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CINDY M OWNBEY

REGISTER OF DEEDS

BY: D REE MCCALL

DEPUTY REGISTER OF DEEDS

BK: DOC 972

PG: 445-462

STATE OF NORTH CAROLINA

COUNTY OF TRANSYLVANIA

AMENDED AND RESTATED

**DECLARATION OF RESTRICTIVE COVENANTS
AND CONDITIONS:**

**LOTS 1A, 1-14, 28-30, 15-19, 20-
27, 31-37, 38-43, 44-53, 86-90, 56-
59B, 1200-1201, and 1300-1301**

OF WATERFORD PLACE

Mail after Recording To:
The Neumann Law Firm, PLLC
9 Park Place West, Suite 102, Brevard, NC 28712

THIS AMENDMENT is made and entered into as of this 19 day of
MARCH, ~~2017~~, by Waterford Place Property Owners Association (the "Association").

JDJ

WITNESSETH:

NJM

THAT WHEREAS, Waterford Place Partnership (the “Developer”), the Developer of Waterford Place (the “Development”), entered into and recorded the following sets of Declaration of Restrictive Covenants and their amendments:

- A. 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 II 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;
- B. 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;
- C. In Deed Book 269, Page 172, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 20-27 and 31-37, Phase II of Waterford Place, (“Declaration C”), and subsequently amended by an amendment thereto which was recorded in Deed Book 506, Page 116, Transylvania County Registry;
- D. In Deed Book 278, Page 401, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 38-43, Phase II of Waterford Place, (“Declaration D”), and subsequently amended by an amendment thereto which was recorded in Deed Book 514, Page 666, Transylvania County Registry;
- E. 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;
- F. 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;
- G. In Deed Book 314, Page 604, Transylvania County Registry, a certain Declaration of Restrictive Covenants for Lots 1200 and 1201, Phase II of Waterford Place, (“Declaration

G”), and subsequently amended by an amendment thereto which was recorded in Deed Book 528, Page 713, Transylvania County Registry; and

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

WHEREAS, all amended Declarations (A-H) are identical in their form and effect. A consolidation to one document governing all phases and Lots within the Development is in the best interest of the Development and its Members.

WHEREAS, this Restated and Amended Declaration (hereinafter “RAD”) seeks to restate and amend certain provisions of the Declarations affecting all Lots and phases.

WHEREAS, a majority of the lot owners which are subject to the Declarations A-H have agreed to this RAD, which is evidenced and certified by the signature of the President of the Association, as well as the attached signature pages of all affirmative votes from the subject Lots.

NOW, THEREFORE, pursuant to G.S. 47F-2-117 of the NCPCA (Amendment of Declaration), and Section D-2 of Declarations A-H (Amendment), as amended, 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.

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. "Board" or "Board of Directors" means the executive board of the HOA.
- C. "Bylaws" means the HOA's bylaws as validly amended from time to time.
- D. "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.
- E. "Common Elements" means all Development Property owned or leased by the HOA in its own name on behalf of its members, less and excepting all privately owned Lots.
- F. "Common Expenses" means expenditures made by, or financial liabilities of the HOA, together with any allocations to reserves.
- G. "Declarant" means Waterford Place Partnership, a North Carolina partnership.
- H. "Development" means Lots 1A, 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.
- I. "Director" means a member of the Board.
- J. "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.
- K. "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.
- L. "Lease" means any lease, use, tenancy, sublease, rental contract, or other occupancy agreement for a Lot whether oral or written.

- M. "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.
- N. "Majority" means greater than fifty percent (50%) in any context, unless a different percentage is expressly required by any applicable Instrument or by law.
- O. "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.
- P. "Nuisance" shall be a term defined by the RRs validly adopted, promulgated, or amended by the Board from time to time.
- Q. "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.
- R. "Officer" means an officer of the Board of the Directors of the HOA.
- S. "Owner" means a "Lot Owner".
- T. "Person" means without limitation a natural person, corporation, trust, estate, partnership, association, joint venture, government, or any other legally recognized entity.
- U. "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)].
- V. "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.
- W. "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.

- X. "RAD" means this Restated and Amended Declaration, together with any prior Declarations, identified hereinabove as Declarations A-H, and any and all subsequent amendments.
- Y. "Short Term Rental" means the rental of a Dwelling or Lot 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.

