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**AMENDED AND RESTATED  
SOMERSBY PARK  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (“Declaration”) is made this the 27 day of Jan, 2026 by and for the Somersby Park Homeowners Association, Inc. pursuant to a vote of the Members of the Association as set forth in Article XVIII, Section 18.2 of the Amended and Restated Somersby Park Declaration of Covenants, Conditions, and Restrictions recorded in Book 1207, Page 208, Henderson County Registry (“Prior Declaration”) and in accordance with N.C. General Statute 47F-2-117.

**THIS DOCUMENT PROHIBITS THE DISPLAY OF POLITICAL SIGNS**

**WHEREAS**, the original Somersby Park Declaration of Covenants, Conditions and Restrictions was recorded in Deed Book 1011, Page 303, Henderson County Registry (the “Original Declaration”); and

**WHEREAS**, the Prior Declaration was recorded to correct certain errors and omissions contained in the Original Declaration; and

**WHEREAS**, the Prior Declaration was amended by the document recorded in Book 3546, Page 578, Henderson County Registry (“First Amendment”); and

**WHEREAS**, this Amended and Restated Declaration shall apply to all the real property previously subjected to the Original Declaration and Prior Declaration (the “Property”) and is intended to replace the Original Declaration, Prior Declaration, First Amendment and any other amendments thereto in their entirety.

**NOW, THEREFORE**, the Association hereby declares that all of the Property shall be held transferred, sold, conveyed; encumbered, leased, used, improved and occupied subject to the following covenants, conditions, restrictions and easements, as well as the provisions of the Act, all of which are for the purpose of enhancing and protecting the value,

desirability and attractiveness of the Property. These covenants, conditions, restrictions and easements shall run with the land and be binding upon all persons having or acquiring any right, title or interest in the above-described property or any part thereof, and shall inure to the benefit of each owner thereof.

THIS AMENDED AND RESTATED SOMERSBY PARK DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS SUPERSEDES AND REPLACES ALL PRIOR DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND AMENDMENTS THERETO, RECORDED AGAINST THE PROPERTY, SPECIFICALLY INCLUDING THE ORIGINAL DECLARATION AND SUCH PRIOR DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS ARE HEREBY WITHDRAWN AND OF NO FURTHER FORCE AND EFFECT.

## **ARTICLE I DEFINITIONS**

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

1.1 “Amendment”: Any change to this Declaration passed pursuant to Article XVI, Section 16.2.

1.2 “Area of Common Responsibility”: The Common Area, together with those areas, if any, which by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, or contract, become the responsibility of the Association.

1.3 “Articles of Incorporation” or “Articles”: The Articles of Incorporation of Somersby Park Homeowners Association Inc., as filed with the secretary of State of the State of North Carolina and as amended from time to time.

1.4 “Association”: Somersby Park Homeowners Association Inc., a North Carolina Nonprofit Corporation.

1.5 “Base Assessments”: Assessments levied on all Lots subject to assessment under Article X to fund Common Expenses for the general benefit of all Lots.

1.6 “Benefitted Assessment”: An assessment levied in accordance with Article X.

1.7 “Board of Directors” or “Board”: The body responsible for administration of the Association, selected as provided in by the Bylaws and generally serving the same role as the board of directors under North Carolina corporate law.

1.8 “Bylaws”: The Bylaws of the Somersby Park Homeowners Association, Inc., as they may be amended from time to time.

1.9 “Common Area” or “Common Elements”: All real and personal property which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in and for the use and enjoyment of the Owners.

1.10 “Common Expenses”: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

1.11 “Community-Wide Standard”: the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors.

1.12 “Covenant to Share Costs”: Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator of such property.

1.13 “Lot”: The final configuration of each numbered, platted lot, whether improved or unimproved, shown on the following subdivision plats of the Properties recorded in the Henderson County, North Carolina Registry, which are intended for development, use, and occupancy as a residence for a single family: Plat Book 1999, Page 3215; Plat Book 1999, Page 3287; Plat Book 1999, Page 3295; Plat Book 2000, Page 3486; Plat Book 2002, Page 4316; Plat Book 2003, Page 4733; Plat Book 2003, Page 4734; Plat Book 2003, Page 4735; Plat Book 2003, Page 4736; Plat Book 2003, Page 4737; Plat Book 2003, Page 4738; Plat Book 2004, Page 4934; Plat Book 2004, Page 5061; Plat Book 2005, Page 5451; Plat Book 2005, Page 5642; Plat Book 2005, Page 5664; Plat Book 2005, Page 5757; Plat Book 2006, Page 6056; Plat Book 2006, Page 6068; Plat Book 2006, Page 6086; Plat Book 2006, Page 6259; Plat Book 2006, Page 6260; Plat Book 2007, Page 6642; Plat Book 2007, Page 6709; Plat Book 2007, Page 6809; Plat Book 2007, Page 6872; Plat Book 2007, Page 6975; Plat Book 2008, Page 7417; Plat Book 2010, Page 8058; 2016, Page 10246; Plat Book 2020, Page 12658. The term shall refer to the land, if any, which is part of the Lot as well as

any improvements thereon. The term shall not include Common Areas or property dedicated to the public.

