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STATE OF NORTH CAROLINA
COUNTY OF RUTHERFORD

AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS
AS OF July 16th, 2007.

RIVERBEND HIGHLANDS

THIS AMENDED AND RESTATED DECLARATION (hereinafter referred to as "Declaration") is made this 13th day of July 2007, by Vista North Carolina Limited, a Limited Partnership (successor in interest to Cross-State Development Company), (hereinafter referred to as "Declarant") and shall replace in its entirety the Original Declaration of Covenants and Restrictions for Riverbend Highlands, recorded at Book 365, Page 76 which shall be null and void upon recordation of this Amended and Restated Declaration.

Article 1

Description of Community

Section 1.1. The name of the Planned Community is Riverbend Highlands (sometimes referred to as Lake Lure Mountain Estates, Highlands section).

Section 1.2. The Planned Community is located in Rutherford County North Carolina. It is specifically described in its deed of record appearing in the Rutherford County Public Registry in Book 9, at page 61.

Article 2

Definitions

The following terms as used in this Declaration and any Supplemental Declaration of Restrictions are defined as follows:

(a) "Articles" shall mean and refer to the articles of incorporation of the Association. (b) "Assessments" means any and all sums levied by the Association against any Lot and its Owner as common expenses or other charges to include but not limited to common expense liabilities, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth below and in the by-laws.

(b) "Association" shall mean and refer to the Riverbend Highlands Property Owners' Association, Inc., a non-profit North Carolina corporation.

(c) "Board or Board of Directors" means the Board of Directors of

the Riverbend Highlands Property Owners Association which is the governing body on behalf of and for the Association referred to as the Executive Board in N.C.G.S. Chapter 47F-1-103(13).

(d) "By-Laws" means the by-laws of the Association.

(e) "Communicate" means by telephone conversation, in person conversation, or by electronic means such as fax or e-mail, or by mail to the last know address, having been deemed sent when placed in a mail receptacle.

(f) "Common Property" or "Common Area" shall mean and refer to those tracts of land that are leased or deeded to the Association and such improvements thereon as are specifically leased or conveyed to the Association, including, without limitation, the recreational parcels, if developed, green space and entrance features. The term "Common Property" shall also include any personal property acquired by the Association, as well as certain areas designed for maintenance responsibility which the Association is herein obligated to maintain notwithstanding that it may not own the underlying fee simple title, as well as certain easements conveyed to the Association. All Common Property is devoted to and intended for the common use and enjoyment of the Owners and their guests, lessees or invitees subject to any operating rules adopted by the Association and subject to any use rights made or reserved by Declarant prior to conveyance of such Common Property or the granting of the easements.

(g) "Declarant" shall mean and refer to Vista North Carolina Limited, its successors and assigns, provided that such right of the Declarant are specifically assigned to the successor or assigns and such successors or assigns assume the obligations of the Declarant under the Declaration, Articles and Bylaws.

(h) "Declaration" means this Amended and Restated Declaration of Restrictions, Conditions, Easements, Covenants, Agreements, Liens and Charges and any future amendments hereto.

(i) "Developer" means Vista North Carolina Limited, its successors and assigns.

(j) "Development" means all that real property situated in Rutherford County, North Carolina, described in Book 9, Page 61 and all other real property which may be annexed thereto as provided herein.

(k) "Dwelling" shall mean and refer to any single-family residential dwelling constructed or to be constructed on or within a Lot, whether a primary or secondary residence.

(l) "Improvements" means all buildings, outbuildings, streets, roads, driveways, parking areas, fences, retaining and other walls,

docks, piers, hedges, poles, antennas and any other structures of any type or kind or any acts done upon a lot of a permanent nature.

(m) "Member" shall mean and refer to all those owners who are members of the association as provided in Article section hereof.

(n) "Landscape easements" shall mean and refer to the easements reserved by developer and/or the Association granted over across and under certain areas of the properties for the installation, maintenance, repair and removal of landscaping and landscaping amenities.

(o) "Lot" means any numbered lot or parcel within the development shown on a plat.

