied by the Board of said Association.
2. **Condominium Unit Members.** As set forth in the Declarations of Condominium Ownership for Waterford Place Condominium Association of Brevard, NC; the individual deeds to the Units; and the historic inclusion of the Unit Owners, the owners of Condominium Units shall be considered Members, but only as set forth in Article 1, Section S1.

C. ASSESSMENTS AND COLLECTION OF COMMON EXPENSES:

1. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association from time-to-time as hereinafter provided: 1) annual assessments or charges; and 2) special assessments for capital improvements and/or other purposes. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land as set forth in the provisions of Section 47F-3-116 of the Act and shall be a continuing lien upon the Lot against which each assessment is made.
2. **Purpose of Assessments.** The assessments for common expenses as described in Section 47F-3-115 of the Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Planned Community as may be more specifically authorized from time-to-time by the Board.
3. **Budget Adoption, and Requirements.** The Board shall, at least (15) days before the end of each fiscal year, adopt a budget for the Association for the next fiscal year, at a meeting duly called for that purpose. The budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications, included when applicable, but not limited to: (a) Administration of the Association; (b) Management fees; (c) Maintenance; (d) Taxes on Association property; (e) Insurance; (f) Security provisions; (g) Other expenses; (h) Operating capital; (i) Reserve accounts for capital expenditures and deferred maintenance. The amount to be reserved shall be computed by means of a

formula which is based upon estimated life and estimated replacement cost for such reserve item. Reserves must be included in the proposed annual budget, but may be removed from the final budget if by vote of the majority of the members present at a duly called meeting of the Association they shall determine for a fiscal year to provide no reserves or reserves less than required. If a meeting of members has been called to determine to provide no reserves or reserves less than required and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect. Expenditures from reserves shall be approved by vote of the Board of Directors of the Association.

4. **Budget Meeting Notice.** The Board of Directors shall mail a meeting notice and copies of the proposed annual budget to the members not less than fourteen (14) days before the meeting at which the budget will be considered. If a budget adopted by the Board of Directors requires an assessment against members in any fiscal year exceeding 115% of the previous year's assessments, the Board shall call a special meeting of members within thirty (30) days and shall be called on not less than ten (10) days written notice to each member. If the proposed budget is not approved as presented at the special meeting, the members shall consider and enact a substitute budget by not less than a majority vote of the members. If at the special meeting, a quorum is not attained or a substitute budget is not adopted by the members, the budget adopted by the Board shall go into effect as scheduled.
5. **Personal Liability of Lot Owners.** The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described in Section 8.1 above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot Owners to pay assessments. The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his or her proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.
6. **Due Dates of Annual Assessments.** Assessments shall be paid in such manner and on such dates as may be fixed by the Board in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.
7. **Acceleration.** If a Lot Owner is in default in payment of any assessment or charge, including, but not limited to, the regular installments of the annual assessment based on the budget, the Board may accelerate the remaining balance of the annual assessment, including regular installments based on the budget, special assessments, and specific assessments, upon ten (10) days written notice to such Lot Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.
8. **Special Assessments.** If the annual assessment proves inadequate for any year the Board may call a special meeting of the Association and hold a vote to approve a special assessment. Such special assessment shall be approved by the affirmative vote of sixty seven percent (67%) of all the Lot Owners at the special meeting. However, in the event of an emergency, as defined by the Board of Directors, the Board may vote for an emergency special assessment which shall only require a majority vote of the Board of Directors. All special assessments shall be assessed equally amongst all Lot Owners.
9. **Effect of Nonpayment of Assessment; Remedies of the Association.** Any assessment attributable to a Lot which remains unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the

Clerk of Superior Court in Transylvania County, North Carolina. Once filed, a claim of lien secures all sums due the Association through the date filed and any sums due to the Association thereafter. Fees, charges, late charges, and other charges imposed pursuant to N.C.G.S. 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115 are subject to the claim of lien under this Section as well as any other sums due and payable to the Association under the Declaration or as the result of an arbitration, mediation, or judicial decision. The Association may bring an action against the Lot Owner personally obligated to pay such assessment or may foreclose the lien created herein in the same manner prescribed by the laws of the State of North Carolina for foreclosure of deeds of trust. Costs, interest, and reasonable attorney's fees as hereinabove provided shall be added to the amount of such assessment.