1.14 "Member": A Person entitled to Membership in the Association.

1.15 "Mortgage": Any and all instruments used for the purpose of encumbering real property as security for the payment or satisfaction of an obligation.

1.16 "Mortgagee": A beneficiary or holder of a Mortgage.

1.17 "Owner": One (1) or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.18 "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.19 "Policy": A rule or convention of general application intended to clarify, implement or supplement the provisions of the Declaration, Bylaws, or Rules and Regulations. Once duly passed by the Board of Directors, a Policy shall be binding upon all Owners, tenants, invitees and licensees within the community.

1.20 "Properties" or "Property": The real property previously subjected to the Original Declaration, the Prior Declaration and any Supplemental Declaration, together with such additional property as is hereafter subjected to this Declaration in accordance with Article IX hereof.

1.21 "Rules and Regulations" or "Rule" or "Regulation(s)": Rules and Regulations promulgated and amended from time to time by the Board of Directors concerning the use of the Common Areas.

1.22 "Special Assessment": An assessment levied in accordance with Article X.

1.23 "Supplemental Declaration": An amendment or supplement to this Declaration filed pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

**ARTICLE II**  
**USE OF COMMON AREA**

2.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Association;

(b) The right of the Board to adopt Rules and Regulations pertaining to the use and enjoyment of the Common Area, including Rules limiting the number of guests who may use the Common Area;

(c) The right of the Board to suspend the right of an Owner to use recreational facilities, if any, within the Common Area (i) for any period during which any charge against such Owner's Lot remains delinquent; and (ii) for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation, of the Declaration, any applicable Supplemental Declaration, the Bylaws, or Rules and Regulations of the Association after notice and a hearing pursuant to Article IV, Section 4.4;

(d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Article IV, Section 4.7;

(e) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Article XIV, Section 14.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership. Every Owner shall be deemed to have a Membership in the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot.

No Owner, whether one (1) or more Persons, shall have more than one (1) Membership per Lot owned. In the event a Lot is owned by more than one (1) Person, all co-Owners shall be entitled to the privileges of Membership, subject to the restrictions on voting set forth in Article III, Section 3.2 and in the Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The Membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The Membership rights of an Owner which is a corporation, partnership, or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.2 Voting. Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for Membership under Article III, Section 3.1; there shall only be one (1) vote per Lot. Note, combining Lots with the Henderson County Tax Department does not act to reduce the number of votes allocated to each Lot subject to this Amended and Restated Declaration.

In any situation where there is more than one (1) Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary to the Association in writing prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) person seeks to exercise it.

**ARTICLE IV**  
**ASSOCIATION FUNCTION**

4.1 Common Area. The Association, subject to the rights of the Owners set forth in this Declaration shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas) and shall keep it in good, clean, attractive, and

sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

4.2 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property.

4.3 Rules and Regulations. The Association, through its Board of Directors, may make, modify and enforce reasonable Rules and Regulations governing the use of the Common Areas, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. Such Rules and Regulations shall be binding upon all Owners, occupants, invitees and licensees.

4.4 Enforcement. The Association shall, after notice and opportunity to be heard pursuant to N.C. Gen. Stat. 47F-3-107.1, be authorized to impose fines and sanctions for violations of this Declaration, the Bylaws, Design Guidelines, or Rules and Regulations. Sanctions may include suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, the Association, through the Board shall have the right to exercise self-help to cure violations and shall be entitled to suspend voting rights and any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations or to abate nuisances. The prevailing party of any court action shall be entitled to an award of their reasonable costs and attorney fees.

4.5 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws. The Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

4.6 Indemnification. The Association, to the fullest extent allowed by applicable law and in accordance therewith, shall indemnify every Officer, Director, and Committee Member against any and all damages and expenses, including counsel fees, reasonably incurred by or imposed upon such Officer, Director, or Committee Member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an Officer, Director, or Committee Member.

The Officers, Directors, and Committee Members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Officers and Directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such Officers or Directors may also be Members of the Association). The Association shall indemnify and forever hold such Officer, Director, and Committee Member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former Officer, Director, or Committee Member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and Officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7 Dedication of Common Areas. The Board shall have the power to dedicate portions of the Common Areas to any local, state, or federal governmental entity, subject to such approval as may be required by Article XIV, Section 14.2.

4.8 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be.

The Association shall not in any way be considered insurers or guarantors of security within the Properties. The Association shall not be held liable for any loss or damage for failure to provide adequate security or ineffectiveness of security measures undertaken.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner acknowledge that the Association, and its Board of Directors, and any Committees appointed by the Board, do not represent or warrant that any entry gate, patrolling of the Properties, or other security system provided by the Association will not be compromised or circumvented; nor that any entry gate, patrolling of the Properties, or other security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that entry gate, patrolling of the Properties, or other security systems will in all cases provide the detection or protection for which the system is designed and intended.