(p) "Owner" means any person or legal entity, including Developer who holds fee simple title to any Lot except that where a lot is being sold by Developer under an Agreement for Deed, the Buyer thereunder and not the Developer shall be deemed to be the owner. (This definition is confined solely to the purposes of this Declaration.)

(q) "Utility" means but is not limited to lines, pipes, cables, conduit, and culverts, for lights, telephone, telegraph, water, gas, sewage, cable, power, run-off, and other utilities, utility companies, governmental authority or Architectural and Land Committee.

r "Supplemental Declaration" shall mean a declaration which the Declarant in accordance with Declarant rights shall file in order to submit additional property to Riverbend Highlands.

Article 3

Lots

Section 3.1. Lot Descriptions. As shown on the plat there are Five-hundred Seventy-Three (573) separate Lots in this Community. These Lots are shown and described on plat recorded in the Rutherford County Registry of Deeds at Book 9, Page 61.

Article 4

Use Restrictions and Purpose

Section 4.1. Residential. Each of the Lots in the Community shall be, and the same hereby are, restricted exclusively to single-family residential use and shall be occupied only by a single family, its nurses, aides, servants, or caretakers, and guests.

Section 4.2. Restrictions in General. The Lots of the Community

are subject to the restrictions contained in this Declaration and as may be set forth in the Bylaws and Rules and Regulations of the Association, including rules and regulations of the Architectural Control Committee.

Section 4.3. Business Activities. No business activities shall be conducted on any portion of this Planned Community, not any Lot nor any Residence, provided, however: private offices may be maintained in residences constructed on Lots so long as such use is incidental to the primary residential use of the Lot and is approved by the Board of Directors.

Section 4.4. Minimum Area/Types of Construction. No dwelling shall be permitted on any lot with an area (exclusive of roofed or unroofed porches, terraces, garages, carports, balconies or other outbuildings) of less than 1000 square feet on the first floor. Necessary parking areas shall be provided by each individual Purchaser in a manner that will not obstruct road traffic or maintenance operations. The erection, placement, or construction of Mobile homes, or manufactured homes (as defined by North Carolina General Statutes 143-143.9(6)) are prohibited at Riverbend Highlands. Modular homes (as North Carolina General Statutes 143-149.1(a)) are permitted provided they are approved by the Architectural and Land Use Committee.

Section 4.5. Set-Backs. No building shall be located on any residential lot nearer to the front property line than 35 feet. No building shall be located nearer than 20 feet from the side lot line or 20 feet from the rear lot line.

Section 4.6. Time to Construct. There shall be no time limit during which construction of house must be started, however, the exterior of the building must be completed within a period of one year from the date construction commences. No house and other dwelling structures may be temporarily or permanently occupied until the exteriors thereof have been completed, and a Certificate of Occupancy has been granted. Further no house and other dwelling structures may be temporarily or permanently occupied without the installation and approval of proper septic system, water, and utilities.

Section 4.7. No Further Subdivision. No lot or parcels shall be re-subdivided or contain more than one (1) dwelling, or its boundary lines changed, except with the written consent of the Developer or the Association. The Developer hereby expressly reserves the right to replat any Lots shown on the plat of said subdivision prior to their sale. The provisions hereof shall apply to each such Lot so created.

Section 4.8. Compliance with all Applicable Governmental Regulations. All construction shall be in compliance with all applicable state and local governmental regulations including building

codes and zoning regulations.

Section 4.9. No Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or reasonably interferes with the peaceful possession and proper use of the property by any Lot Owner. All Lots shall be kept free of accumulations of brush, trash, junk, building materials, inoperable automobiles or other unsightly things. No drying or airing of any clothing or bedding shall be permitted on the exterior of any residential lot within view of the roadways or neighboring home. The discharging of firearms, bows and arrows, air guns, or any other device of similar kind is strictly prohibited and will be considered a nuisance. The Board of Directors, in it sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. After fourteen (14) days written notice to the Owner, sent to the address contained in the list maintained by the Association, and an opportunity to be heard by the Board or its designee, the Association reserves the right of entry for the purpose of clearing away any such violation, assessing the cost thereof against the Owner and such assessment shall be in force as other liens herein provided for. The Developer need not comply with this provision until all development work has been completed and the common properties deeded to the Association.

