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 Buncombe County, NC
 Drew Reisinger Register of Deeds

BK 4878 PG 891-909

Prepared by and return to:
 Erin F. Dunnuck, Esq. #80

References: Deed Book 1611, page 107
 Deed Book 1689, page 722

STATE OF NORTH CAROLINA
 BUNCOMBE COUNTY

AMENDED AND RESTATED
 DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 (Hamburg Mountain Subdivision)

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

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS made this ~~24th~~ day of April, 2011, by Hamburg
 Mountain Homeowners Association, Inc., a North Carolina non-profit corporation; and

WHEREAS, Hamburg Mountain Homeowners Association, Inc., ("Association") is the
 association of lot owners at Hamburg Mountain, an older planned community located in Buncombe,
 North Carolina; and

WHEREAS, the Association was established to be organized, controlled and governed by
 the Declaration of Covenants, Conditions and Restrictions as recorded in Deed Book 1611 at Page
 107, *et seq.*, in the Buncombe County Registry of Deeds ("Original Declaration"), as amended; and

WHEREAS, the Association was originally named Le' Perrion at Hamburg Mountain
 Homeowners Association, Inc. but has officially changed its name with the North Carolina
 Secretary of State to Hamburg Mountain Homeowners Association, Inc.; and

WHEREAS, in Article 16 of the Original Declaration, provides for amendment of the
 Original Declaration by at least seventy-five percent (75%) of the votes in the Association; and

WHEREAS, in accordance with Section 47F-1-102(d) of the Planned Community Act, any planned community created prior to the effective date of the Act (“existing community”) can elect to make the provisions of the Act applicable to that planned community; and

WHEREAS, members owning the appropriate percentage of the lots in the subdivision voted or consented in writing to adopt the Planned Community Act and the following Amended and Restated Declaration of Covenants, Conditions and Restrictions for Hamburg Mountain for the purposes stated above. This Amended and Restated Declaration shall bind and restrict all current owners of the lots located within Hamburg Mountain, their devisees, heirs, assigns and/or successors; and

NOW, THEREFORE, the original Declaration of Covenants, Conditions and Restrictions for Hamburg Mountain are now amended by striking it in its entirety except for the purpose of preserving legal descriptions and by simultaneously substituting therefor the following Amended and Restated Declaration of Covenants, Conditions and Restrictions which shall govern all numbered lots shown on the plats recorded in Plat Book 57, at Page 107, Plat Book 68, at Page 64, and Plat Book 114, at Page 22, in the Office of the Register of Deeds for Buncombe County, North Carolina of Hamburg Mountain.

ARTICLE 1
DEFINITIONS

AS USED HEREIN:

A. **"Articles"** means the Articles of the Incorporation of the HAMBURG MOUNTAIN HOMEOWNERS ASSOCIATION, INC.

B. **"Corporation" or "Association"** means HAMBURG MOUNTAIN HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation. The Board of Directors or "Board" shall be the elected body governing the Association and managing the affairs of the Association.

C. **"Bylaws"** means the Bylaws of the HAMBURG MOUNTAIN HOMEOWNERS ASSOCIATION, INC.

D. **"Community Use Areas"** means all real and personal property, together with those areas within dedicated portions of the Development Area and the Subdivision, which may be deeded to or acquired by the Association for the common enjoyment of the members of the Association.

E. **"Common Expenses"** means and includes actual and estimated expenses of maintaining and operating the common area and operating the Association for general purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Association.

F. **"Dedication"** means the act of committing a portion of the Development Area or the Subdivision to the purposes of this Declaration.

G. **"Development Area"** shall mean that property depicted on the plats recorded in Plat Book 57, at page 107, Plat Book 68, at Page 64, and Plat Book 114, at Page 22, in the Office of the Register of Deeds of Buncombe County, North Carolina.

H. **"Lot"** means a separately numbered tract of land lying within the Subdivision or other dedicated portion of the Development Area and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is 'dedicated.' The Owner of all of a numbered Lot may combine such numbered Lot, part or parts of another such numbered Lot and the aggregate shall be considered as one Lot for the purposes of these Restrictions.