RESIDENTIAL AREA COVENANTS

A-1 LAND USE AND BUILDING TYPE:

- 1) 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.
- 2) As is stated in Item A-7 of these covenants, 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, basement, tent, shack, garage, carport, shed, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

- 3) As provided for in Item B-1 of these covenants, no structures or improvements of any kind or any alterations or additions may be erected or placed on any lot until the complete plans of such improvements have been submitted to and approved by the Architectural Review Committee for New Construction of Waterford Place Property Owners Association (said committee hereinafter being referred to as the "ARC" and said Association sometimes hereinafter being referred to as "the Association").

A-2 SUBDIVISION PROHIBITED:

- 1) No lot shall be subdivided.

A-3 DWELLING SIZE:

- 1) 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 on June 1, 2009, shall be not less than 850 square feet of enclosed living space for one story dwellings, not less than 1,200 square feet of enclosed living space for a structure of more than one story.
- 2) The ground floor of the main structure of any dwelling erected or placed on any lot, exclusive of one story open porches and garages, 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.

A-4 BUILDING LOCATION:

- 1) With the exception of those buildings which were in existence on June 1, 2009, no building shall be located on any lot nearer to the front lot line or nearer to the side street 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 June 1, 2009, shall be located on any lot nearer than thirty (30) feet to the front lot line or six (6) feet to a side street line.

A-5 EASEMENTS:

- 1) Easements for streets and installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. No other easements, rights of way or rights of access shall be deeded, granted or in any way given to any person, firm or corporation through or over any lot in the Development, except upon the written consent of the Association.

A-6 NUISANCES:

- 1) 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 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) 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.
- 3) 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.

A-7 TEMPORARY STRUCTURES:

- 1) 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, basement, tent, shack, garage, carport, shed or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

A-8 SIGNS:

- 1) 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.

A-9 LIVESTOCK, PETS AND POULTRY:

- 1) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats 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.
- 2) No pet shall be kept on any lot which consistently barks, howls or makes other disturbing noises which might be reasonably expected to disturb any other lot owner or his tenants

or guests. The breach of any of these restrictions, obligations and duties shall be a noxious and offensive activity constituting a private nuisance. Lot owners shall be responsible for cleaning up after their pets.

A-10 GARBAGE AND REFUSE DISPOSAL:

- 1) 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.

A-11 MAINTENANCE OF LOTS:

- 1) 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.

A-12 PARKING AND/ OR STORAGE OF RECREATIONAL VEHICLES:

- 1) 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.

AESTHETIC PROVISIONS

B-1 ARCHITECTURAL CONTROL:

- 1) In order to ensure that all driveways located on lots are attractively designed and properly constructed and that all houses and other improvements are of appropriate size and harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each lot, the ARC shall have full architectural control in order to achieve these objectives.
- 2) Accordingly, no driveway, building, fence, wall, garage, structure or improvement of any kind or any alterations or additions thereto shall be erected or placed on any lot until the complete plans of such improvements, including specifically proposed design and location thereof on the lot, appearance, quality and manner of construction and/or installation of exterior trim, roofs, flashing, piping, foundations, windows, colors of buildings and other proposed improvements shall have been submitted in writing to and approved by the ARC.
- 3) Permission to carry out such improvements shall not be unreasonably withheld and shall be given or denied in writing within thirty days after any such plans and other required information have been properly submitted to the ARC. Denial of approval of plans, location, specifications and other matters requiring the approval of such committee may be based upon any reasonable ground, including purely aesthetic considerations. Structural changes to any lot shall require the approval of the ARC if the change requires a permit pursuant to municipal regulations.
- 4) The ARC shall prepare and, on behalf of the Association, shall promulgate design guidelines and application procedures which shall be applicable to all lots which are subject to these covenants (the "community"). These community standards and procedures shall be those of the Association, and the ARC shall be responsible for preparing and amending the standards and procedures. It shall make both available to owners, builders and developers who seek to engage in the development of or construction of any portion of the Development or in making any modifications, additions or alterations to any existing improvements located in the Development who shall conduct their operations strictly in accordance therewith.
- 5) 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.

B-2 TREE REMOVAL, SITE CLEARING, UNDER-BRUSHING AND BURNING:

- 1) 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.

