

**AMENDED, RESTATED AND CONSOLIDATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF RIVER COUNTRY ESTATES**

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AMENDED, RESTATED AND CONSOLIDATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF RIVER COUNTRY ESTATES

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**AMENDED, RESTATED AND CONSOLIDATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
RIVER COUNTRY ESTATES**

**ARTICLE I  
DEFINITIONS**

**1.1** "Annual Assessment" shall mean and refer to an assessment levied pursuant to Article 16 hereof and described therein as such.

**1.2** "Architectural Review Committee" shall mean and refer to a committee of not fewer than three (3) and not more than seven (7) individuals designated and appointed by the Board to carry out the duties herein assigned to said Architectural Review Committee and shall operate according to the policies and procedures established by the Architectural Review Committee and approved by the Board. The members of the Architectural Review Committee shall serve at the pleasure of the Board, and the chairman of the Architectural Review Committee shall be appointed by the Board.

**1.3** "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

**1.4** "Association" means River Country Estates Homeowners Association, Inc., a North Carolina non profit corporation, its successors and assigns.

**1.5** "Board" means the Board of Directors of the Association.

**1.6** "Bylaws" refers to such governing regulations as are adopted for the regulation and management of the Association including such amendments thereof and thereto as may be adopted from time to time.

**1.7** "Club Property" are those lots in Mountain Escapade section, being Lots numbered 8, 9, 10, 11, 12, 13, 14, 15, 17 on which a Club House, including parking, is constructed.

**1.8** "Common Area" or "Common Elements" means all real property owned by or held in trust for the benefit of the Association for the common use and enjoyment of its Members, but does not include real property over which the Association has only an easement.

**1.9** "Common Expenses" The term "Common Expenses" shall mean and refer to the actual and estimated expenses of the Association incurred or anticipated to be incurred in providing for the acquisition, construction, management, maintenance, and care of the Common Area and the Association's obligations recited herein and further defined in Section 15.2 hereof.

**1.10** "County" means Alleghany County, North Carolina.

**1.11** "Declaration" means this Amended, Restated and Consolidated Declaration of Covenants, Conditions and Restrictions of River Country Estates.

**1.12** "Governing Documents" shall mean and refer to the Articles of Incorporation of River Country Homeowners Association, Inc., the Bylaws of River Country Homeowners Association, Inc., and the Amended, Restated and Consolidated Declaration of Covenants, Conditions, and Restrictions for the River Country Estates and the Rules and Regulations adopted by the Board, as all may now exist or as they may be amended.

**1.13 "Lot"** means any numbered lot or plot of land, together with any improvements thereon, as shown upon any recorded final subdivision map covering the Project or a part thereof, which is not a dedicated street or Common Area.

**1.14 "Member"** means a member of the Association.

**1.15 "Mortgage"** means any mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

**1.16 "Mortgagee"** means the holder of the beneficial interest in any Mortgage.

**1.17 "Owner"** means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

**1.18 "Person"** shall mean an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

**1.19 "Planned Community Act" or "Act"** means the North Carolina Planned Community Act (N.C.G.S. §§47F-1-101 et seq.)

**1.20 "Property"** means, collectively, all property commonly known as River Country Estates, consisting of seven sections known as Spring Meadows, Raven Ridge, Whispering Pines, Hidden Forest, Mountain Escapade, River Escapade, and River Forest. The Property is more particularly described in Exhibit "A" attached hereto and by reference incorporated herein.

**1.21 "Residence"** The term "Residence" shall mean and refer to (a) a building erected on a Lot for use as a dwelling including any exterior steps, garage, parking space, patio, deck, driveway, balcony, storage facilities, terraces, verandas, and landscaping located on the Lot and (b) the Lot upon which said building and improvements are located.

**1.22 "Rules and Regulations"** means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Board.

**1.23 "Single Family"** means a traditional family unit, a single housekeeping unit, or persons substantively structured as an integrated family unit such that any of these must function, as a family within the dwelling or unit and the composition of the family unit must be relatively stable and permanent.

**1.24 "Single Family Residential Dwelling"** means a residential structure built and intended for use and occupancy by a single-family and which is constructed on a Lot designated as a single family residential Lot on any recorded Plat for the community or in any Supplemental Declaration. Such structure must therefore be built to accommodate only single meter service for any utilities including but not limited to electric, water, and gas.

**1.25 "Voting Power"** means the total number of votes of Members in the Association whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of the Declaration, or of the Rules and Regulations. Voting Power shall be computed by including all such Members, whether or not such Members are present in person or by proxy at a meeting.

**ARTICLE II  
PROPERTY SUBJECT TO DECLARATION**

**2.1 Property.** The Property is and shall be held, transferred, sold, conveyed, and occupied under this Declaration and within the jurisdiction of the Association. The property subject to this Declaration is described in Exhibit "A" attached hereto and by this reference incorporated herein.

**2.2 No Subdivision.** No Lot, as set forth on a subdivision map, as recorded in the Alleghany County Registry of Deeds, of a portion of Property shall be subdivided so as to create any number of smaller Lots.

**2.3 Lot Combination.** It shall be the policy of the Association to allow the combination of contiguous Lots with the end result that two (2) or more individually platted Lots become one (1) Lot. The Community benefits by allowing two or more lots which may be unbuildable as platted to become buildable if combined. This can also promote the Community policy of less density. Nevertheless, the Association recognizes the loss of potential assessment income through Lot combinations. Lot combinations are allowed and permitted subject to and in accordance with the Association's Rules and Regulations covering lot combinations. Once two or more Lots are combined, they cannot be re-subdivided again. One and only one single family residential dwelling can be constructed on a lot consisting of two or more combined lots. Furthermore, in consideration of the permission to combine and in light of lost assessment revenue, the applying owner shall pay a Lot Combination Fee to the Association, which Fee shall be set from time to time in the sole discretion of the Board.

**2.4 Submission to Planned Community Act.** In accordance with the recorded amendments to the Declaration for Sections of River Country Estates, the Property has been submitted jointly and collectively to the terms and provisions of the North Carolina Planned Community Act (NCGS §§47F-1-101 et seq.) River Country Estates shall be governed in accordance with and subject to the Planned Community Act.