10. **Interest, Late Charges and Payments.** In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at the rate not to exceed eighteen percent (18%) per year. The Board shall set a late charge to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid.
11. **Allocation of Common Surplus.** Any surplus funds of the Association remaining after payment of or provision for common expenses and any prepayments shall be retained in the general operating funds or long-range fund of the Association, in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.
12. **Limitations on Assessments for unimproved contiguous lots.** Any Owner of a Lot who owns more than one contiguous Lot is subject to these covenants shall pay an assessment for each Lot that has been improved by the erection of a dwelling on it. Any owner of more than one contiguous Lot subject to these covenants and paying an assessment on at least one Lot shall not be required to pay an assessment on the other contiguous undeveloped Lot or Lots. If a dwelling or other structure (including any wall, retaining wall, fence, or improvement requiring approval by the Architectural Review Committee) is erected on any Lot for which no assessments are paid by the Owner, assessments shall begin to come due as of the date of approval of construction plans by the ARC. Nothing in this section shall be construed as to limit or abridge the rights of the Developer as they may exist at the time of the recording of this amendment.

D. COMMON ELEMENTS:

1. **Common Elements.** Common Elements include all parts of the Planned Community located outside the boundaries of the respective Lots and include any real estate, both improved and unimproved, within the Planned Community owned or leased by the Association and as defined by Article 1, H of this Declaration. By way of illustration but not limitation, Common Elements include real property often called common areas, facilities, and amenities which are maintained by the Association.
2. **Use of Common Elements.** Each Lot Owner subject to this Declaration shall have the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of other Lot Owners subject to this Declaration. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. Any Lot Owner subject to this Declaration may delegate, in accordance with the provisions of this

Declaration, the Bylaws and Rules and Regulations promulgated by the Board, the right to use the Common Elements to immediate family members living on the Lot, to a limited number of guests, or to tenants who reside on the Lot. The Lot Owner's right to use the Common Elements shall be subject to the following:

- a. The right of the Association to promulgate and enforce all reasonable regulations governing the use of the Common Areas to ensure the safety and rights of all Owners;
 - b. The right of the Association to suspend the right to use the Common Areas by any Owner for a period during which any assessment against his Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
 - c. The right of the Association to grant utility, drainage, or other easements across the Common Areas;
 - d. Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy the Common Areas during the period of the tenancy, but the right to use and enjoy such shall inure to the tenant.
3. **Transfer of Common Elements.** The Association shall not seek to abandon, partition, subdivide, encumber, sell, or transfer any portion of the Common Elements, without the written approval of owners of Lots totaling eighty percent (80%) of the members of the Association. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this paragraph.

E. MAINTENANCE RESPONSIBILITIES

1. **By the Association.** The Association shall maintain and keep in good repair, as a common expense, all Common Elements.
2. **By the Lot Owner.** Every Lot Owner shall maintain, repair, and replace at his expense all portions of his home located on the Lot and shall prevent the development of any unclean, unkempt, or unsightly conditions. Each Lot Owner shall maintain, repair, and replace, when necessary, all damage to his residence and any other permanent structures located on the Lot unless the Association or its insurance coverage is responsible for remedying any such damage. Lawns shall be seeded and mowed, shrubbery trimmed, and all appropriate exterior surfaces painted, all in a manner and with such frequency as is consistent with good property management. All damages to the Common Elements intentionally or negligently caused by a Lot Owner, his family, guests, invitees, agents, servants, lessees, employees, or contractors shall be repaired promptly by such Lot Owner, except to the extent such damage is covered by hazard insurance required to be maintained by the Association, in which case the Association waives its right of indemnity to the extent of funds received and paid pursuant to said insurance policy. If the Lot Owner defaults in his obligations herein and if any such default is not cured by him within fifteen (15) days from written demand by the Association, the same may be cured by the Association and the cost thereof shall be assessed against the Lot owned by the subject Lot Owner. The Lot Owners shall be responsible for maintenance and repair to all utilities and services to the Lots.
3. **Restrictions on Lot Owners.** No Lot Owner shall perform or cause to be performed any maintenance, repair, or replacement work upon his Lot which disturbs the rights of the other Lot Owners or jeopardizes the soundness or the safety of the Common Elements. If the Lot Owner shall cause any work so performed on the Lot, which in the sole opinion of the Board violates the terms of this paragraph, it shall be immediately corrected, and