PROPERTY OWNERS ASSOCIATION

C-1 MEMBERSHIP:

- 1) Every person (or entity) who/which is the record owner of a fee or undivided fee interest in any lot which is subject to this Declaration shall be deemed to have a membership in Waterford Place Property Owners Association, 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 the bylaws and 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) Assessments and Voting Rights
 - A. Each owner of a lot that is subject to these Covenants shall pay an assessment in such amount and manner as may from time to time be established in accordance with the provisions of these Covenants and with the provisions of the Bylaws of the Association.
 - B. Any owner of a lot who owns more than one lot subject to these covenants shall pay an assessment for each lot that has been improved by the erection of a dwelling on it.
 - C. Any owner of more than one lot subject to these covenants and paying an assessment on at least one lot shall not be required to pay an assessment on other undeveloped lot or lots.
 - D. If a dwelling 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 Architectural Review Committee.
 - E. Any lot on which assessments are not paid shall not be entitled to a vote in any meeting of the membership.

F. Nothing in this section shall be construed so as to limit or abridge the rights of the Developer as they may exist at the time of the recording of this amendment.

- 3) Each of the applicable assessments described above, or otherwise authorized by law including without limitation the NCPA or this Declaration, together with interest thereon and the costs of collection thereof, including reasonable attorneys' fees, and together with late fees and interest, if any, shall be a continuing lien upon each Lot and the personal obligation of such Lot's Owner(s) and shall run with and burden the land notwithstanding any conveyance thereof unless otherwise expressly stated herein.
- 4) Assessments whether regular, special, or otherwise shall be paid in such manner and on such dates as the Board may establish, which may include installments, early payment discounts, reasonable late fees (see limitation below), and special requirements for Lot Owners with a history of late payment.
- 5) No Lot Owner may exempt himself from liability for assessments by non-use of Common Elements, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Lot Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the HOA 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 HOA.
- 6) Any assessment against any Lot which remains unpaid for a period of thirty (30) days after its regular due date, or otherwise after delivery of a request for payment thereof shall be deemed past due, and interest shall accrue on any such unpaid amount from the date that it was otherwise due at the rate to be established by the Association not exceeding eighteen percent (18.00%) per annum.
- 7) In addition to the foregoing a reasonable charge 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 shall be assessable and due for every applicable late payment period including the date upon which the assessment initially became past due and continuing until such time as all past due assessments together with any applicable interest and late charges are paid in full.
- 8) All payments on account shall be applied first to any of the aforesaid costs of collection, then to late charges, then to interest owed, and finally to the principal amount of any past due Assessment.

- 9) The HOA shall, within ten (10) business days of any such demand, and for a reasonable charge, furnish a certificate signed by an officer of the HOA stating whether all assessments against a specified Lot have been paid. A properly executed certificate of the HOA as to the status of assessments against a Lot shall be binding upon the HOA as of the date of its issuance.

- 10) The HOA shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessments, together with interest, late fees and costs of collection, including reasonable attorneys' fees. When an assessment becomes thirty (30) days past due, the lien created hereunder may be filed by the HOA against the delinquent Lot Owner in the office of the Clerk of Superior Court of Transylvania County in accordance with G.S. 47F-3-116 of the NCPA, and thereafter may be enforced against any such Lot Owner in accordance with the terms thereof including but not limited to the ability of the HOA to foreclose against the Lot on which the lien is placed in like manner as a mortgage on real estate. The lien provided for in this provision or otherwise acquired pursuant to the NCPA shall be in favor of the HOA and shall be for the benefit of all its Owners. The HOA, acting through the Board, shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. No lot shall be classified as withdraw-able property and any buyer that acquires title to property through a foreclosure sale, either judicial or non-judicial, will take subject to the covenants, conditions, and restrictions set forth within this Declaration including any Instruments or Exhibits incorporated herein by reference, as all may be validly amended or adopted from time to time hereafter. In addition thereto, each such assessment, together with interest, late fees, and costs of collection, including reasonable attorneys' fees shall also be deemed the personal obligation and liability of the Owner(s) of any Lot to which the same are appurtenant, who shall remain liable to the HOA for the payment thereof notwithstanding the conveyance of any such Lot or the continuing lien thereupon in favor of the HOA until otherwise paid in full, and may be enforced by the HOA by filing a legal action for the collection thereof in the same manner as a debt owed thereto in addition to any other remedies authorized herein or otherwise by law.

- 11) Notwithstanding anything contained in this Declaration or the Act which may be construed to the contrary, in the event any First Mortgagee that is an Institutional Mortgagee shall acquire title to any Lot by virtue of any deed in lieu of foreclosure of a First Mortgage, or by foreclosure itself, such First Mortgagee shall not be liable for, nor shall such Lot be subject to a lien for any Assessments chargeable to such Lot on account of any period prior to the time such First Mortgagee shall so acquire title to such Lot; provided however, that Common Expenses collectible thereafter from all Lot Owners, including such First Mortgagee, shall be paid thereby as set forth in this Declaration.