**2.5 No Declarant Status.** There shall be no "Declarant status" or "Declarant rights". Over the course of the development of River Country Estates, several different persons and entities have claimed declarant rights. All such declarant rights have terminated and no declarant rights will be recognized or be valid at River Country Estates ever again. River Country Estates is a planned community made up of lot owners. Regardless of how many lots that any person(s) or legal entity owns, they are just lot owners. All lot owners pay assessments and vote according to the number of lots owned. Any amendment of this section or any other attempt to name or create a new declarant requires an eighty percent (80%) agreement by all the lot owners at River Country Estates.

**ARTICLE III  
COMMON AREA**

**3.1 Common Area; Owner's Easements of Enjoyment.** The Common Area shall consist of the remaining portion of the Property after deleting the (a) Lots, and (b) Club Property. Such Common Area, in general, consists of the areas known as Indian Cave, Waterfall Hiking Trail, River Pavilion, the Entrance, and all roads within River Country Estates. Each Owner shall have a right and easement of enjoyment in and to the Common Area owned by the Association, which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration.

**3.2 Suspension of Use Rights.** After providing written Notice and opportunity to be heard before the Board, the Association shall be entitled to suspend the voting rights of and the right to use the recreational facilities of the Common Area by an Owner, and his immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents, for any period during which any assessment against said Owner's Residence or Lot remains unpaid.

**3.3 Dedication.** The Association shall be entitled to dedicate, transfer or to grant an easement in or to all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association and the grantee expressed in an instrument agreeing to such dedication, transfer or grant that is signed by the Association and placed upon the records of the Registry of Deeds of Alleghany County, North Carolina.

**3.4 Loans.** The Association shall be entitled, in accordance with its Governing Documents, to borrow money for the purpose of repairing or improving the Common Area and, in aid thereof, to mortgage and encumber the Common Area in accordance with the Act, Section 47F-3-112.

**3.5 Usage Rights.** The Common Area shall be used only for the purposes for which they are intended in providing services and facilities for the common use and enjoyment of the Owners. There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Area except upon the prior written consent of the Association.

**3.6 Area Boundaries and Conveyance of Common Area.** Each Lot shall have the boundaries set forth in the plats filed in the Registry of Deeds of Alleghany County, North Carolina by Declarant for the real property made subject to this Declaration. The Common Area owned by the Association shall remain undivided, and no right shall exist to partition or divide said Common Area except as provided herein. The Association shall retain the right to subject the Common Area to any type of easements for utilities, roads, and other necessary purposes as determined and approved by the Board.

**3.7 Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws and subject to the terms and conditions recited herein, his right of enjoyment to the Common Area to and his immediate family, guests, invitees, visitors, lessees, tenants, servants, and employees.

#### **ARTICLE IV CONSTRUCTION ON LOTS/RESIDENCES**

**4.1 Minimum Requirements.** No Owner of a Lot may build, reconstruct or renovate a Residence, or any other structure, including but not limited to patios, decks, garages, outbuildings, terraces; fences, hedges, or screen planting, without first obtaining approval from the Architectural Review Committee, subject to the terms, conditions, and restrictions set forth herein as well as subject to the additional terms, conditions, and restrictions set forth by the Architectural Review Committee in its Policies and Procedures.

**4.2 Applicable Laws and Architectural Review Committee Policies.** A Lot is subject to having constructed on it by its Owner a Residence that meets the requirements of (a) the Governing Documents and (b) any applicable Federal, state, county or municipal statutes, regulation, law or code. The Architectural Review Committee, a standing committee of the Association, shall have the power

to enforce the terms of the Governing Documents, including, but not limited to, the Policies and Procedures related to matters within its jurisdiction by any action including any type of action in a court of law or equity.

**4.3 Plans and Specifications.** No building of any type, outside lighting, outside trash receptacle, berm, fence, wall, hedge or screen planting shall be erected, placed or altered on the Property until the building plans, specifications, and plat maps showing the location of such building, outside lighting, outside trash receptacle, berm, wall, hedge, fence or screen planting have been approved in writing (a) as to conformity and harmony of external design and external materials with existing structures in the area and (b) as to location with respect to topography, including the river, and finished ground elevation by the Architectural Review Committee. Mobile homes, homes built on platforms or stilts, and homes having exposed cinder or concrete block walls are prohibited. In the event that the Architectural Review Committee fails to approve or disapprove such design or location within forty-five (45) Days after such plans and specifications have been submitted to the Architectural Review Committee, the Board shall assume approval authority, and shall approve or disapprove such plans within thirty (30) Days of assuming such authority.

**4.4 Site Plans.** The Architectural Review Committee shall approve the location of buildings and other improvements on all building sites in the subdivision.

**4.5 Square Footage of Residences.** No residential structure with an aggregate area of less than eight hundred (800) square feet of heated living space, exclusive of porches, decks and garages, shall be erected or placed on any Lot. If the Residence is more than one story in height, then the main floor shall have no less than eight hundred (800) square feet of heated living space as set forth above. The total Lot coverage by structures and impermeable surfaces, including walkways and driveways, shall not exceed 60% of the total square footage of the Lot.

**4.6 Approvals.** The Architectural Review Committee shall have the right to disapprove any plans, specifications or details submitted thereto if (a) the Architectural Review Committee deems such plans, specifications, and details not to be in accordance with all of the provisions established in this Declaration and the Policies and Procedures, (b) the Architectural Review Committee deems the design or color schemes of the proposed building or other structure not to be in harmony with the general surroundings of such Lot or the adjacent buildings or structures, or (c) the plans and specifications submitted are incomplete. The aforesaid conclusions of the Architectural Review Committee shall be in the sole and exclusive discretion of the Architectural Review Committee, and the decisions of the Architectural Review Committee shall be final, subject to the right of the Owner to appeal to the Board pursuant to the Policies and Procedures.

**4.7 Impact Fee.** Upon approval by the Architectural Review Committee for new construction of a single family residential dwelling and prior to beginning any construction, including land clearing, the Owner shall pay to the Association an impact fee of \$1,000.00 which fee may be changed from time to time in sole discretion of the Board of Directors. Any new construction causes certain accelerated wear and tear on the roads and can cause damage to shoulders and erosion control systems. The impact fee offsets these costs and shall be placed in the operating reserves.

**4.8 Building Permit.** No Owner shall obtain a building permit from the applicable municipal agencies without first obtaining all necessary approvals from the Architectural Review Committee as set forth in the Policies and Procedures.