Section 4.10. Maintenance of Lots and Improvements. The exterior maintenance upon each lot, including the maintenance of trees, shrubs, grass, buildings and improvements shall be the responsibility of each lot owner. Each lot owner shall maintain the exterior of his property, including trees, shrubs, grass, buildings and improvements in good repair.

Section 4.11. Mining and Drilling. No oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor wells for the production of, or from which there may be produced, oil or gas shall be dug or operated upon said premises, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection therewith. Nor shall any mineral excavation, or shafts, or machinery used incident thereto be permitted upon or in any Lot. No derrick or other structure intended for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 4.12. Animals. No livestock, poultry of any kind shall be raised, bred, stabled, pastured, penned or kept on any Lot, except that dogs, cats and other household pets may be kept and horses and ponies (one per acre) may be kept, provided none of such animals are kept, bred or maintained for any commercial purposes. No pets or other animals shall be kept in such number or in such manner as to constitute a nuisance. All animals shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or

offensive on account of noise, odor, unsanitary conditions, or other nuisance. No savage or dangerous animals shall be kept or permitted in the community. Pets shall not be allowed to leave a lot unless on a leash. Any pet which consistently barks, howls, or makes disturbing noises which might be reasonably expected to disturb other property owners, their lessees or guests, shall not be allowed and shall be considered a nuisance under section 4.9.

Section 4.13. Burning Permits. No open fires shall be permitted without a burning permit secured from the appropriate governmental agency. Fires shall be contained within approved camp stoves or fire boxes or burning piles. There shall be no burning during the hours of 7pm to 9am.

Section 4.14. Automobile Storage Areas. No carports shall be permitted unless approved by the Architectural and Land Use Committee and shall be of the same color, material and design as the home, including supports, siding and shingles.

Section 4.15. Clothes Dying Area. No portion of any lot or Common Area shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a lot.

Section 4.16. Off road and non-standard motorized vehicles. No motorized vehicles such as motorcycles, 2, 3, and 4 wheel ATV's, 6 wheel or other off-road or all terrain or amphibious vehicles, cars or trucks may be operated on any trails, roads or within Common Property of the Development by any person.

Article 5

Reservation of Easements and Limitation of Liability

Section 5.1. Utility Easements. Developer hereby reserves the right without further consent from any land owner to grant to any public utility company, municipality, the Association or other governmental unit, water or sewer company an easement for a right-of-way in all streets and roads on which the land hereby conveyed abuts and also in and to a 10 foot strip of land located along the front lot line, and a 5 foot strip of land located along any other lot line, for the right to erect and lay, or cause to be erected or laid, maintained, removed or repaired, all light, telephone and telegraph poles, wires, water and gas pipes and conduits catch basins, surface drains, sewage lines, access easement and other customary or usual appurtenances as may, from time to time, in the opinion of the Developer, or any utility company, or governmental authority, be deemed necessary for maintenance and repair of said utilities or other appurtenances. Any right of recourse on account of temporary or other inconvenience caused thereby against Developer is hereby waived by the Buyer.

Section 5.2. Connection to Sewerage and Water System. All buildings or structures to be inhabited or requiring water and/or sewerage disposal shall have individual wells and waste disposal systems meeting the requirements of the North Carolina State Board of Health or County of Health or shall connect with central water and/or sewerage disposal utilities within thirty (30) days after being made available, at Owners expense. However, wells may be maintained for outside use, including watering of lawns and swimming pools, but subject to approval of duly constituted public health authorities.

Section 5.3. Septic Tanks, Waste Disposal Systems and Wells. All septic tanks, waste disposal systems and wells shall meet the requirements of the North Carolina State Board of Health and local Health Departments.