the Lot Owner shall refrain from recommencing or continuing any such work without written consent of the Board. A Lot Owner shall not repair, alter, replace, or move any of the Common Elements without the prior written consent of the Board.

4. **Responsibility for Damages.** In accordance with Section 47F-3-107 of the Act, if damage for which a Lot Owner is legally responsible and which is not covered by insurance provided by the Association is inflicted on any common element or the property of another Lot Owner, the Association may direct such Lot Owner to repair such damage or the Association may itself cause the repairs to be made and recover the costs thereof from the responsible Lot Owner.
5. **Insurance Deductibles.** If maintenance is required as a result of an insured loss, the amount of the deductible shall be paid by the Association. If such maintenance is caused by the act or omission of a Lot Owner, or his or her immediate family member(s), guest(s), tenant(s), or lessee(s), then the Lot Owner will be assessed and shall pay the amount of the deductible.

ARTICLE V. Insurance

A. COVERAGE

Coverage. To the extent reasonably available, the Board shall obtain and maintain insurance coverage as a common expense in accordance with Section 47F-3-113 of the Act and as set forth in this Article. If such insurance is not reasonably available, and the Board determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners at their respective last known addresses.

B. LIABILITY INSURANCE

Liability Insurance. The Association shall maintain liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the common elements and covering the Association, the Board, Officers, and all agents and employees of the Association and all Lot Owners and persons entitled to occupy any Lot or other portion of the Planned Community. If such insurance is not reasonably available, and the Board determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners at their respective last known addresses.

C. POLICY REQUIREMENTS

Policy Requirements. In accordance with Section 47F-3-113(c) of the Act, the insurance policies carried in accordance with Section 9.1 and 9.2 above must provide that:

- a. Each Lot Owner is an insured person under the policy to the extent of the Lot Owner's insurable interest;
- b. The insurer waives its right of subrogation under the policy against any Lot Owner or members of the Lot Owner's household;
- c. No act or omission by any Lot Owner, unless acting within the scope of his or her authority on behalf of the Association, will preclude recovery under the policy; and

- d. If, at the time of a loss under the policy, there is other insurance in the name of a Lot Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

D. ASSOCIATION AS TRUSTEE

Association as Trustee. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Lot Owners, and the mortgagees of Lot Owners, if any. The proceeds from property and casualty insurance claims shall be payable to the Association as trustee for all Lot Owners and mortgagees of Lot Owners. It shall be the duty of the Board at least annually to conduct an insurance review to determine that the policies in force are adequate to meet the risks of the Association. Such a responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify insurance policies in existence to meet the needs of the Association. All insurance shall run to the benefit of the Association, the respective Lot Owners, and their respective mortgagees as their interests may appear. Policies may contain reasonable deductibles and the amount thereof shall be added to the face amount of the policies in determining the amount of coverage.

E. OTHER INSURANCE

Other insurance. The Board shall obtain as a common expense:

- a. Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;
- b. Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain a cross liability endorsement;
- c. Such other insurance as the Board may determine to be necessary.