**4.9 Revisions to Policies and Procedures.** The Architectural Review Committee, subject to the approval of the Board, shall adopt, and, from time to time and at any time, may amend and revise such Policies and Procedures as reasonably necessary (a) to establish, preserve, and promote the highest aesthetic and architectural standards of the Property and (b) to maintain the financial value of Lots and Residences thereat and thereon.

## **ARTICLE V CONSTRUCTION POLICIES**

**5.1 Time Period.** The work of constructing, altering or remodeling any building on any Lot or Lots shall be pursued diligently from the commencement until the completion thereof and shall be completed within twelve (12) months from the date of approval by the Architectural Review Committee; provided, however, that the Architectural Review Committee may grant an extension on a case-by-case basis in its sole discretion. All landscaping shown in the original construction plans submitted to the Architectural Review Committee must be completed within one (1) year from the date of approval by the Architectural Review Committee.

**5.2 Grading.** All planned Lot grading and filling shall be approved in advance by the Architectural Review Committee.

**5.3 Construction Disturbances.** During the Construction period, the Owner shall maintain the building site in a reasonably clean and uncluttered condition. No construction debris should be scattered on any road, nor placed upon any Lot or Property except the Lot being constructed upon.

## **ARTICLE VI USE OF PROPERTY**

**6.1 Use of Property.** River Country Estates is a community of single family dwellings. All lots in River Country Estates shall be restricted to be used only for single family residential dwellings with habitation restricted to one single family, with the sole exception of the Club Property in the Mountain Escapade Section (Lots 8, 9, 10, 11, 12, 13, 14, 15, 17) and as more particularly described and limited as to use in Article 17.

**6.2 Residences.** Each of the Single Family Dwellings shall be occupied only by the Owner, his immediate family, guests, invitees, visitors, lessees, tenants, servants, and employees. No Residence may be divided or subdivided into a smaller unit nor any portion thereof separately sold or otherwise transferred. The lease or rental of a Residence to one or more tenants or lessees for purposes limited to residential purposes, subject to the other provisions of this Declaration, shall not be considered to be a violation of this covenant.

**6.3 Nuisances.** No nuisances shall be allowed upon the Property nor any use or practice that is the source of annoyance to residents or that interferes with the peaceful possession and proper use of the Property by its residents.

**6.4 Owner's Obligations.** The Owners shall thus be responsible for the following maintenance obligations: (a) all Residences and Lots shall be kept in a clean and sanitary condition, (b) all Residences and Lots shall be maintained to high aesthetic standards, (c) no rubbish, refuse or

garbage shall be allowed to accumulate in any Residence or on any Lot, (d) no fire hazard shall be allowed to exist in any Residence or on any Lot, and (e) Lots must be maintained in a neat and orderly manner and cleared and maintained clear of dead, diseased, and broken trees, tree limbs, vegetation, and debris.

**6.5 Common Area (Common Elements).** No damage to or waste of the Common Area or any part thereof shall be committed by any Owner, or his immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents; and each Owner shall indemnify and hold the Association and the other Owners harmless against all losses resulting from any such damage or waste.

**6.6 Violations.** No Owner shall make or permit any use of his Lot or Residence or make any use of the Common Area that will violate the provisions of the Governing Documents or any policies of insurance covering the Property.

**6.7 Failure to Maintain.** In the event that an Owner fails to meet his obligations pursuant to Section 6.4 hereof, the Association, after providing written Notice to the Owner, shall have the right, privilege, and license to enter upon the Lot and to undertake and make any and all corrective action and remediation that may be necessary to meet the obligations of the Owner thereunder if the owner fails to correct the condition within 10 days of the date of the written Notice. The cost of such corrective action and remediation of such conditions shall be charged to the Owner and shall be due, payable, and collectible as set forth in this Declaration.

**6.8 Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of any part of the Property, and any applicable Federal, state, county or municipal statute, regulation, law, code or ordinance or other governmental requirement shall be observed. The expense of complying with any applicable Federal, state, county or municipal statute, regulation, law, code or ordinance or other governmental requirement, and the costs of maintenance, modification or repair of the Common Area if necessitated thereby, shall be borne by the Association unless resultant from the misuse, misconduct or neglect of an Owner, or his immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents, in which case such expenses shall be assessed against such Owner, in accordance with Article 16.

**6.9 Rules and Regulations.** The Board may adopt reasonable Rules and Regulations to carry out the provisions of the Articles of Incorporation of the Association, the Bylaws, and the Declaration, provided, however, these Rules and Regulations, nor any amendment thereto, shall not be effective until written notice thereof has been given by mailing a copy of the Rules and Regulations, postage prepaid, at least ten (10) days before the effective date of the Rules and Regulations, to each Member addressed to the Member's address last appearing in the books of the Association. These Rules and Regulations shall thereafter be binding upon the Owners and their immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents, and violations thereof shall be enforced pursuant to the provisions of Article 10.

**6.10 Signs.** Unless prior written approval is obtained from the Architectural Review Committee, no sign shall be posted on the Common Area or on any Residence or Lot, except for security service signs and standard size "for sale" signs customarily used by realtors. Political signs may only be placed upon the Property during the time periods and under such restrictions established by Alleghany County. If no restrictions have been promulgated by Alleghany County, then no political signs may be placed upon the Property except within 45 days of any election. Such signs must be removed within 7 days after the day of the election. Only one sign per Lot shall be allowed,

with maximum dimensions of 24 inches by 24 inches.

**6.11 Offensive Trade or Activity.** No noxious or offensive trade or activity shall be carried on upon the Property nor shall anything be done thereon that may be or become an annoyance or nuisance to the neighborhood. Trade materials or inventories for personal use only may be stored upon the Property for no more than 45 days; and no campers, recreational vehicle, motor homes, trucks or tractors, boats or boat trailers may be stored or regularly parked on the Property, for no more than 45 days unless garaged and out of view, without prior written approval of the Board.

**6.12 No Temporary Structures.** No structure of temporary character, tent, shack, trailer, camper, garage or any other outbuilding shall be used on any Lot at any time as permanent or temporary residence or dwelling except under a temporary written permit issued in the discretion of the Architectural Review Committee and subject to specific limitations of such use including, but not limited to, the duration of such use; provided, however, the Architectural Review Committee may grant permission, under a temporary written permit issued in the discretion of the Architectural Review Committee and subject to specific limitations of such use including, but not limited to, the duration of such use, for temporary buildings or structures for the storage of materials during construction by the parties doing such work. Furthermore, above-ground swimming pools and portable pools with a capacity of more than 250 gallons are prohibited. Such prohibition does not include spas, hot tubs, or jacuzzis.