Section 5.4. Limitation of Liability for Equestrian activities. Pursuant to N.C. Gen. Stat. Section 99E-2, neither the Declarant nor the Association nor any lot owner is liable for any injury or death of a horseback rider resulting from the inherent risks of equine activities. Declarant, Lot owners, and Association will hold each other harmless from any liability whatever resulting from use of roads as a trail, and from any injury resulting from equestrian activities. Lot owners should post equine liability for their guests who may ride on equestrian trails. Declarant, and Association may, at its option, require visitors using roads as trails to sign release prior to participation.

Section 5.5. Limitation of Liability for Trails and other Common Facilities. All trails pose inherent risks and dangers. Therefore, all trail users, including Lot owners, invited guests, family members, Declarant, and Association, agree to hold each other harmless from any liability whatsoever, which results from use of trails and other common facilities which exist and common facilities which may be constructed within the development.

Article 6

Architectural and Land Use Committee

Section 6.1. Architectural and Land Use Committee. The Association shall select an Architectural and Land Use Committee to perform the functions set out herein and such other functions as shall be assigned to it when the Developer has sold all the lots in the Subdivision or earlier at the Developer's discretion. Until such time as the Architectural and Land Use Committee has been selected or in the event no Committee exists, the Developer may carry out that Committee's functions. The Board of Directors may promulgate additional rules and regulations concerning architectural control and land use, and such regulations may include but not be limited to the imposition of impact fees and/or security deposits in connection with

new construction.

Section 6.2. Necessity of Architectural Review and Approval. No improvement or structure of any kind, including, without limitation, any building, fence, wall, swimming pool, tennis court, screen enclosure, sewer, drain, disposal system, excavation, land clearing, decorative building, landscape device or object, or any other improvement shall be commenced, erected, placed or maintained upon any lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Association. All plans and specifications shall be evaluated as to harmony of external design and location in relation to surrounding structures and topography and as to conformance with the Architectural and Land Use Committee of the Association.

Article 7

Assessments and Collection of Expenses

Section 7.1. Collection.

(a) Any assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of County in the manner provided in N.C.G.S. Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to Sections 47F-3-102(10), (II), and (12), 47F-3-107(d), 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.

(b) The lien under this Section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) This Section does not prohibit separate collection

actions to recover sums which are personal obligations of Owners and for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

(d) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(e) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which became due prior to acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Lot Owners including such purchaser, and its heirs, successors and assigns.

Section 7.2. 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 11.4 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 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 therefore.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors 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.

Section 7.3. No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the common elements or by abandonment of the Lot against which the assessments are made.

Section 7.4. 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 the highest interest allowed by law per annum.

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.

Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

Article 8

Enforcement Powers

Section 8.1. Procedures for Enforcement. In accordance with Section 47F- 3-107.1 of the Planned Community Act, the Board of Directors or its designated representatives or committee shall not impose a fine or charge for violations of the Declaration, By-Laws or Rules and Regulations against a Lot Owner unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation of the Declaration, Bylaws, or Rules and Regulations shall be served upon the alleged violator specifying: (i) the alleged violation (ii) the action required to abate the violation and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if such violation is continuing one or a statement that any further occurrence of the same violation may result in the imposition of sanction, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's sole determination, pose a danger or nuisance to safety or property. Charges for late payments under Article 11 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

(b) Notice. Within twelve (12) months of such demand as stated above, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may impose a fine by giving the violator written notice. This notice shall state: (i) the nature of the alleged violation (ii) the amount of the fine (iii) that the violator will have the opportunity to be heard by requesting within ten (10) days from the date of such notice, a hearing before the Board of Directors or its designated committee to contest the fine (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing and (v) that all rights to be heard or to have a fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If a hearing is requested, it shall be held before the Board of Directors or a committee designated by the Board and the violator shall be given a reasonable opportunity to be heard. The Board or designated committee shall render its final decision regarding imposition of the fine no later than five (5) days after the

hearing. The Board or its designated committee shall issue a written statement of the results of the hearing.

Article 9

Property Owners' Association

Section 9.1. Powers and Duties. Acting by and through its Board of Directors and /or its membership in accordance with the provisions of the Declarations, Bylaws and Rules and Regulations, the Association shall have the powers and duties necessary for the administration of the affairs of the 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.