All Owners and occupants of any Lot, and all tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board of Directors, and/or Committees, are not insurers.

All Owners and occupants of any Lot and all tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board of Directors, and/or Committees, have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representation or warranties, expressed or implied, relative to any entry gate, patrolling of the Properties, or other security systems recommended or installed or any security measures undertaken within the Properties.

## **ARTICLE V MAINTENANCE**

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to (i) all landscaping and other flora, parks, scenic overlooks, structures, and improvements, including bike and pedestrian pathways/trails situated upon the Common Area; (ii) any private streets or shared drive access shown on any recorded plat of the Properties situated upon the Common Area or a Lot; and (iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any covenant, contract, or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

5.2 Owner's Responsibility. Except to the extent otherwise specifically provided above, each Owner shall maintain his or her Lot and all structures, parking areas, and other improvements on the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner in accordance with Article X. However, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

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

5.4 Party Walls, Party Fences and Party Driveways.

(a) Applicability. Each wall, fence or driveway built as a part of the original construction on the Lots:

(i) Any part of which is built upon or straddling the boundary line between two adjoining Lots; or

(ii) Which is built within four (4) feet of the boundary line between adjoining Lots, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or

(iii) Any party driveway, which is shown as a party driveway on a plat and determined for use of more than one Lot; or

(iv) Which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, regardless of whether constructed wholly within the boundaries of one Lot; shall constitute a party wall, party fence, or party driveway, respectively (herein referred to as "party structures"). The Owners of each such Lot (the "Adjoining Owner") shall own that portion of the party structure lying within the boundaries of their respective Lots and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining Lot.

(b) Maintenance. Upon written request of either adjoining Owner, which request is delivered to the Board with a copy to the other adjoining Owner, and agreement of the Board that a party structure or common driveway is in need of maintenance, repair or replacement, the Board shall perform the necessary maintenance, repair or replacement of the party structure or party driveway on behalf of the Owners. Except as otherwise provided

in Subarticle (c) below, all costs of such maintenance, repair or replacement shall be assessed equally to the adjoining Owners and their Lots as a Benefitted Assessment under Article X.

(c) **Damage and Destruction.** Each adjoining Owner shall be responsible for maintaining a property insurance policy on that portion of any party structure lying within the boundaries of such Owner's Lot, as more particularly provided in Article VI, Section 6.3., and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

If a party structure is destroyed or damaged by fire or other casualty, the Board shall proceed promptly to repair or restore the party structure and shall assess all costs incurred against the Adjoining Owner who is responsible for insuring the party structure and against his or her Lot as a Benefitted Assessment under Article X. If both Adjoining Owners are responsible for insuring portions of the party structure, then such costs shall be assessed equally against the Adjoining Owners and their Lots. However, nothing herein shall prejudice the right of either Adjoining Owner to recover from the other under any rule of law or equity regarding liability for negligent or willful acts or omissions.

## **ARTICLE VI INSURANCE**

6.1 **Association Insurance.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) **Blanket property insurance** covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If "risks of direct physical loss" on a "special form" basis is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property.

(b) **Commercial general liability policy** on the Area of Common Responsibility, insuring the association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its

behalf. If generally available at reasonable cost, the commercial general liability policy shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

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

(d) Directors' and Officers' liability coverage;

(e) Fidelity insurance covering all persons responsible for handling Association funds in an amount determined by its best business judgment but not less than one-sixth (1/6) of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation; and

(f) Such additional insurance as the Board, in its best business judgment, determines advisable.

6.2 Association Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the Henderson County, North Carolina, area.

All Association policies shall provide for a certificate of insurance to be furnished to each Member insured, and to the Association, upon request.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard upon the same terms as set forth in Article IV, Section 4.4, that the loss is the result of the negligence or willful conduct of one of more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Article X.

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

(i) Be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board requires; and

(ii) Be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its Members; and

(iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees; and

(iv) Contain an inflation guard endorsement; and

(v) Include an agreed amount endorsement if the policy contains a co-insurance clause.

(b) In addition, the Board shall be required to use reasonable efforts to secure insurance policies providing the following:

(i) A waiver of subrogation as to any claims against the Association's Board, Officers, employees, and its manager, the Owners and their tenants, licensees, agents, and guests; and

(ii) A waiver of the insurer's right to repair and reconstruct instead of paying cash; and

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

(iv) An endorsement excluding individual Owners' policies from consideration under any "other insurance" clause; and

(v) An endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; and

(vi) A cross liability provision; and

(vii) Vest in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss; and

(viii) List the Lot Owners as additional insureds under the policy.

6.3 Owners Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance in an amount sufficient to cover the cost to clear the Lot of all debris and ruins located upon his or her Lot, less a reasonable deductible, and liability insurance, unless the Association carries such insurance (which they are not obligated to do hereunder).