**6.13 Recreational Vehicles.** Recreational vehicles, including but not limited to ATV's, UTV's, golf carts, motorcycles, mopeds, or minibikes, are allowed to be operated in any part of the Property. Any such recreational vehicle operated on the Property after sunset must be equipped with headlights, taillights, and a horn. No such vehicles shall be allowed to be operated at any time if they constitute a disturbance sufficient to disrupt the quiet enjoyment of any other Lot Owner.

**6.14 Hunting and Firearms.** Hunting on the Property is prohibited and, furthermore, the discharge of any and all firearms on the Property is prohibited.

**6.15 Hazardous Chemicals.** No hazardous chemicals shall be brought onto the Property, including but not limited to those chemicals used by growers of Christmas trees to reduce mites.

**6.16 No Livestock.** No livestock of any description may be permitted or kept on the Property with the exception of dogs, cats, and other animals that are bona fide household pets and that do not make objectionable noise or constitute a nuisance or inconvenience to Owners of other Lots. Dogs, cats, and other animals must be leashed when off of their respective master's Lot. Upon receipt of a written complaint regarding any animal, the Association may notify the master of such animal of the complaint and, after affording the master an opportunity to be heard, impose such restriction upon the master regarding such animal as may be reasonably necessary to satisfy said complaint and ensure compliance herewith. No raising, breeding, training or dealing in dogs, cats or any other animals shall be permitted on or from the Property.

**6.17 Leasing.** The Lots and Residences thereon may be leased or rented for any period without the prior written consent of the Association. All tenants and lessees are subject to this Declaration and to the Association's Rules and Regulations

**6.18 Off-Street Parking.** Adequate off-street parking shall be provided by the Owner of

each Residence for the parking of automobiles owned by such Owner and his immediate family, guests, invitees, visitors, lessees, and tenants, servants, and employees. The Owners, and their respective immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents, of Residences or of other improvements under construction shall park their automobiles or other vehicles on the Lot on which construction is or shall be underway other than on the roads and streets on the Property.

**6.19 Refuse.** No Lot shall be used or maintained as a dumping ground for rubbish, refuse, yard waste or garbage. Garbage or other waste shall be kept in sanitary containers. Burning of trash or refuse is prohibited on all Lots. No hazardous substance, waste or other toxic material shall be dumped, buried, injected, treated or disposed of on any Lot or any portion of the Common Area.

**6.20 Laundry.** All drying of laundry must be done indoors or in an area screened from view from any other Lot, street or road.

**6.21 Delegation of Use.** Any Owner may delegate, in accordance with the Governing Documents, his right of enjoyment to the Common Area to his immediate family, guests, invitees, visitors, lessees, and tenants, servants, and employees.

## **ARTICLE VII EASEMENTS**

**7.1 Utility and Drainage Easement.** The Association, as applicable, reserve the right (a) to construct and maintain utilities on the streets and roads on the Property either above or below ground; provided, however, that, upon completion of such activities pursuant hereto, the Association, as applicable, shall use reasonable efforts to restore the surface area of the Lot or other property that was disturbed pursuant hereto to the condition in which it existed prior to the disturbance thereto. However, this easement expressly grants the right to cut trees, shrubs, and bushes and to grade soil and make cuts as necessary to carry out the purpose of this easement

**7.2 Reservation of Easements.** The Association reserves perpetual utility easements under, over, and across a strip five (5) feet in width adjacent to and along the side yard lines of each Lot, and across a strip ten (10) feet in width adjacent to and along the front and back yard lines of each Lot for the purpose of placing, laying, erecting, constructing, maintaining, and operating as well as of authorizing the placement, laying, erection, construction, maintenance and operation of utilities. Said utilities shall include, without limitation, sewage, water, electricity, gas, cable television, telephone, and telegraph.

**7.3 Drainage.** No change in the natural drainage of a Lot shall be made by any Owner without the prior written approval of the Architectural Review Committee.

**7.4 Easement for Use of Streets.** The Association hereby grants, conveys, assigns, and sets over to every Owner, and his immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents, the right of ingress and egress over, upon, and across the private roads within the Property and they shall have the use of said roads for access to and from public highways adjoining the Property. The Association reserves the right at any time hereafter to dedicate and to convey said roads to any appropriate governmental authority or to the public upon the affirmative vote of sixty-seven percent (67%) of the Voting Power in a regular or special meeting of

the Association duly called and constituted.

**7.5 Master Antennas.** The Association may locate master antennas or cable television facilities upon certain portions of the Property. Any such antennas and connections shall be maintained in good order and repair by the Association. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purpose of providing connection of that Lot with the cable television facility or the master antenna most convenient thereto. Each Lot shall be subject to easements thereto and therefor. The Common Area shall be subject to a further easement for the placement thereon by the Association of such master antennas, cable television facilities, and appurtenances as well as for the installation and maintenance thereon of connections to serve any Lot. All of the foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Lot and the Common Area servient to such easements or to which such easements are appurtenant.

**7.6 Private Antennas.** Subject to any applicable Federal, state, County or municipal statute, regulation, law, code or ordinance or other governmental requirement, no mast, tower, pole, antenna, or aerial shall be permanently erected, constructed or maintained on any Residence or Lot in such a manner and location as to be visible from the outside of such Lot. However, upon the installation of a permitted reception device, the Architectural Review Committee may require that the Owner surround, disguise, and screen the installation to the maximum extent permitted pursuant to any applicable Federal, state, county or municipal statute, regulation, law, code or ordinance or other governmental requirement.

**7.7 Flagpoles.** The erection, construction, and maintenance of residential-scale flagpoles shall be permitted subject to the approval of the Architectural Review Committee for location and size.

**7.8 Owner's Right to Ingress and Egress.** Each Owner shall have the right to ingress and egress over, upon, and across the Common Area necessary for access to his Lot, and such right shall be appurtenant to and pass with the title to each Lot.