(c) Collect assessments for common expenses for Lot Owners.

(d) Hire and terminate managing agents and other employees, agents, and independent contractors.

(e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Community.

(f) Make contracts and incur liabilities.

(g) Regulate the use, maintenance, repair, replacement, and modification of Common Areas.

(h) Cause additional improvements to be made as part of the Common Areas.

(i) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property.

(j) Grant easements, leases, licenses, and concessions through or over the common areas.

(k) Impose and receive any payments, fees, or charges for use, rental, or operation of the common areas other than limited common areas described in Subsections 47f-2-102(2) and (4) of the Planned Community Act and for services provided to Lot Owners.

(l) Impose charges for late payment of assessments and, after notice an opportunity to be heard, levy reasonable fines not to exceed One Hundred Dollars ($100.00) per violation or per day for a continuing violation of the Declaration, Bylaws and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the

Planned Community Act.

(m) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or Bylaws.

(n) Provide for the indemnification of and maintain liability insurance for its officers, directors, employee's and agents.

(o) Assign its right to future income, including the right to receive common expense assessments.

(p) Exercise all other powers that may exercised in this State by non-profit corporation.

(q) Exercise any other powers necessary and proper for the governance and operation of the Association (the Developer is exempt from such governance.)

Section 9.2. Membership Covenant. All Owners of Lots in Riverbend Highlands Subdivision are members of the Riverbend Highlands Property Owners' Association, Inc. upon signing the contract to purchase a Lot in Riverbend Highlands. Each Owner of a lot subject to these covenants and restrictions shall maintain one (1) membership for each lot owned by him and shall maintain such membership or memberships in good standing as long as such person is the Owner of such lot or lots, has paid membership dues and during such time shall abide by the Declaration, By-Laws and Rules and Regulations of the Association, as may be amended from time to time, and further agrees to pay to the Association an annual charge, initially $300.00 per lot, payable in a manner established by said Association, said annual charge being a reasonable, necessary charge for the maintenance, up-keep and operation of the Association. For the purpose of this clause the Developer shall not be considered an Owner.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser or greater amount. Any change in the annual assessment from that made in the prior year, to be effective and binding on the Owner, must be communicated to the Owner, in writing, within 60 days of the next years assessment to be charged.

In addition to the annual assessments authorized hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, but which may be payable annually over a period not to exceed ten years, for the purpose of defraying, in whole or in part, the cost of any construction, new or otherwise or reconstruction, repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that notwithstanding any provisions, By-Laws, any such assessment shall be

approved by (i) a vote of a majority of the holders of Deed, and the Developer or (ii) the Developer. Approval rights of the Developer under this provision shall cease when the Developer has sold all lots in the subdivision. For purposes of this section the Developer shall not be considered an Owner and exempt is from any said special assessments.

The due date of any Special Assessment shall be fixed in the resolution authorizing such Assessment.

This membership covenant shall be deemed to run with the land and the non-payment of the annual charge when they become due shall bear interest at the highest rate allowed by law from the date due until paid and shall become a lien upon the applicable lot in favor of said Association, and shall be enforceable by the said Association, in equity and as may be provided by law.

Section 9.3. Fining Powers. Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the North Carolina Planned Community 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 Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article 11 hereof, and become a personal obligation of the Lot Owner, and a lien upon the property to suspend an Owner's or occupant's right to use the common elements and to suspend an Owner's right to vote. In the event that any occupant of a Resident Lot violates the Planned Community Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Resident Lot Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective. Charges for late payments of assessments under Article 11 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

Section 9.4. 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, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating 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.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Article 10

Miscellaneous Provisions

Section 10.1. No Rights Waived by Delay. No delay or omission on the part of the Developer or the Owner or Owners of any lot or lots in said property, in exercising any right, power or remedy herein provided for in the event of any breach of any of the provisions, restrictions, conditions, easements, covenants, agreements, liens and charges herein contained, shall be construed as a waiver thereof or acquiescence therein and no right of action shall accrue, nor shall any action be brought or maintained by anyone whomsoever against Developer for or on account of its failure or neglect to exercise any right, power or remedy herein provided for in the event of any such breach, or for imposing herein provisions, restrictions, conditions, easements, covenants, agreements, liens and charges which may be unenforceable.