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

#### 6.4 Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Members holding at least sixty-seven percent (67%) of the total votes in the Association decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period,

then the period may be extended for not more than sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

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

6.5 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvements account.

6.6 Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Benefitted Assessments against those Owners responsible for the premiums for the applicable insurance coverage under Article VI, Section 6.1.

## **ARTICLE VII NO PARTITION**

Except as is permitted in this Declaration or amendments hereto, the Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

## **ARTICLE VIII CONDEMNATION**

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting upon approval of Members holding at least sixty-seven percent (67%) of the total votes in the Association) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available, unless within sixty (60) days after such taking, Members holding at least sixty-seven percent (67%) of the total votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the provisions in Article VI hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

## **ARTICLE IX ANNEXATION OF PROPERTY**

Subject to the consent of the owner thereof, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members holding a majority of the votes of the Association represented at a meeting duly called for such purpose.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the public records of Henderson County, North Carolina. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed. Any such annexation shall be effective upon filing unless otherwise provided therein.

## **ARTICLE X ASSESSMENTS**

10.1 Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Article X, Section 10.9. There shall be three (3) types of assessments: (i) Base Assessments to fund Common Expenses for the general benefit of all Lots; (ii) Special Assessments as described in Article X, Section 10.4; and (iii) Benefitted Assessments as described in Article X, Section 10.5. Each

Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest at a rate to be set by the Board (not to exceed the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Article X, Section 10.6. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. In the event of a transfer of title to a Lot, the grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance. However, no first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment, a certificate in writing signed by an Officer of the Association setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. If the Board so elects, assessments may be paid in installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may waive or otherwise exempt himself or herself from liability for the assessments, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law,

ordinance, or with any order or directive of any municipal or other governmental authority. Note, a lot combination through the Henderson County Tax Department does not remove the obligation to pay assessments for each Lot.

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

10.2 Computation of Base Assessment and Budget. It shall be the duty of the Board, at least ninety (90) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve and in accordance with a budget separately prepared as provided in Article X, Section 10.3.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. The Board shall take into account the number of Lots subject to assessment under Article X, Section 10.7 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any amounts due from any party pursuant to a Covenant to Share Costs.

Within 30 days after adoption of any proposed budget for the planned community, the Executive Board shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The executive board shall set a date for a meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing or emailing (for those owners who have authorized the Association to communicate via email) of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the lot owners in the association or any larger vote specified in the declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved, or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

10.3 Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare a reserve budget, which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments, as appropriate, over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided In Article X, Section 10.2.

10.4 Special Assessments. In addition to other assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire Membership, if such Special Assessment is for Common Expenses.

The Board shall provide to its Members a summary of the proposed special assessment and notice of a meeting to ratify the Special Assessment at least thirty (30) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at a meeting where the Special Assessment is to be considered by the Members. The Special Assessment shall be deemed ratified unless at the meeting a majority of all the Members entitled to vote rejects the Special Assessment. Special Assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the Members subject to such Special Assessment, and shall be payable as determined by the Board and as set out in such notice.

Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

10.5 Benefitted Assessments. The Board shall have the power to specifically assess expenses of the Association against Lots (a) receiving benefits, items, or services not provided to all Lots or that are incurred, upon request of the Owner of a Lot for specific items or services relating to the Lot or (b) that are incurred as a consequence of the conduct of a

particular Owner or Owners, occupants of such Owners' Lot or their licensees, invitees, or guests or (c) for cost of repair or maintaining all waste water collection systems to include but not limited to: lines, pump stations, force main, and all water related systems. The Association may also levy a Benefitted Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot or into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and the Association Rules and Regulations. Such Benefitted Assessments may be levied upon the vote of the Board after notice to the Owner, as applicable, and an opportunity for a hearing.

10.6 Effect of Nonpayment of Assessment(s); Remedies of the Association. Any assessment which is not paid when due shall be delinquent and shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum. 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 Henderson 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.

No Lot Owner may escape liability for any assessment through non-use of the Common Elements or through abandonment of his or her Property. The obligation of a Lot Owner for delinquent assessments shall pass to his or her successors or assigns in title unless expressly excused by the Association, except that such personal obligation shall not pass to mortgagees or trustees under Deeds of Trust of such successor Owner or assignee. After notice and opportunity to be heard, the Association shall also be entitled to suspend the right of a defaulting Lot Owner to use the Common Property, until the delinquency is cured. 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.

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

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments, which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Article X, Section 10.1, including such acquirer, its successors and assigns.

10.7 Date of Commencement of Assessments. The obligation to pay the assessments provided for herein shall commence as to a Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

10.8 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

10.9 Exempt Property. The following property shall be exempt from payment of Base Assessments, Special Assessments, and Benefitted Assessments:

(a) All Common Area; and

(b) All property dedicated to and accepted by any governmental authority or public utility, including without limitation public schools, public streets, and public parks, if any.

