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01/24/2022 01:46:43 PM

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WILLIAM LEE KING, Henderson COUNTY, NC

Prepared by Harmony W. Taylor Black Slaughter & Black P.A. 1927 S. Tryon St. Suite 100 Charlotte NC 28203 ←

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

AMENDED AND RESTATED DECLARATION  
OF RESTRICTIVE COVENANTS OF  
THE HOMESTEAD AT MILLS RIVER,  
HENDERSON COUNTY, NORTH CAROLINA

*This document is being re-recorded to correct formatting, typographic and numbering issues contained within the document recorded in Book 3845 at Page 269 of the Henderson County Register of Deeds.*

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

**THIS DOCUMENT REGULATES THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA. IT REGULATES THE USE OF FLAGPOLES TO FLY FLAGS WITHIN THE COMMUNITY.**

**WHEREAS**, The Homestead at Mills River, LLC, the original Declarant of the property within the Homestead at Mills River community in Henderson County, North Carolina, known as The Homestead at Mills River (“the Development”), subjected that property to certain restrictive covenants by means of an instrument entitled Restrictive Covenants for The Homestead at Mills River, recorded in Deed Book 1164, Page 91, in the Henderson County, North Carolina Register of Deeds (the “Original Declaration”);

**WHEREAS**, certain plat maps have been recorded which describe the lots in the various Phases of Development and certain declarations, amendments and restatements have been recorded in the Henderson County, North Carolina Register of Deeds, at Book 1192, at Page 26; Book 1194, at Page 512; Book 1234, at Page 444; Book 1294, at Page 526; Book 1294, at Page 530; Book 1299, at Page 595; and Book 1397, at Page 74 (hereinafter collectively known as the “Homestead Declarations”);

**WHEREAS**, pursuant to Article XXIX of the Homestead Declarations “the Declaration may be amended at any time and from time to time either by the recordation in the office of the Register of Deeds for Henderson County, North Carolina, of written amendment to these Restrictive Covenants signed by the owners of at least sixty-seven percent (67%) of the lots in the Development, or by the recordation in said office of a document prepared and executed by the Secretary of the Board of Directors certifying that the amendment to the declaration set out therein has been approved by the affirmative vote of at least sixty-seven (67%) of the votes in the Association”;

**WHEREAS**, following proper notice to the owners of lots within the Development of the following Amended and Restated Declaration of Covenants for the Homestead at Mills River, Henderson County, North Carolina, and approval by at least sixty-seven percent (67%) of those lot owners, the following terms



and conditions were adopted to replace the Homestead Declarations, except for the purpose of preserving legal descriptions.

**NOW, THEREFORE**, the Homestead Declarations governing all of the real estate within the Development, recorded in the Henderson County, North Carolina Register of Deeds, are hereby amended by striking them in their entireties, except for the purpose of preserving legal descriptions, if any, found in the Homestead Declarations and by substituting therefore the following Amended and Restated Declaration of Restrictive Covenants (hereinafter "Declaration"), which shall run with said properties and by which the Development shall be governed;

**NOW, THEREFORE**, the Homestead at Mills River Property Owners Association, Inc. ("Association"), being the administrative body of the Development, by and with the consent of its members and consistent with Article XXIX of the Homestead Declarations, and pursuant to the terms of N.C. Gen. Stat. § 47F-2-117, declares that all of the lots within the Development are held and shall be held, conveyed and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots to create reciprocal rights between the respective owners of all such lots; to create privity of contract and estate between the owners of such lots, their heirs, successors and assigns; and operate as covenants running with the land for the benefit of each and all other such lots in the Development and their respective owners, present and future.

**PURPOSE:**

The primary purpose of this Declaration and the foremost consideration in the origin of the same is to submit the real property within the Development to these restrictions and continue to support and maintain this residential, planned community.

**DEFINITIONS:**

**A. "Annual Assessment" or "Annual Assessments"** shall mean any and all sums levied by the Association against any Lot and its owner as Common Expenses or other charges to include but not be limited to Common Expense Liability, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth in this Declaration and the Bylaws including those amounts as described in Article XXVI hereof.

**B. "Common Elements"** shall mean any real estate or other property within the Development owned or leased by the Association, including any improvements thereon, other than a Lot.