Section 10.2. Invalidation. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 10.3. Declarant Rights. In addition to any other Declarant/Developer rights set forth herein, Declarant reserves the right to submit additional lands or properties to Riverbend Highland whose description shall be set forth in one or more Supplemental Declarations.

Section 10.4. Amendments. Any of the provisions of this Declaration may be annulled, amended or modified as to all or part of the lots subject to these restrictions at any time by the filing in the Office of the Register of Deeds of Rutherford County of an instrument setting forth, such annulment, amendment or modification, executed by either the Developer, or assigns at any time during which it owns of record a lot in Riverbend Highlands Subdivision or adjacent properties which it has or intends to subdivide or the Owners of record (as shown upon the records in the Office of the Register of

Deeds for Rutherford County at the time of filing of such instrument) of sixty-seven percent (67%) of the Lots subject to these restrictions. Should a dispute arise between an amendment made by Owners of record of sixty-seven (67%) of the Lots subject to the restrictions versus an amendment made by the Developer, the Developers amendment shall prevail. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Planned Community Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Rutherford County, North Carolina.

Section 10.5. Term. The provisions of this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded at which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 10.6. Rules. The lots, in addition to the restrictions and conditions herein contained, are conveyed subject to all present and future rules, regulations and resolutions of the County of Rutherford, State of North Carolina, and Architectural and Land Use Committee, if any, relative to the zoning and the construction and erection of any buildings.

Section 10.7. Notices. Any notice required to be sent to any member or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 10.8. Assignment. The Developer may assign any and all rights and responsibilities, other than assessment obligations, it has under the terms of this Declaration to the Riverbend Highlands Property Owners' Association. In the event the Developer transfers all of its remaining interest in the Subdivision to third parties, the third parties shall become the Declarant and have all the rights and responsibilities of the Developer under the terms of this Declaration.

IN WITNESS WHEREOF, THE DECLARANT HAS EXECUTED THIS DECLARATION THE DAY AND YEAR FIRST ABOVE WRITTEN

Vista North Carolina
Limited Partnership

BY: _____
President

(Corporate Seal)

Attest:

_____, Sec.
Secretary

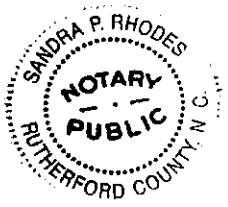
STATE OF NORTH CAROLINA)

SS:

COUNTY OF Rutherford)

I, SANDRA P. RHODES, a Notary Public, do hereby certify that MARTIN BIRENBAUM personally appeared before me this day and acknowledged that he is Secretary of Riverbend Highlands Property Owners Association, and that, by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

WITNESS my hand and official seal this 16th day of July, 2007.



Sandra P. Rhodes
Notary Public

My Commission Expires January 11, 2009

North Carolina, Rutherford County

The foregoing certificate of _____ Notary Public/Notaries Public is/are certified to be correct. This instrument was presented for registration and recorded in this office at Book _____, Page _____. This _____ day of _____, 2007 at _____ o'clock _____

_____
Register of Deeds

Rutherford County, N.C.

Doc ID: 004800240003 Type: CRP
Recorded: 11/02/2016 at 01:31:53 PM
Fee Amt: $26.00 Page 1 of 3
Revenue Tax: $0.00
Instr# 201600004264
Rutherford County, NC
Faye H. Huskey Register of Deeds
BK 1138 PG 87-89

NORTH CAROLINA
RUTHERFORD COUNTY

SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF RIVERBEND HIGHLANDS

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS OF RIVERBEND HIGHLANDS (the "***Amendment***") is made as of this 2nd day of November, 2016, by **VISTA NORTH CAROLINA LIMITED PARTNERSHIP**, a North Carolina limited partnership ("***Declarant***", also referred to herein and in the Declaration as the "***Developer***").