I. **"Subdivision"** means HAMBURG MOUNTAIN Subdivision.

J. **"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.

K. **"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.

**ARTICLE 2
APPLICABILITY**

These Restrictions shall apply to all subdivided numbered Lots shown on the aforesaid plat or map, and additional plats or maps of subdivisions of the Development Area, (hereafter referred to as "Lot" or "Lots"), which Lots are for residential purposes only. These Restrictions shall not be applicable to any unnumbered land or lands designated on the plat as "Reserved" or other lands of Developer, and Developer is withholding these parcels from these Restrictions pursuant to its general scheme of development, the absence of Restrictions thereupon being intended to allow Developer maximum flexibility in the determination of the development of such parcels.

ARTICLE 3 HOMEOWNERS ASSOCIATION

A. A corporation named HAMBURG MOUNTAIN HOMEOWNERS ASSOCIATION, INC. was formed pursuant to the rules and requirements of the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes) as an association of the Owners of Lots. 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 be limited to, the following:

- (a) Adopt and amend Bylaws and Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect assessments for common expenses for Lot Owners;
- (d) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the 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;
- (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.

A. Each Owner of each Lot within the Subdivision shall be a member of the Association. The Declarant, Owners of individual Lots in Hamburg Mountain by their acceptance of individual deeds thereto, covenants and agree with respect to the Association:

1. That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Association;
2. That each shall be subject to the rules and regulations of the Association with regard to ownership of a Lot; and
3. That any unpaid assessment, whether general or special, levied by the Association in accordance with these Restrictions, the Articles or the Bylaws shall be a lien upon the Lot upon which such assessment was levied, and shall be the personal obligation of the Owner of the lot at the time the assessment fell due.

B. Each membership in the Association shall relate to and have a unity of interest with an individual Lot which may not be separated from ownership of said Lot.

C. The Association shall have one class of members who shall be all Owners. Each member shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote or any fraction of a vote be cast with respect to any Lot.

ARTICLE 4
MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Community Use Areas of the Subdivision shall be the sole right and responsibility of the Association. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Association, but may be delegated or contracted to managers or management services.

ARTICLE 5
COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

- A. All amounts expended by the Association in operating, administering, managing, repairing, replacing and improving the Community Use Areas of the Subdivision; all amounts expended by the Association in legal, engineering, or architectural fees; all similar fees which may be incurred by the Association from time to time in performing the functions delegated to the Association in enforcing these Restrictions, the Articles or the BYLAWS.
- B. All amounts expended by the Association in carrying out any duty or description as may be required or allowed by these Restrictions, the Articles or the Bylaws.
- C. All amounts declared to be Community Expenses in the Bylaws or in these Restrictions, including, but limited to, maintenance of common areas, street lighting, roadway maintenance, recreation areas, if any, and water system.
- D. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Community Use Areas in the Subdivision.

ARTICLE 6
ANNUAL GENERAL ASSESSMENT

- A. The Owner of any Lot by acceptance of a deed for same (whether or not it shall be so expressed in such deed) is deemed to covenant and agrees to pay to the Association annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of the lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.
- B. Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Planned Community

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during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within 30 days after adoption of any proposed budget for the planned community, the 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 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 ten (10) not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting sixty-seven percent (67%) of all the lot owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

C. 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.

D. The annual general assessments levied by the Association shall be used exclusively to improve, maintain and repair the Community Use Areas, to pay the expenses of the Association, to pay the cost of lighting the Community Use Areas, to pay the cost of any insurance the Association determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon the Community Use Areas.

E. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

F. 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 or portion thereof benefiting fewer than all of the lots shall be assessed exclusively against the lots benefited.

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(c) 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.

ARTICLE 7 SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes of which special assessment may be levied include, but are not limited to, providing funds to pay Community Expenses which exceed the general assessment fund then on hand to pay same and providing a contingency fund for capital improvements and extraordinary expenses. Furthermore, special assessments may be assessed against specific Lots. In the event the Owner of such Lot fails to comply with the provisions of Article 12 hereof, the Association may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

ARTICLE 8 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 Buncombe 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 Article.

(b) The lien under this Article 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.

ARTICLE 9 COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BYLAWS OF THE ASSOCIATION

In the case of failure of a Lot Owner to comply with the terms and provisions contained in the Declaration, the Articles or the Bylaws of the Association, the following relief shall be available:

A. Enforcement Powers.

(1) 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.

(2) 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

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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.

(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, 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.

B. 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.

(1) Notice. If it appears that a lot owner is in violation of the Declaration, Bylaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the lot owner is not in violation of the Declaration, Bylaws, or Rules and Regulations; (iv) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (v) that the lot owner has the right to be represented by an attorney at the hearing.