## **ARTICLE XI ARCHITECTURAL STANDARDS**

11.1 General. No structure shall be placed, erected, or installed upon a Lot, and no construction or modification (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs) shall take place except in strict compliance with this Article, until the requirements below have been fully met, and approval of the Architectural Review Committee has been obtained pursuant to Article XI, Section 11.2.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of any improvements constructed upon his or her Lot or to paint the interior of such improvements any color desired. However, modifications or alterations to the interior of screened porches, patios, and similar portions of a Lot visible from outside the Lot shall be subject to approval. No permission or approval shall be required to repaint the exterior of an improvement in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer and the proposed builder must be approved by the ARC.

11.2 Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and exterior modifications under this Article shall be handled by the Architectural Review Committee ("ARC"). The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the ARC on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

(a) Architectural Review Committee. The ARC shall consist of at least three (3), but no more than five (5), Persons and shall have jurisdiction over all construction on any portion of the Properties. The Board of Directors shall appoint the members of the ARC, who shall serve and may be removed at the Board's discretion.

(b) Impact Fees and Construction Deposit. Upon approval of construction and preliminary plans, the Owner shall pay to the Association a non-refundable road impact fee in the amount of three thousand five hundred dollars (\$3,500), and a five thousand-dollar (\$5,000.00) construction compliance deposit to be paid prior to commencing any improvement on the Lot. This amount can be increased each year by the Board of Directors to adjust for inflation.

### 11.3 Guidelines and Procedures

(a) The design and development guidelines and application and review procedures (the "Design Guidelines") shall be applicable to all construction and Lot modification activities, including non-construction activities on undeveloped Lots, within the Properties.

The ARC may suggest changes to the Design Guidelines from time to time which the Board may review and approve; notwithstanding the Board may amend the Design Guidelines at its sole discretion. The ARC shall make the Design Guidelines available to Owners and builders who seek to engage in development of or construction upon all or any portion of the Properties and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. Any amendments of the Design Guidelines adopted from time to time by the Board in accordance with this Article shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved by the Architectural Committee once the approved construction or modification has commenced.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and exterior modifications to homes and landscaping shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning, without limitation, landscaping, hardscaping and ancillary structures, and any other special features of such proposed construction or modification, as applicable, shall be submitted.

In the event that the ARC fails to approve or to disapprove any application within thirty (30) days after acknowledgment of submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARC pursuant to Article XI, Section 11.5.

An Owner may appeal any decision made by the ARC to the Board. The Board may appoint a panel of Board Members to hear an appeal. The decision by the Board or a panel of Board Members shall be the final decision. A notice of appeal shall be sent to the Board within ten (10) days of the date of any decision by the ARC. The Board shall thereafter schedule a hearing for the appeal to be heard no later than 60 days after receiving the notice of appeal. The Board's review of the ARC decision shall be based on an abuse of discretion standard, meaning the Board will only overturn an ARC's decision if it finds the decision was based on an unreasonable application of the Design Guidelines, and not whether the Board may otherwise disagree with the ARC decision being appealed.

11.4 No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute precedent for future approval requests. The ARC may withhold approval or consent to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

11.5 Variance. The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with established procedures. Such variances may be granted, however, only when there is a hardship to the owner in complying with the Design Guidelines, and no variance shall (a) be effective unless in writing; or (b) estop the ARC from denying a variance in other circumstances. For purposes of this Article, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

11.6 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental

requirements. Neither the Association, nor members of the ARC shall be held liable for any injury or quality of approved construction on or modifications to any Lot.

11.7 Enforcement. Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, bring such construction, alteration or other work into conformity with this Article to the satisfaction of the Board or remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration or other work. Should an Owner fail to remove and restore as required hereunder, the Association shall have the right to enter the Property, remove the violation, and restore the Property to substantially the same condition as existed prior to the construction, alteration, or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Benefitted Lot and collected as a Benefitted Assessment pursuant to Article X, Section 10.5.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in Article IV, Section 4.4. In such event, neither the Association, its Officers, or Directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies, including fines not to exceed the statutory per day maximum for fines pursuant to N.C. Gen. Stat. 47F-3-107.1 to enforce the provisions of this Article and the decisions of the ARC.

## **ARTICLE XII USE RESTRICTIONS**

12.1 Plan of Development. A general plan of development has been established for the Properties under this Declaration in order to protect all Owners' quality of life and collective interests, the aesthetics and environment within the Properties, and the vitality of and sense of community within the Properties, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the community. The Properties are subject to Design Guidelines as set forth in Article XI, Section 11.3 and other restrictions governing land development, architectural control, individual conduct and uses of or actions upon the Properties. This Declaration establishes affirmative and negative covenants, easements, and restrictions on the Properties.