**7.9 Inspection and Maintenance.** The Board and any other person so authorized by the Board shall have an access easement across, over, and under the Property for ingress, egress, and access to the Common Area for the purposes of inspection, maintenance, repair or replacement thereof.

## **ARTICLE VIII TRAFFIC REGULATION**

**8.1 Automobiles.** The Association shall establish provisions of the Rules and Regulations governing the operation of vehicles of any sort used by any person on any portion of the Common Area. The Association shall establish and maintain traffic control and safety equipment, markings, and signage consistent with such regulations. The Association shall enforce such regulations and shall thus establish and impose reasonable remedies for violations together with an appeal procedure therefor. The Association may assign some or all of the authority granted by this Article to any appropriate governmental authority.

**ARTICLE IX  
ENFORCEMENT AUTHORITY**

**9.1 Enforcement Powers.**

(a) Rules Making Authority. The Planned Community shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written consent of a majority of the total Association vote at an annual or special meeting. No rule or regulation shall be in conflict with either the Declaration or the Bylaws.

(b) Fining Powers. Pursuant to Sections 47F-3-102(12) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against the Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Section 47F-3-116(a) of the Planned Community Act, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common elements; and to suspend an Owner's right to vote or other privileges provided by the Association. In the event that any occupant of a Lot violates the Planned Community Act, Declaration, Bylaws, or Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Lot Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter.

(c) Abatement and Enjoinment of Violations. In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a lot or any portion of the common elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

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

**9.2 Enforcement Procedures.** In accordance with Section 47F-3-107.1 of the Planned Community Act, the Board of Directors or its designated representatives or committee shall not

impose a fine or a charge for damages against a lot Owner unless and until the following procedure is followed.

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

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

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

**9.3 Late Charges and Interest on Assessments.** In accordance with Sections 47F-3-102 and 47F-3-115 of the Planned Community Act, the Association may make a late charge on past due assessments. Any past due common expense assessment shall bear interest at the rate of eighteen percent (18%) per year. Additionally, the Lot Owner shall be liable for any and all costs of collection including but not limited to reasonable attorney's fees actually incurred.

## **ARTICLE X VARIANCES**

**10.1 Variances.** The Board shall be entitled to allow reasonable variances and adjustments of the terms of this Declaration, including, but not limited to, height, size, and setback requirements, in order to overcome practical difficulties and prevent unnecessary hardships in the application of the regulations contained herein; provided, however, that the approval of such variances conform to the intent and purposes hereof and further provided that, in every instance, such variance or adjustment shall not be materially detrimental or injurious to other property or improvements located on the Property.

## **ARTICLE XI INSURANCE AND CASUALTY/LOSSES**

**11.1 Insurance.** The Board shall maintain such policies of insurance in such coverage's as the Board, in its sole and exclusive discretion, shall determine; provided, however, that the Board shall maintain policies of insurance against, *inter alia*, (a) loss or damage to the Common Area, (b)

liability for injuries to others resultant from use of the Common Area, (c) liability that may be incurred in service to the Association, and (d) such other coverage's required by the General Statutes of the State of North Carolina.

**11.2 Owner's Insurance.** It shall be the individual responsibility of each Owner, at his own expense, to provide insurance in those coverage's as he determines to be appropriate on his Lot and Residence. In the event of damage or destruction to the Residence or other structures, the Owner shall commence reconstruction of the Residence or other structure within 30 days of the casualty or 30 days of receiving the insurance proceeds, whichever is later. In no event shall this period exceed six (6) months. If the Owner fails to reconstruct or repair the damage, then the damaged structure must be removed and the Lot cleared within six (6) months of the date of the casualty.

**11.3 Use of Proceeds.** Any loss recovery amounts paid to the Association shall be used to defray the cost of repairs or replacements to the Common Area so insured; provided, however, that, if the cost of repairs or replacements exceeds the amount of loss recovery, such excess costs may be raised pursuant to (a) a Special Assessment or (b) an appropriation from a reserve fund, or any other fund that may be established for the purpose of providing for the maintenance, repair or replacement of any of the Common Area, as the Board, in its sole and exclusive discretion, shall determine.

## **ARTICLE XII MAINTENANCE/REPAIR**

**12.1 Maintenance Obligations.** Each Owner, at his own expense, shall keep all of his Lot and Residence, including, but not limited to, all exterior walls, roofs, equipment and fixtures therein and thereon, landscaping, water, storm drainage, and sanitary sewer and other utility lines serving only his Lot, in good order, sanitary condition, and good state of repair and in a clean, attractive, orderly, and safe state of appearance.

**12.2 Responsibility.** Each Owner, at his own expense, shall be responsible for all redecorating and painting necessary to preserve or maintain the good condition and appearance of the Residence, the patios, terraces, balconies, verandas, and all other improvements and landscaping located on the Lot or appurtenant to the Residence.

**12.3 Damages to Common Area.** Each Owner shall be responsible for all damages to any of the Common Area that may result from the neglect, negligence, misuse or misconduct of such Owner, and that of his immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents, and the cost of repair of any such damage shall be charged to the Owner and shall be due and payable as provided in Article 17 hereof.

**12.4 Association Responsibilities for Maintenance.** The Association shall maintain and keep in good condition, order and repair the Common Area.

**12.5 Common Expenses.** The Association may, as a Common Expense, (a) maintain other property and improvements that it does not own including, but not limited to, property dedicated to the public as well as fences, walls, entry features or signs that designate the entrance to River Country Estates and (b) provide maintenance or services related to such property over and above the level provided by the owner thereof if the Board of Directors determines that such maintenance is

necessary or desirable to maintain the general appearance of River Country Estates and serves to maintain or increase the property values thereof and thereat.

**12.6 Allocation.** Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Common Area and those items set forth in Section 16 hereof shall be a Common Expense to be allocated amongst all Owners as part of the General Assessment without prejudice to the right of the Association to seek reimbursement from the owners or other responsible parties for all costs associated with any contract, lease or agreement for maintenance thereof duly entered into by the Association.

### **ARTICLE XIII CONDEMNATION**

**13.1 Condemnation.** If part or all of the Planned Community is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47F-1-107 of the Planned Community Act.

### **ARTICLE XIV THE ASSOCIATION AND OWNERS**

**14.1 Association.** The River Country Estates Homeowners Association, Inc. is a North Carolina nonprofit corporation. There are seven sections in River Country Estates. Those sections were under three different original declarations and they have amended their Declarations to adopt the Planned Community Act and to delegate to River Country Estates Homeowners Association, Inc. (“Association”) any and all powers that can be exercised by the Association under the Planned Community.