(2) Hearing. The hearing shall be held before the Board of Directors and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a

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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 6 are not to be regarded as fines that warrant a hearing under this section.

**ARTICLE 10
PROPERTY RIGHTS OF LOT OWNERS, CROSS-EASEMENTS,
AND EXCEPTIONS**

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, shall have a perpetual easement over and upon the Community Use Areas within the Subdivision for each and every purpose or use to which such Community Use Areas were intended as determined by their type, or for which such Community Use Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Association shall have the right to make reasonable rules and regulations respecting the use of same.

2. The Association shall have the right to suspend the voting rights of a Lot Owner and his right to use the Community Use Areas within the Subdivision for any period during which any due assessment against such Owner's Lot remains unpaid as is provided in Articles 6 and 7 hereof, and for a period not to exceed sixty (60) days for an infraction of its published Rules and Regulations.

3. The Association shall have the right to charge reasonable admission and other fees for the use of any recreation facility situated upon the Community Use Areas.

B. The Association hereinafter may grant easements for utility purposes for the benefit of the Subdivision and the Lots now or hereafter located thereon, over, under, along and throughout the Community Use Areas. Provided, however, that no such grant of easement shall have a material adverse effect on the use, enjoyment or value of any Lot.

C. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Community Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

D. Deleted.

E. The established easements and right of way areas reserved by Association on each Lot pursuant hereto shall be maintained continuously by the Owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Improvements

within such areas also shall be maintained by the respective Owner except those for which a public authority or utility company is responsible.

F. The rights of the use of utility and service easements and rights of way areas as provided and defined herein for any type of cable transmission system is reserved exclusively to the Association, and no other cable transmission service company or organization shall be permitted to service any Lot or combination of Lots except with the express permission of the Association.

ARTICLE 11 ARCHITECTURAL STANDARDS AND ARCHITECTURAL STANDARDS COMMITTEE

The Board of Directors shall establish an Architectural Standards Committee (hereafter referred to as the "Committee" or the "ASC") which shall be composed of three (3) members. The Board of Directors shall have the right to appoint and remove members at any time and without cause.

A. No construction, which term shall include within its definition clearing, excavation, grading and other site work or preparation, shall take place except: in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Committee has been obtained.

B. The Committee shall have exclusive jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof together with any modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved. The Committee shall prepare and, subject to the approval of the Board of Directors, shall promulgate architectural standard guidelines ("Guidelines") and application and review procedures ("Procedures"). The Guidelines and Procedures shall be those of the Association and the Committee shall have the sole and full authority to prepare and to amend the guidelines and procedures subject to approval of the Board of Directors. The Committee shall make the guidelines and procedures available to Owners, builders and developers who seek to engage in the development of or construction upon the lots and who shall conduct their operations strictly in accordance therewith.

C. The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions and the Guidelines; if the design, color scheme or location upon the Lot or Lots of the proposed improvements are not in harmony with the general surroundings or adjacent structures; if the plans or specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or detail, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to this Declaration or the Owners thereof.

D. The Committee shall approve or disapprove plans, specifications and detail submitted in accordance with its procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided,

however, that plans, specifications and details revised in accordance with Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans, specifications and details within thirty (30) days after submission of the same to the Committee, approval, for the purposes of this Article, shall be deemed to have been given by the Committee.

E. The Committee, or its agents, shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details. Upon completion of the construction in accordance with the approved plans, specifications and details, the Committee shall issue a certificate of completion to the Owner.

F. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence or permitted pertinent structure, or to paint the interior of the same any color desired.

G. Neither the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

H. The requirements of this Article shall not constitute a lien or encumbrance on any Lot on which construction is completed, and any subsequent purchaser thereof for value without notice thereof is in no way affected by the failure of his predecessors in title to comply with the terms hereof.

ARTICLE 12
RESTRICTIONS ON USE AND OCCUPANCY

A. No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on less than a numbered Lot other than one: (1) detached, single family residence dwelling including a private enclosed garage with space for not more than three(3) automobiles and a second story for guests or servants quarters which garage shall not be rented separately for remuneration. Unenclosed carports, or similar storage structures, shall not be erected, placed or permitted to remain on any Lot.

B. The ground floor area of the main structure, exclusive of open porches and garages, shall not be less than 1700 square feet of heated living space for a one-story dwelling. Multi-story dwellings shall be a minimum of 1400 square feet of heated living space on the first floor. For the purpose of this restriction, split-level and split-foyer homes shall be considered one-story dwellings.

C. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except within the minimum building set back lines as set forth herein:

- (a) Thirty (30) feet from the lot front line.
- (b) Ten (10) feet from the lot side line.

(c) Thirty (30) feet from the lot rear line.

The term "lot front line" defines the boundary line of the Lot that is contiguous to and bounded by the named street as shown on the recorded subdivision plat.

The term "lot rear line" defines the boundary line of the Lot that is farthest from, and substantially parallel to, the line of the street on which the Lot abuts.

The term "lot side line" defines a boundary line that extends from the street on which the Lot abuts to the rear line of the Lot.

Variances may be allowed, in the event of a hardship, by the Architectural Standards Committee pursuant to Article 14.

An Owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may construct a dwelling and other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, all such structures to comply with the minimum building setback lines from the actual boundary lines of the subject Owner's property, and thereafter such combinations of lots or portions hereof shall be treated for all purposes under these Restriction as a single Lot; provided, however, no structure shall be permitted which would interfere with an easement or right of way as provided for in Article 10.

D. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to sewer system located upon such and approved by the appropriate governmental authorities. Each such approved sewer system shall be maintained in accordance with the requirements of governmental authorities having jurisdiction. No outside toilet shall be constructed or permitted on any Lot except during construction as herein expressly provided.

E. The design, size and location of containers for the collection and removal of garbage, trash and other like household refuse shall be subject to and shall require the approval of the Committee.

F. The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:

1. No mobile home, trailer, camper, tent, or temporary house, temporary garage or other temporary outbuilding shall be placed or erected on any Lot, provided, however, that the Committee may grant permission for temporary structures for storage of material during construction. No such temporary structure as may be approved shall be used at any time as a residence.

2. Once construction of a dwelling or other improvements is started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement.

2a. During construction of improvements on any Lot, the owner or general contractor or any subcontractor shall be required to maintain silt fences on the property for erosion control.

2b. Prior to construction of improvements on any Lot, the owner will be required to provide a deposit of \$3,000.00 or such amount as may be determined by the Board of Directors that shall be consistent with its purpose to assure the satisfactory preservation and replacement of the natural landscape and cleanup of debris and trash removal from the Lot and of repairing damage to roads, sewers, waterlines, telephone connections, cable connections and the like which represent a liability to the Corporation. In the event any of the foregoing are not satisfactorily completed or maintained, the Board of Directors may withdraw any sums from the Deposit, including interest earned thereon, and expend the same as necessary to effect the proper preservation and replacement of the natural landscape and cleanup of debris and trash removal from the Lot, and the repair and replacement of any facility, either on or off the Lot, which facility has been damaged by said Owner or its agents, and to cover any administrative costs it may incur in this regard. Upon completion of construction, each Owner and builder shall clean his construction site and repair all property which was damaged, including but not limited to restoring grades, planting trees as approved or required by the Architectural Standards Committee, and repair of streets, driveways, drains, culverts, ditches, signs, lighting and walls. The remaining amount of the Deposit after completion of the construction to the satisfaction of the Architectural Standards Committee shall be paid to the Owner. Any expense incurred by the Association in excess of the Deposit amount due to the actions of the Owner or his Agent with respect to the construction or improvement, including, but not limited to, landscape restoration, site clean-up, environmental remediation or the legal fees associated with enforcement of this provision, may be recovered by the Association from the Owner via a special assessment as provided in Article 7, herein. Any of the requirements of this subparagraph may be waived by the Architectural Standards Committee for modifications or alternatives to construction which take place after initial construction is completed.

3. During construction of improvements on any Lot, adequate portable sanitary toilets must be provided for the construction crew and the Lot must be cleaned of excess debris once per week.

4. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in a good workmanship manner and quality. No structure shall have an exterior constructed of concrete blocks, asbestos or asphalt siding. Any exposed concrete block above grade level will be covered with stucco, stone, brick, wood, or other material as approved by the Committee. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling on the Lot. The requirements of the Committee shall control all improvements to any Lot as is therein specified.

5. Reserved.

6. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted. In the event of non-compliance the Association shall proceed pursuant to Article 9.

7. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot or other area in the subdivision.

8. Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot .Longer than three (3) months.