12.2. **Applicability.** All provisions of this Declaration and any Rules and Regulations shall apply to all Owners, occupants, tenants, guests, and invitees of any Lot. Any lease of any Lot shall provide that the lessee and all occupants of the leased Lot shall be bound by the terms of this Declaration, the Bylaws, and the Rules and Regulations of the Association.

12.3 **Acknowledgement.** All Owners and occupants of Lots are given notice that use of their Lots is limited by the Use Restrictions set forth below. Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot can be affected by this provision and that the Use Restrictions may be amended in accordance with Article XVI, Section 16.2.

12.4 **Use Restrictions.**

(a) **Dwellings:**

(i) Only one single-family residential dwelling shall be erected on any lot. All one- or one-and-one-half story dwellings shall have a minimum of 1,800 square feet of heated floor space. All two-story dwellings shall have a minimum of 2,400 square feet of heated floor space. In limited circumstances based on lot characteristics exceptions to minimum square footage may be granted with approval by both the Architectural Review Committee and the Board.

(ii) The construction of all dwellings shall be completed within one year of Architectural Review Committee issuance of the Approval and Permit for New Construction form. Any extensions require ARC and Board approval.

(iii) No alteration affecting the exterior appearance of any building or structure shall be made without prior approval of the Architectural Review Committee.

(b) **Setbacks:** While Somersby Park requires the minimum setbacks shown below, the Town of Laurel Park may require more restrictive rules.

- (i) Boundary Adjoining a Street - 25 feet (minimum 40 feet from roadway center)
- (ii) Rear Interior Boundary - 20 feet
- (iii) Side Boundary - 15 feet
- (iv) Waterside Boundary - 15 feet from the top of the bank of any stream or pond

(c) Lot Boundary Modifications: No Lot shall be subdivided. All changes to Lot boundaries, including Lot combinations, require prior Board approval.

(d) Hardscape, Walls, and Fences: All hardscaping elements including walls and fences must be approved by the Architectural Review Committee.

(e) Ancillary Structures and Equipment: Construction of any above-ground structure, such as decks, bridges, electronic vehicle charging stations, and permanent grills, requires approval from the Architectural Review Committee. The Architectural Review Committee also must approve the placement of all ancillary equipment, including, but not limited to, solar panels, generators, satellite dishes and HVAC units, to ensure placement minimizes visibility from the street.

(f) Temporary Structures: No building or dwelling of a temporary nature, including but not limited to sheds, mobile homes, trailers, or recreational vehicles will be allowed to remain on any Lot.

(g) Parking: No trailer, motor home or recreational vehicle, etc. may be parked on the premises for more than 72 hours without prior approval from the Board.

(h) Trees: No living tree exceeding six (6) inches in diameter as measured four and one-half (4.5) feet from the ground nor any native dogwood, rhododendron, mountain laurel or azalea, shall be cut down or substantially trimmed on any Lot without prior written consent of the Architectural Review Committee.

(i) Animals: Only animals generally recognized as domestic pets are allowed and must be kept indoors at night. All pets must remain under the control of their owner and be kept so as not to become a nuisance or an annoyance to other residents. No Owner shall be permitted to raise animals of any kind for commercial or business purposes.

(j) Maintenance: Owners shall, at their sole cost and expense, maintain their Lot and all improvements thereon in a clean, safe, sanitary, and attractive condition. Including but not limited to:

(i) Compliance with any relevant Design Guideline.

(ii) Repair and upkeep of all structures, driveways, and other improvements on the Lot.

(iii) Mowing lawns regularly and keeping landscaping weeded and trimmed.

(iv) Preventing unsightly conditions.

(k) Nuisances: No activity which is an annoyance or nuisance to the Subdivision will be permitted outside the Community Wide Standard.

(l) Trash: Trash containers must be securely stored out of view from the street. No trash may be put on the street except on the morning of trash pickup.

(m) Lighting: All exterior lighting shall be installed so as not to disturb neighbors or impair vision of traffic on nearby streets.

(n) Decorations: Outdoor holiday or party decorations shall not be excessive. The Board has sole authority to determine what is excessive, including when and for how long decorations and lights may be displayed.

(o) Motor Vehicles: All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles, including dirt bikes, all-terrain vehicles (ATVs), etc., shall be driven within the Subdivision, except on driveways and on the roadways shown on the recorded plats for the Subdivision.

(p) Hunting and Weapons: No hunting shall be allowed any place within the Subdivision, nor shall firearms or other weapons of any kind be discharged within the Subdivision.

(q) Signs: One sign identifying the builder of a new dwelling or advertising the sale of a home or Lot is permitted. These signs shall be of a design approved by the Architectural Review Committee. The Board must approve all other signs.

**(r) Political Signs: Political signs shall not be displayed on any Lot. For the purposes of this section, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.**

12.5 Rights of Owners. Except as may be specifically set forth in this Declaration, the Board, through adoption of a Rule and Regulation, shall not adopt any Rule or Regulation in violation of the following provisions:

(a) Household Composition: No Rule, or Regulation shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Board shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted on the basis of the size and facilities of the Lot and its fair use of the Common Area.