This Declaration now therefore, in accordance with those amended declarations, reauthorizes the powers of the Association and delegates to the Association, as the Master Association in accordance with Section 47F-2-120 of the Planned Community Act, all powers and duties as set forth in Article 14.3 herein. As the master association, the Association shall administer and regulate all sections of River Country Estates.

**14.2 Association Membership.** All Lot Owners by virtue of their ownership of a Lot in the Planned Community are members of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Planned Community Act and the Documents, such Owners shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership.

**14.3 Powers and Duties.** Acting by and through its Board of Directors and/or its membership in accordance with the provisions of the Documents, the Association shall have the powers and duties necessary for the administration of the affairs of the Planned Community which shall include, but not limited to, the following:

- (a) Adopt and amend Bylaws and Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;

- (c) Collect assessments for common expenses for Lot Owners;
- (d) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Planned Community;
- (f) Make contracts and incur liabilities;
- (g) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (h) Cause additional improvements to be made as a part of the common elements subject to the provisions of Section 13.5 of this Article;
- (i) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to Section 47F-3-112 of the Planned Community Act;
- (j) Grant easements, leases, licenses, and concessions through or over the common elements;
- (k) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements described in Subsections 47F-3-102(2) and (4) of the Planned Community Act and for services provided to Lot Owners;
- (l) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Dollars (\$100.00) per violation or per day for a continuing violation of the Declaration, Bylaws, and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the Planned Community Act;
- (m) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or Bylaws;
- (n) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;
- (o) Assign its right to future income, including the right to receive common expense assessments;
- (p) Exercise all other powers that may be exercised in this State by non-profit corporations; and
- (q) Exercise any other powers necessary and proper for the governance and operation of the Association.

**ARTICLE XV  
COMMON EXPENSES**

**15.1 Budget.** Not later than the first day of November of each succeeding year, the Board shall prepare a proposed budget for the maintenance and operation of the Common Area for the succeeding calendar year (hereinafter the "Budget") and shall therein estimate the amount of Common Expenses to be paid for such year.

**15.2 Common Expenses.** The Common Expenses shall include, but not be limited to, the following (hereinafter the "Common Expenses"):

- a) General Obligations. Fees and expenses of managing and administering the Association and maintaining the Common Area including the roads;
- b) Utilities. Expenses of utility services for the Common Area, including water, gas, electricity, and sewer;
- c) Insurance. The costs of all insurance premiums on all policies of insurance obtained by the Board pursuant to this Declaration;
- d) Rent. All rental and other payments required to be made for any real property or equipment that is hereafter leased or rented for the use and benefit of the Association;
- e) Working Capital Amounts determined by the Board to be reasonably required as working capital of the Association, for a general operation reserve, for a reserve fund for replacements, for deficiencies arising from unpaid assessments, and such amounts as may be required for the purchase or lease by the Board or its designee, corporate or otherwise, on behalf of all Owners of any Lot that is to be sold at a foreclosure or other judicial sale;
- f) Special Assessments. Special Assessments for capital improvements as provided for hereinafter;
- g) General Welfare. Fees and expenses for the promotion of the health, safety, and welfare of the residents of the Property;
- h) Maintenance. Maintenance and operation expenses related to the Common Area.
- i) Facilities. Costs and expenses for the acquisition, improvement, repair, and maintenance of the real property, services, and facilities owned or acquired by the Association;
- j) Managers. Costs and expenses for the employment of third party managers for the Common Area, accountants, attorneys and other professionals to represent the Association when necessary;
- k) Bonds. Costs and expenses for the procurement and maintenance of fidelity and performance bonds for its officers, agents and employees; and
- l) Other. All other amounts necessary to carry out the responsibilities of the Association under the terms of this Declaration.

**ARTICLE XVI**  
**ASSESSMENT AND COLLECTIONS**

**16.1 Notification of Assessments.** The Board shall, based on the Budget, fix the amount of the Annual Assessment against each Lot and its respective Owner at least thirty (30) Days in advance of each Annual Assessment period. Written notice of the Annual Assessment, along with a copy of the Budget, shall be sent to every Owner subject thereto. Annual Assessments are due with payment in full on the first day of each calendar year, but at an owner's option the Annual Assessment may be paid in no more than two (2) installments with the second installment, if any, due no later than July 1. The Association shall, upon request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a Lot have been paid. Notwithstanding the foregoing, however, in the event the Board fails for any reason so to fix the amount of the Annual Assessment, then, and until such time as the Annual Assessment for such year shall have been fixed, an Annual Assessment equal to the amount of the last such Annual Assessment against each Lot shall be deemed to have been imposed as of the first day of such calendar year and shall be payable in full.

**16.2 Purpose of Assessments.** The assessments for common expenses as described in Section 47F-3-115 of the Planned Community Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in the Planned Community as may be more specifically authorized from time to time by the Board.

**16.3 Apportionment of Common Expenses.** Except as set forth in this Article, common expenses shall be assessed against all Lots equally for the common expenses as set forth in this Declaration.

**16.4 Common Expenses Attributable to Fewer than All Lots.**

(a) If a common expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.

(b) Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the lots to which that limited common element is assigned, equally, or in any other proportion that the declaration provides.

(c) Any common expense or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited.

(d) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.

(e) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Planned Community Act, the Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

## **16.5 Lien for Assessments.**

(a) Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Alleghany County in the manner provided in Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, and interest charged pursuant to Sections 47F-3-102(10), (11), and (12), 47F-3-107(d), 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.

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

(c) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(d) This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

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

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

**16.6 Limitation on Assessments.** The 2010 Annual Assessment shall be in the amount of Six Hundred Dollars (\$600.00). The Annual Assessment shall not be increased over the Annual Assessment levied in the prior calendar year by more than ten percent (10%) of the Annual Assessment of the prior calendar year; provided, however, that (a) the Annual Assessment can be increased in excess of the limitations set forth herein upon the affirmative vote at least sixty-seven (67%) percent of the Voting Power at a regular or special meeting duly called and constituted and (b) this limitation upon the increase in the Annual Assessment shall not in any manner restrict, limit, modify or amend or be construed to restrict, limit, modify or amend the amount of a Special Assessment that may be levied by the Board as provided hereinafter.