ARTICLE VI ANNEXATION OF ADDITIONAL PROPERTY

A. ANNEXATION.

Annexation Vote. Any current Owner of a Real Property contiguous to the Waterford Place Community may subject their property to this Amended and Restated Declaration upon a vote of sixty seven (67) percent of the members eligible to vote approving the annexation. The annexation shall be documented by the recording of a supplemental declaration signed by the president of the Association and the Owner of the property being annexed.

ARTICLE VII GENERAL PROVISIONS

A. TERM:

Term. All of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2038, at which time said covenants shall be automatically extended for successive periods of ten years unless by written amendment to these restrictions signed by the owners of a majority of the lots which are subject to this Declaration such owners agree to change these covenants in whole or in part.

B. AMENDMENT:

Amendment. This Amended and Restated Declaration may be amended only by affirmative vote of or written agreement signed by Lot Owners of Lots subject to the Declaration to which at least Sixty Seven Percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Transylvania County, North Carolina.

C. ENFORCEMENT:

1. **Defaults and Remedies.** Enforcement of the agreements contained in this Declaration shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any provision herein contained, either to restrain or enjoin violations or to recover damages. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity.
2. **Fining Powers.** Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Lot Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article 8 hereof, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend a Lot Owner's or occupant's right to use the common elements; and to suspend a Lot Owner's right to vote. The failure of the Board to enforce any provision of the Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective.
3. **Abatement and Enjoinment of Violations.** In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the common elements to abate or remove any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner, and shall be collected as provided for herein for the collection of assessments.
4. **Recovery of Attorney Fees and Costs.** In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees and may be allowed by the court, with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are uncured until paid.
5. **Nonwaiver of Covenants.** The failure of the Association or any member thereof to enforce any term, provision, right, covenant or condition that may be granted by this Declaration, the Bylaws, the Articles of Incorporation, the rules and regulation or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

D. ENFORCEMENT PROCEDURES:

3. **Fining Procedure.** In accordance with Section 47F-3-107.1 of the Act, the Board shall not impose a fine or charge for damages against a Lot Owner or suspend a Lot Owner's planned community privileges or services unless and until the following procedure is followed:
- a. **Notice.** If it appears that a Lot Owner is in violation of the Declaration, Bylaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the Lot Owner is not in violation of the Declaration, Bylaws, or Rules and Regulations; (iii) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (iv) that the Lot Owner has the right to be represented by an attorney at the hearing.
 - b. **Hearing.** The hearing shall be held before the Board and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The Board shall render its Final Decision to the Lot Owner regarding imposition of the fine or suspension of planned community privileges or services. Charges for late payments under Article 8 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

E. SEVERABILITY:

Severability. Invalidation of any one of these covenants by judgment or court order shall not in any way affect any of the other provisions, which shall remain in full force and effect.

F. INTERPRETATION:

Interpretation. In the event of a dispute or ambiguity in regards to the interpretation of this Declaration, or any term found herein, the Board of Directors shall be the sole defining party of any ambiguous term, or phrase, and sole arbiter of any dispute.

IN WITNESS WHEREOF, pursuant to the authority cited hereinabove and as otherwise authorized by law, the undersigned, for the purposes more particularly described hereinabove, including without limitation to amend and fully restate the covenants, conditions, and restrictions affecting Waterford Place, attests that this Declaration of Restrictive Covenants and Conditions of Waterford Place Property Owners Association was duly adopted and approved by the appropriate Members of the Association by vote of sixty seven percent (67%) of eligible voters on the 15th day of May, 2023.

Waterford Place Property Owners Association, Inc.

By: William Christie
Title: President

State of North Carolina - County or City of Transylvania

I, the undersigned Notary Public of the County of _____ and State aforesaid, certify that William Christie personally came before me this day and acknowledged that William Christie is the President of Waterford Place Property Owners Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of such entity, they signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this ____ day of _____, 2023.

_____ Notary Public My Commission Expires _____

Notary's Printed or Typed Name

(Affix Seal)

A signed and notarized copy of this Declaration is on file in the Office of the Register of Deeds of Thansylvania County.