(b) Activities Within Dwelling: No Rule, or Regulation shall interfere with the activities carried on within the confines of dwellings on the Lots, except that the Board may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, that block the views from other Lots, or that create an unreasonable source of annoyance.

(c) Pets: No Rule or Regulation shall prohibit the owning of pets except the Board may adopt reasonable Rules and Regulations designed to minimize damage and disturbance to others. Nothing in this provision shall prevent the Board from requiring removal of any animal that presents an actual threat to the health or safety of the Community or is a nuisance or unreasonable source of annoyance.

(d) Alienation or Leasing: No Rule or Regulation shall prohibit the leasing of a home except that leases shorter than 2 months are not allowed. The Board may adopt a Policy that requires a stricter minimum lease term of up to twelve (12) months and may require that Owners use lease forms approved by the Board. The Board shall not impose any fee on the lease or transfer of any Lot greater than an amount reasonably based on the costs to the Association to administer that lease or transfer.

(e) Abridging Existing Rights: Any Rule or Regulation which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was being kept on the Properties prior to the adoption of such Rule or Regulation and which was in compliance with all Rules and Regulations in force at such time.

## **ARTICLE XIII EASEMENTS**

13.1 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

13.2 Easements for Utilities, Etc. There are hereby reserved unto the Association, and its designees (which may include, without limitation, Town of Laurel Park and City of Hendersonville, North Carolina and any utility company public or private) access and maintenance easements upon, across, over, and under all of the Properties as shown on recorded plats as amended, to the extent reasonably necessary for the purpose of replacing, repairing, and maintaining cable television systems, master television antenna systems, security and similar systems, road, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, cable, and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Without limiting the generality of the foregoing, there are hereby reserved for the water supplier, electric company, and natural gas supplier easements across all the Common Area for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Lot. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be

installed or relocated on the Properties, except as may be approved by the Association's Board of Directors.

All utilities must be underground. All residences shall be connected to the central system for water and sewer, when such systems are constructed, unless a variance is granted by the ARC.

13.3 Easement for Emergency. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any Lot for emergency, security, and safety reasons. The Association's rights may be exercised by the Association's Board of Directors, Officers, agents, employees, managers, and all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

13.4 Easements for Maintenance and Enforcement. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter upon any portions of the Properties, including any Lot, (a) to perform its maintenance responsibilities pursuant to Article V, and (b) to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, Bylaws, and Rules and Regulations. The Association's rights may be exercised by the Association's Board of Directors, Officers, agents, employees, and managers, in the performance of their respective duties. Except in an emergency situation, entry into a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and the Person causing the damage at its sole expense shall repair damage to such property.

The Association or its duly authorized agent shall also have the power to enter a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, or the Rules and Regulations. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

13.5 Access. All Lots within the Properties shall have a non-exclusive, perpetual easement for pedestrian and vehicular ingress and egress over all roads which are now or hereafter designated as Common Areas by the Declaration or any Supplemental Declaration. Said easement shall be effective as to each road or any portion only after the construction thereof is complete.

13.6 Trails. The trails constructed by the former Declarant shall be deemed Common Areas, as defined herein, to be used as recreational pedestrian pathways and trails ("trail system").

The Association, and the Members, guests, invitees have a reserved nonexclusive, perpetual easement of ingress and egress over the trail system and such portions of the Common Areas which are necessary to travel to and from the trail system.

#### **ARTICLE XIV MORTGAGE PROVISIONS**

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

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

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

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of an Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days.

Notwithstanding this provision, any holder of a first Mortgage is entitled upon request to written notice from the Association of any default in the performance by an Owner

of a Lot of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Members holding at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Subarticle);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board shall not be subject to this provision where such decision or subsequent Declaration is otherwise authorized by this Declaration);

(c) By act or omission, waive, or abandon any scheme of regulations or enforcement pertaining to Architectural Design, exterior appearance or maintenance of Lots and the Common Area (the issuance and amendment of Architectural Standards, procedures, Rules and Regulations, or Use Restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on property insurance policies or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

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

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

14.5 Applicability of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Bylaws, or North Carolina law for any of the acts set out in this Article.

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

## **ARTICLE XV**

### **ENFORCEMENT POWERS, DISPUTE RESOLUTION, AND LIMITATION ON LITIGATION**

15.1 Enforcement. Subject to the limitations set forth in this Article, enforcement of the covenants contained in this Amended and Restated Declaration, including violations of the Design Guidelines, 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,

**15.2 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 the maximum amount of statutory fines contained in N.C. Gen. Stat. 47F-3-107.1 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, Design Guidelines, 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 7 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, Design Guidelines, 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.

**Hearing.** The hearing for violations 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 the maximum statutory allowance pursuant to N.C. Gen. Stat. 47F-3-107.1 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 N.C. Gen. Stat. 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 7 of the Declaration are not to be regarded as fines that warrant a hearing under this section.