9. No stripped, partially wrecked, or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.

10. No vehicle of any type shall be parked on any street in the subdivision for a period of greater than 72 hours. Except for emergency repairs, no person shall repair or restore any vehicle, boat, or trailer upon any portion of the subdivision except in an enclosed garage.

11. All fuel storage tanks shall be buried below the surface of the ground and all outdoor receptacles for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible to the occupants of other Lots or the users of any street or recreation area.

12. All outdoor poles, clotheslines and similar equipment shall be screened or so placed as not to be visible to the occupants of other Lots or the users of any street or recreation area.

13. No mail or paper box (tube) or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located upon any Lot except such receptacle of standard design as shall have been approved by the Committee.

14. With three exceptions, no sign, advertisement, notice, or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of a Lot or the exterior of any residence, garage or any other building constructed on any lot without written permission from the Board of Directors. However, Owners are allowed to erect a tasteful and conservatively designed 24"x 30" sign on the Owner's Lot advertising the Owner's Lot for sale. Additionally, construction identification signs approved by the Board of Directors showing the Lot number and name of the builder may be exhibited upon the Lot during the period at construction. In addition, Owners are allowed to erect one political sign with the maximum dimensions of 24" x 24" on their lot. The political sign may only be erected forty-five (45) days before an election day and must be removed seven (7) days after an election day. Further, nothing herein shall be construed

to prevent the Board of Directors from erecting an entrance sign or street signs.

15. Reserved.

16. All dwelling connections for all utilities including but not limited to, water, electricity, gas, telephone, and television shall be run underground from the proper connecting points to the dwelling structure in such a manner as may be acceptable to the appropriate utility authority.

17. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets in a reasonable number may be kept provided they are not kept, bred or maintained for any commercial purpose, and provided, further, that such pets do not constitute a danger or nuisance to other Lot owners or to the neighborhood.

18. The erection of fences shall require approval of the Committee as provided in Article 11 hereof, but no fence shall be erected along the front line of any Lot nor along the side line of any Lot that adjoins a street except a split-rail, wooden fence of not more than two (2) horizontal rails. No fence of chain link type construction or in excess of four feet in height shall be approved by the Committee, except that the Committee, in its sole discretion, may approve fences of chain link construction and up to six feet in height for the purpose of confining pets provided same does not extend more than twenty-five (25) in any direction and are constructed so as not to violate the minimum building setback lines.

19. Entrance to enclosed garages may face in any direction provided that all such garages shall have a door or doors that completely close off the garage entrance and such door or doors shall remain completely closed except during periods of actual use of such garage entrance.

20. No window air-conditioning units shall be installed in the side of any structure in such manner as to be visible from any Lot.

21. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other Lot owners or the neighborhood.

ARTICLE 13
WAIVER

No provision contained in these Restrictions, the Articles or the Bylaws, shall be deemed to have been waived abandoned, or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

ARTICLE 14 VARIANCES

The Architectural Standards Committee in its discretion may allow reasonable variances and adjustments of these Restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various persons with each such Owner having an easement upon area Owned by the Association.

ARTICLE 15 DURATION, AMENDMENT AND TERMINATION

This Amended and Restated Declaration for Hamburg Mountain 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 Buncombe County, North Carolina.

ARTICLE 16 CAPTIONS

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine.

ARTICLE 17 LIBERAL CONSTRUCTION

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an homeowner's association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

IN WITNESS WHEREOF, the undersigned officers of Hamburg Mountain Homeowners Association, Inc. hereby certify that the above Amended and Restated Declaration of Covenants, Conditions and Restrictions are duly adopted by the Association and its membership in accordance with and pursuant to the Declaration of Covenants, Conditions and Restrictions.

This 20th day of April, 2011.

(Seal)

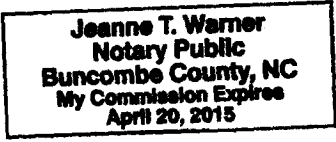
Hamburg Mountain Homeowners Association, Inc.
by: *David J. Robison*
President
Attest: *David J. Robison*
Secretary

NORTH CAROLINA
BUNCOMBE COUNTY

I JEANNE T. WARNER, Notary Public for Buncombe County, North Carolina, certify that DAVID J. ROBISON personally came before me this day and acknowledged that he is Secretary of Hamburg Mountain Homeowners Association, Inc., a nonprofit 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 20th day of APRIL, 2011.

(SEAL)



Jeanne T. Warner
Notary Public

My commission expires APRIL 20, 2015.