RECITALS:

A. Developer's predecessor in interest established the Riverbend Highlands subdivision (sometimes referred to as Lake Lure Mountain Estates, Highland section), by the execution of that certain Declaration of Covenants and Restrictions for Riverbend Highlands, recorded at Deed Book 365, Page 76 with the Rutherford County Register of Deeds (the "***Original Declaration***").

B. The Original Declaration became null and void upon the recordation of that certain Amended and Restated Declaration of Covenants and Restrictions, recorded at Deed Book 937, Page 812 with the Rutherford County Register of Deeds registry (the "***Declaration***").

C. Developer is the current legal owner of one or more Lots in Riverbend Highlands.

D. Pursuant to Section 10.4 of the Declaration, the Developer desires to amend the Declaration in accordance with the terms and provisions provided herein.

E. The First Amendment to the Amended and Restated Declaration of Covenants and Restrictions of Riverbend Highlands, recorded at Deed Book 1123, Pages 514-516 with the Rutherford County Register of Deeds is nullified and stricken from the public registry.

NOW, THEREFORE, Developer hereby amends the Declaration as follows:

1. Section 5.1 of the Declaration and any amendments thereto, is hereby deleted in its entirety and replaced by the following:

Section 5.1. Utility and Communications Facility Easements and Leaseholds. Developer hereby reserves the right without further consent from any Owner to grant to any public utility company, municipality, private entity, the Association and any governmental unit, water or sewer company an easement for a right-of- way in all streets and roads on which

the land hereby conveyed abuts, in and to a 10 foot strip of land located along the front lot line, a 5 foot strip of land located along any other lot line for the right to erect and lay, or cause to be erected or laid, maintained, removed or repaired, all light, telephone and telegraph poles, wires, water and gas pipes and conduits catch basins, surface drains, sewage lines, access easement and other customary or usual appurtenances as may, from time to time, in the opinion of the Developer, or the applicable grantee or lessee, as be deemed necessary by such party for maintenance and repair of said utilities or other appurtenances hereinabove delineated. The Developer may grant an easement or leasehold interest in all or any portion of one Developer owned Lot for the placement and construction of one wireless communications tower in order to improve wireless communications services to Riverbend Highlands. Any right of recourse on account of temporary or other inconvenience caused thereby against Developer is hereby waived by each Owner. Notwithstanding anything contained in this Declaration, the residential restrictions contained in Article 4 or otherwise in this Declaration shall not apply to the construction of a single monopole wireless communications tower on said Lot and the operation thereof and the construction and operation of such shall not be considered a nuisance under this Declaration or otherwise a violation of this Declaration.

2. Declarant hereby covenants and warrants that Declarant has sufficient authority under the terms of the Declaration to effectuate and record this Amendment. Declarant hereby agrees to exonerate, indemnify, defend and hold harmless any party, and its successors or assigns, granted an easement or leasehold interest in any portion of Riverbend Highlands, including all or any portion of a Lot located therein from any claims, obligations, liabilities, costs, demands, damages, expenses, suits or causes of action, including costs and reasonable attorney's fees, which may arise out of the breach of the covenant and warranty of Declarant set forth in the preceding sentence.

3. Except as modified herein, the Declaration is hereby ratified and confirmed. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Declaration.

[INTENTIONALLY LEFT BLANK - SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed this Amendment under seal as of the day and year first written above.

VISTA NORTH CAROLINA LIMITED PARTERSHIP
a North Carolina limited partnership

By: Vista North Carolina, Inc., Member

SEAL

VP

Martin Birenbaum, Vice President

STATE OF NORTH CAROLINA
COUNTY OF Rutherford

I, a notary public of the county and state aforesaid, certify that Martin Birenbaum personally came before me this day and acknowledged that he is Vice President of Vista North Carolina, Inc., and that he has duly been given the authority to execute this instrument on behalf of the same as a member of Vista North Carolina Limited Partnership.

Witness my hand and official stamp or seal, this the 2 day of November, 2016.

Kathleen D. Hansford
Notary Public

My commission expires: April 30, 2021

(notary seal)