**15.3 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, Design Guidelines, or Rules and Regulations. Unless an emergency 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 assessment.

**15.4 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.

15.5 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 Amended and Restated Declaration, the Bylaws, the Articles of Incorporation, the Rules and Regulations 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.

15.6 Alternative Dispute Resolution. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, and to avoid the emotional and financial costs of litigation, if at all possible. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the Association Rules and Regulations, or the Articles (collectively "Claim"), except for those Claims authorized in Article XV, Section 15.7, shall be resolved using the procedures set forth in Article XV, Section 15.6 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

15.7 Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Article XV, Section 15.8:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article X, Section 10.6, Article XI, Section 11.7, and Article, Section 15.2;

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article XI (Architectural Standards) and Article XII (Use Restrictions and Rules);

(c) Any suit between Owners seeking redress of a Claim which would constitute a cause of action under federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, Bylaws, Articles or Rules and Regulations of the

Association, if the amount in controversy exceeds the Henderson County small claims maximum allowable amount, and

(d) Any suit by the Association in which similar or identical claims are asserted against more than one Bound Party.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Article XV, Section 15.8. but they shall not be obligated to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Article XV, Section 15.8 shall require the approval of the Board.

**15.8 Mandatory Procedures for All Other Claims.** All Claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) The nature of the Claim, including date, time, location, Persons involved, and Respondent's role in the Claim;

(ii) The basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);

(iii) What Claimant wants Respondent to do or not do to resolve the Claim;  
and

(iv) That Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation

(i) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(d) Mediation.

(i) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of any Henderson County dispute resolution center or such other independent neutral mediator which may provide similar services upon which the Parties may mutually agree.

(ii) If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(iii) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

(iv) Each Party shall, within five (5) days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(e) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within fifteen (15) days of the Termination of Mediation, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration in accordance with the most current version of the Rules of Arbitration established by the American Arbitration Association, or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

(ii) This Subarticle (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

#### 15.9 Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Article XV, Section 15.8 (a), (b), and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Article XV, Section 15.8(c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Article XV, Section 15.8 (c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in Article XV, Section 15.7 (c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

15.10 Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Article XV, Section 15.8. and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement

or Award without the need to again comply with the procedures set forth in Article XV, Section 15.8. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

## **ARTICLE XVI GENERAL PROVISIONS**

16.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association, or the Owner of any Properties, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive 10-year period agreeing to change this Declaration, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

### 16.2 Amendment.

(a) By Owners. Except as otherwise specifically provided herein, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total votes in the Association. In addition, the approval requirements set forth in Article XIV hereof shall be met if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Effective Date and Validity. To be effective, any amendment must be recorded in Henderson County, North Carolina.

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

16.3 Severability. Invalidation of any provision or portion of a provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

16.4 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

16.5 Litigation. Except as otherwise specifically provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Owners holding seventy-five percent (75%) of the total votes of the Association. This Article XVI, Section 16.5 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article X; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Article XVI, Section 16.5 shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

16.6 Compliance. Every Owner and occupant of any Lot shall comply with all lawful provision of this Declaration, the Bylaws, and the Rules and Regulations of the Association. Failure to comply shall be grounds for action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association, or, in a proper case, by any aggrieved Lot Owner(s). In addition, the Association may avail itself of any and all remedies provided in this Declaration or the Bylaws.

16.7 Notice of Sale or Transfer of Title. In the event that any Owner desires to sell or otherwise transfer title to his or her Lot, such Owner shall give the Board of Directors at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot coming due prior to the date upon which such notice is received by the Board of Directors including assessment obligations, notwithstanding the transfer of title to the Lot.

Each transferee of a Lot shall, within seven (7) days of taking title to a Lot, confirm that the information previously provided by the transferor is complete and accurate.

**IN WITNESS WHEREOF**, This Amended and Restated Declaration of Covenants, Conditions, and Restrictions is effective as of the day and year first written above.

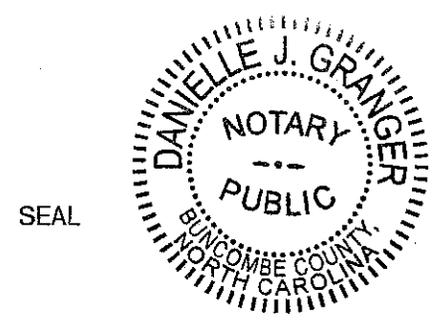
Somersby Park Homeowners Association, Inc.

BY: Jeffrey Waggoner  
TITLE: President

STATE OF North Carolina  
COUNTY OF Buncombe

I, Danielle J. Granger, a Notary Public of said County and State do hereby certify that Jeffrey Waggoner, President of Somersby Park Homeowners Association, Inc., a North Carolina Nonprofit Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the corporation.

Witness my hand and notarial seal this 27 day of January 2026.



Notary Public Danielle J. Granger  
Commission Expires: 7-17-29