**16.7 Special Assessments for Capital Improvements.** In addition to the Annual Assessments, the Association may levy Special Assessments for the purpose of paying, in whole or in part, the cost of construction of any new improvement or reconstruction or replacement of any existing improvement within the Common Area and the cost of any fixtures or personal property relating thereto; provided, however, that such Special Assessment shall be subject to the affirmative vote of a majority of the Voting Power cast at a regular or special meeting duly called and constituted. Written notice of any meeting called to authorize a Special Assessment shall be sent to all Members not fewer than thirty (30) Days nor more than sixty (60) Days in advance of the meeting. At the meeting, the presence of Members or of proxies entitled to cast ten percent (10%) of the Voting Power shall constitute a quorum for purposes of adjournment thereof. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) Days following the preceding meeting.

**16.8 Personal Liability of Lot Owners.** The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described in Section 12.4 above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

**16.9 Acceleration.** If a Lot Owner is in default in payment of any assessment or charge, including, but not limited to, the regular installments of the annual assessment based on the budget, the Board of Directors may accelerate the remaining balance of the annual assessment, including regular installments based on the budget, special assessments, and specific assessments, upon ten (10) days written notice to such Lot Owner, whereupon the entire unpaid balance shall become due and payable upon the date stated in such notice.

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

**16.11 Interest, Late Charges and Payments.** In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at 18% per annum.

The Board shall set a late charge to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges.

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

**16.12 Surplus Funds.** Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.

**16.13 Failure to Assess.** The failure of the Board to fix assessment amount or rates or to deliver or mail to each Owner a notice of applicable assessments (hereinafter the "Assessment Notice") shall not be deemed to be a waiver, modification or release of any Owner from the obligation to pay applicable assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at, and, at such time, the Association may assess any shortfalls in collections on a retroactive basis.

## **ARTICLE XVII CLUB PROPERTY**

**17.1 Club Property.** The Club Property is made up of Lots 8, 9, 10, 11, 12, 13, 14, 15, and 17 of the Mountain Escapade Section. Use of the Club Property shall be restricted to use for recreational and social activities only. No commercial use of the Club Property is allowed, with the exception of food service related activities at the Club Property.

**17.2 Use of Club Property.** Use of the Club Property shall be voluntary. Any type of membership shall also be voluntary as to whether lot owners decides to participate or to become a member. Any dues or fees required to be paid by club members shall be for Club Property use and only lot owners who are Club Property users or members shall be required to pay.

**17.3 No Association Involvement.** The Association is expressly prohibited from entering into any agreement or contract to lease or rent the Club Property or any of its facilities.

**17.4 Possibility of Association Ownership.** In the event that ownership of the Club Property is offered as a gift or contribution to the Association at any time, the Club Property can only be accepted if the Association lot owner members vote by a majority vote of all members to accept such ownership. If approved for ownership by the vote of the lot owners, the Club Property would become a limited common area (limited common element). The Club Property and all facilities thereon would be administered, operated, and maintained by Committee designated by the Board. Any assessment for the operation and maintenance would be strictly voluntary and paid exclusively by those Association members who elect to use the Club Property. No Association member will ever be required to be a Club Property user. Furthermore, no Association funds from annual assessments or special assessments can ever be spent on the Club Property. All funds used for the Club Property must be raised through voluntary assessments paid by Club Property users.

## **ARTICLE XVIII NOTICES**

**18.1 Notices.** Any notice required pursuant to the Governing Documents shall be, unless otherwise required, a written notice delivered to the recipient or mailed to him by the United States

Postal Service, postage prepaid, at (a) his last known address if the recipient is an individual, (b) addressed to the senior executive of the business entity if the recipient is a business entity or (c) to the President of the Association if the recipient is the Association or the Board. All notices so delivered by mail shall be deemed to have been given as of the date and hour of the postmark thereon or, in the absence of such postmark, as of the date and time of mailing. The address of an Owner shown on the records maintained by the Secretary of the Association shall be the address of each Owner for making of all notices required from the Board or the Association. It shall be the responsibility and obligation of each Owner to furnish the Secretary with written notice of any error in such records and of any change of address.

## **ARTICLE XIX COVENANTS, CONDITIONS, AND RESTRICTIONS RUN WITH LAND**

**19.1 Application.** The provisions of this Declaration and related documents shall constitute covenants running with the land that are binding on the Association, and all Owners of any part of the Property, their grantees, successors, assigns, heirs, personal representatives, administrators, and devisees as well as their immediate family, guests, invitees, visitors, lessees, tenants, servants, employees, and agents. By the acceptance of any deed or other document conveying or transferring any interest in a Lot or Residence, the recipient thereof accepts and ratifies all covenants, conditions, and restrictions set forth in the Governing Documents.

**19.2 Acceptance.** Each Owner of a Lot, by the acceptance of a deed therefor, covenants and agrees each with the other that (a) he will join in the execution of any and all documents that are deemed necessary by the Board to renew or extend this Declaration from time to time and (b) that any provision of any applicable Federal, state, county or municipal statute, regulation, law, code or ordinance or other governmental requirement removing any limitation of time that would apply to this Declaration if this Declaration were made after such provision of any applicable Federal, state, county or municipal statute, regulation, law, code or ordinance or other governmental requirement becomes of effect shall be deemed automatically to apply to this Declaration retroactively.

## **ARTICLE XX AMENDMENTS**

**20.1 Amendment.** With the exception of the requirement of Article 2.5 regarding reinstatement of declarant rights, this Declaration of Planned Community may be amended only by affirmative vote of or written agreement signed by Lot Owners of Lots to which at least Sixty Seven Percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Planned Community Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Alleghany County, North Carolina.

## **ARTICLE XXI TERM**

**21.1 Term.** This Declaration of Planned Community, as from time to time amended, shall run with the land and shall be binding on all parties and all persons claiming hereunder until such time as planned community may be terminated in accordance with Section 47F-2-118 of the Planned Community Act.

**21.2 Application.** All of the provisions, restrictions, conditions, easements, covenants,

agreements, liens, and charges set forth herein shall affect each and all of the Lots, shall run with the land, and shall exist and be binding upon all parties and all persons claiming under them after the date of recordation hereof unless sooner annulled, amended or modified pursuant to the provisions hereof.