- 12) In addition to the foregoing, the Board may suspend the vote of any Owner, as well as the right of such Owner to use the Common Elements, during the period in which any Assessment or portion thereof remains unpaid after notice and an opportunity to be heard is provided pursuant to G.S. 47F-3-107.1 (Procedures for fines and suspension of planned community privileges or services) the terms and provisions of which are incorporated into this Declaration as if fully set out herein.

GENERAL PROVISIONS

D-1 TERM:

- 1) 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.

D-2 AMENDMENT:

- 1) These restrictions may be amended at any time and from time to time by the recordation in the office of the Register of Deeds for Transylvania County, North Carolina, of a written amendment to these restrictions signed by the owners of a majority of the lots which are subject to this Declaration. The signatures of such lot owners shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deed for Transylvania County, North Carolina, unless a later effective date is specified therein.

D-3 ENFORCEMENT:

- 1) Each Owner and Occupant shall comply strictly with the provisions of this Declaration and the Instruments. In the event of a violation or breach, or threatened violation or breach, of any of the same, the HOA shall have the right to conduct an investigation and proceed at law or in equity to compel compliance therewith, including, but not limited to, the imposition of a fine of one hundred dollars (\$100.00) per day, or to prevent a threatened violation or breach thereof.

- 2) In addition to all other remedies, the HOA, or a duly authorized agent thereof, shall have the right to enter upon any portion of the Common Elements where a violation exists and, at the expense of the violating Owner, abate or remove any structure, thing or condition that may be or exist contrary to the intent and meaning hereof or of the Instruments, if after notice and an opportunity to be heard given in accordance with the provisions of G.S. 47F-3-107.1 it shall not have been corrected by such Owner.
- 3) Neither the HOA, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Should the HOA employ legal counsel to enforce any of its rights or remedies of the HOA, all costs incurred in such enforcement, if successful, including a reasonable fee for counsel, shall be paid by the violating Owner.
- 4) Inasmuch as the enforcement of the provisions hereof and of the Instruments are essential for the protection of present and future Owners and Occupants, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages alone, and that the HOA or, in any proper case, any aggrieved Owner(s), in addition to all other remedies, may require and shall be entitled to remedy by injunction to restrain or enjoin any such violation or breach, or threatened violation or breach.
- 5) No delay, failure or omission on the part of the HOA, or any aggrieved Owner(s) in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement.
- 6) No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the HOA or its Officers or Directors for, or on account of, any failure to bring any action on account of any violation or breach, or threatened violation or breach, of this Declaration or of the Instruments, however long continued, or for the imposing of provisions which may be unenforceable.
- 7) The provisions hereof shall be liberally interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. In all cases, the terms, conditions, and provisions set forth within or provided for in this Declaration shall be construed and given that interpretation or construction which, in the opinion of the HOA Board of Directors, will best affect the intent of the general plan of the Planned Community Development.

D-4 SEVERABILITY:

- 1) 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.

D-5 INTERPRETATION:

- 1) 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, and each being of the age of legal majority or otherwise being a duly authorized representative acting of behalf of any legal entity executing this RAD, has read and by setting their hands and legal SEALS hereunto, do hereby adopt and intend to be bound by this RAD, together with the Instruments defined herein, as of the day and year first stated hereinabove. This RAD were duly adopted and approved by the Voting Members of the Association by a majority of votes cast in person or represented by proxy at a meeting duly called for the purpose of amending the Declaration of Restrictive Covenants and Conditions of Waterford Place Property Owners Association on the 19 day of MARCH, 2017.

2021
NTM

**WATERFORD PLACE PROPERTY
OWNERS ASSOCIATION**

By: Norm Malenke
Print Name: NORM MALENKE
Title: PRESIDENT

STATE OF NORTH CAROLINA

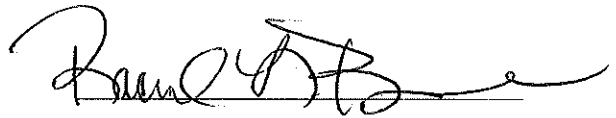
COUNTY OF TRANSYLVANIA

I, a Notary Public of the aforesaid State and County, certify that

Norman Malenke appeared before me and being personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signatures(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official stamp or seal, this 19th day of March, ²⁰²¹~~2017~~ Ren

Rachel L Barton
NOTARY PUBLIC
Transylvania County, NC



NOTARY PUBLIC

My Commission Expires:

4/14/2020

[NOTARY SEAL]