**21.3 Interpretation.** The provisions of the Governing Documents shall be given reasonable interpretation or construction which will best effect the consummation of the general plan of land use restrictions and affirmative obligations of the Property that will preserve the Property as a situs for high quality, attractive, well-maintained, privately-governed residential planned community.

**21.4 Discrepancy.** In the event of a discrepancy in the provisions of the Declaration, Articles of Incorporation, Bylaws, or Rules and Regulations, the true intent shall be determined first by reference to the Declaration, then the Articles of Incorporation, then the Bylaws, then the Rules and Regulations, in that order.

## **ARTICLE XXII TIME SHARE PROHIBITION**

**22.1 General Intent and Purpose.** The purpose of this Section is to prohibit the use of any Lot Improvement, single-family dwelling, or any other property or land within the River Country Estates Community, for Time-Share Programs or Time-share-like arrangements. In addition, the further intent of this Article is to preserve the character of River Country Estates as a residential community of low intensity use with minimum disturbance from move-in and move-out of Owners or occupants and use by Owners.

Time share-like arrangements including but not limited to multi-party purchasing and use schemes but which do not fit within the definition of time-shares, are likewise prohibited at River Country Estates. By way of illustration but not limitation, an owner(s) is prohibited from setting up a timeshare arrangement in which one owner is on the deed but that owner arranges dates of separate occupancy and use for other individuals. It is furthermore prohibited for multiple owners as tenants in common to divide up the occupancy of the unit on any time-based formula. If an owner(s) devises a time share-like arrangement that does not meet the North Carolina statutory definition of a time-share, this arrangement could still be considered a time-share in the sole discretion of the Association and therefore be prohibited.

**22.2 Definitions.** For the purposes of this Article, the following words shall have the meanings ascribed herein:

(a) "Accommodations" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, single-family dwelling, living unit, or any other private or commercial structure designed for occupancy by one or more individuals.

(b) "Offer to Sell", "Offered for Sale", "Offer", or "Offering" means any offer to sell, solicitation, inducement, taking of reservations, advertisement, whether by radio, television, newspaper, magazine or by mail, or any other method of solicitation of Purchasers whereby a person is given an opportunity to acquire a Time-Share Interval or participate in a Time-Share Program.

(c) "Person" means one or more natural persons, corporations, partnerships, associations, trusts, other entities, or any combination thereof.

(d) "Purchaser" means any person who is buying, who has bought, or who acquires an interest in a Time-Share Interval or Time-Share Program.

(e) "Time-Share Estate" means an ownership or leasehold estate subject to a Time-Share Program, including tenants-in-common, interval ownership, time-span ownership, or any other type of ownership or leasehold Time-Share Program.

(f) "Time-Share Interval" means a Time-Share Estate or Time-Share Use.

(g) "Time-Share Program" means any arrangement, plan, scheme, or similar device, whether by membership, agreement, tenancy-in-common, sale, lease, deed, rental agreement, license, right-to-use agreement, or by any other means, whereby a Time-Share Interval is created and whereby the use, occupancy or possession of an Accommodation, Lot, Improvement, Multi-Family Dwelling, Single-Family Dwelling, Parcel, Common Area or any other land or property within the Community, has been or becomes subject to a Time-Share Interval whereby such use, occupancy or possession circulates among purchasers of the Time-Share Interval according to a fixed or floating time schedule on a periodic basis occurring annually over any period of time in excess of one (1) year in duration.

(h) "Time-Share Use" means any contractual right of exclusive occupancy, whether fixed for a specific time period or not, which does not fall within the definition of a "Time-Share Estate", including, without limitation, a vacation license, prepaid hotel reservations, club membership, limited partnership, trust agreement, or vacation bond.

**22.3 Prohibition of Time-Share Program.** Time-Share Programs and Time-Share-like arrangements are expressly prohibited in any respect within River Country Estates.

**22.4. Miscellaneous.** No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use shall be, nor is intended to be, considered as a Single-Family Dwelling, but instead shall be considered solely in accordance with the terms of this Section.

**22.5. No Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use** shall be, nor is intended to be, considered as a "residential use" under the terms of this Declaration, but instead shall be solely considered in accordance with the terms of this Article.

**22.6 No Addition of Property.** Despite anything to the contrary, notwithstanding under the terms of the Declaration, no person shall have any right whatsoever to add to the Community any real property used or to be used as Time-Share Estate, Time-Share Interval, Time-Share Program or Time-Share Use.

**22.7 Invalidity of Some Section.** If any subsection, subdivision, paragraph, sentence, clause, phrase, or word in this Section, or any part hereof is for any reason held by any court of competent jurisdiction to be unconstitutional, invalid, ineffective or otherwise unenforceable, such decision shall not affect the validity or effectiveness of the remaining portions of this Section or any part thereof. The Association and its membership, by adoption hereof does hereby declare that it has enacted each section, subsection, subdivision, paragraph, sentence, clause, phrase or word of this Section irrespective of the enactment of any other and irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or words be declared unconstitutional, invalid, ineffective or otherwise unenforceable.

**ARTICLE XXIII  
MISCELLANEOUS**

**23.1 Multiple Owners.** If any Lot shall be owned as tenants in common by two or more Persons, such Persons shall be jointly and severally liable for the assessments levied against such Lot and for prompt discharge of each and every obligation or duty imposed on such Owners by the Governing Documents.

**23.2 No Partition.** There shall be no judicial partition of the Property or any part thereof, and, the Owners thus hereby waive and release any such right of judicial partition.

**23.3 Construction and Headings.** The section headings throughout this Declaration are for convenience and reference only, and words contained therein shall in no way be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Declaration. Whenever used herein, a pronoun in the neutral gender shall include the masculine and feminine gender, and the singular shall include the plural unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the undersigned officers of River Country Estates Homeowners Association, Inc. hereby certify that the above amended, restated and consolidated Declaration of Covenants, Conditions and Restrictions of River Country Estates is duly adopted by the Association and its membership in accordance with and pursuant to the Declaration of Covenants, Conditions and Restrictions and Bylaws of the Association.

This \_\_\_\_\_ day of \_\_\_\_\_, 2010.

(Seal)

River Country Estates Homeowners Association, Inc.

by: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Secretary

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I \_\_\_\_\_, Notary Public for said County and State, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he is Secretary of River Country Estates Homeowners Association, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

My commission expires \_\_\_\_\_.