**C. "Common Expenses"** shall mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Development as a Planned Community pursuant to Chapter 47F of the North Carolina General Statutes, the Planned Community Act ("Act").

**D. "Common Expense Liability"** shall mean the liability for Common Expenses allocated to each Lot as permitted by the Act, this Declaration, the Bylaws of this Association, or otherwise by law.

**E. "Lot"** shall mean any Lot shown on any of the recorded plats for the Development.

**F. "Development"** shall refer to all of the real property bound by this Declaration and which is part of the Homestead at Mills River planned community.



**ARTICLE I**  
**LAND USE AND STRUCTURE TYPE**

Book 3857  
Page 626

**A. RESIDENTIAL USE.**

1. All numbered Lots in the Development shown on the recorded plats, hereinabove referred to, are hereby designated and restricted to single-family residential use. No trade or business of any kind may be conducted on any Lot, nor may any trade materials or inventories be stored upon any Lot; provided, however, Lot owners may utilize portions of their property for home office use, where such use is not the primary use of the Lot and such use does not increase traffic to or from the Lot or involve any client, customer or vendor visits. All Lots are for residential purposes only and shall not be used as an access point to any adjoining acreage not a part of the planned community.

2. Leases. Lots may be leased only subject to the following restrictions.

(a) All leases shall be in writing, and no Lot may be leased except in its entirety for a period of at least six months. All leases shall identify the name of all permitted occupants over the age of 18 and shall expressly state that the lease is subject to the Declaration, Bylaws and any rules and regulations of the Association, and that any violation of such restrictions shall be a default under the lease.

(b) No Lot may be advertised for lease for any period of less than twelve months.

(c) A Lot shall be deemed to be leased if any occupant pays or provides money or consideration of any type in exchange for permission to occupy any part of any Lot for any period of time and shall include any oral or written agreement relating to occupancy. A Lot shall not be deemed to be leased if it is occupied by an immediate family member of the Lot owner, which shall be defined as the Lot owner's husband, wife, father, mother, son, daughter, brother, sister, or spouse of any of these.

(d) Lot owners shall be liable for the defaults of their lessee under the governing documents.

(e) No Lot may be subleased.

(f) Copy of fully executed Lease to be provided to Board within thirty days of execution for review and approval prior to occupancy.

3. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, together with a porch, terrace, and either an attached garage for not more than three cars or a detached garage for not more than two cars.

4. Each dwelling constructed, erected or situated on a Lot shall have a fully enclosed floor area (exclusive of any roofed or unroofed porch, terrace, garage, or other areas not enclosed by the main structure) which shall contain not less than 2,800 square feet of fully enclosed floor area at ground level, and in the case of two or two and one-half (2½) story building, shall contain not less than 1,800 square feet of fully enclosed floor area on the main floor at ground level. However, the Board hereinafter provided for in this Declaration may grant variances from these square footage requirements when in its judgment the topography of a Lot and the location of setback lines make it impractical or impossible to construct on such Lot a building which conforms to the minimum square footage requirements set out herein. All structures must be constructed in compliance with then current Architectural Control design standards and procedures (the "Guidelines").



**B. BUILDING LOCATION.**

1. Subject to the limitation set out in Article II of this Declaration that the location of buildings or other proposed improvements on each Lot must be approved by the Architectural Control Committee ("ACC"), each Lot is subject to the further restriction that no building shall be located on any Lot nearer to the Lot lines or nearer to the street lines than the minimum building setback lines shown on any recorded plat. In the event that no minimum building setback line is shown on a plat, all buildings shall be at least: (a) 25 feet from all road right of way lines as delineated by the concrete curbing; (b) 10 feet from the rear and interior Lot lines.

2. Notwithstanding anything set out to the contrary in Article II of the Declaration, in the event that the Board shall determine that application of the minimum setbacks specified in the preceding paragraph of this Article I of the Declaration to a particular Lot would unreasonably limit the use thereof by the owner and effectively deprive such owner of an appropriate construction site upon said Lot, the Board of Directors shall have the authority to grant a variance to the owner of said Lot from the provisions of such setback restrictions.

**ARTICLE II  
ARCHITECTURAL CONTROL**

**A. ARCHITECTURAL CONTROL COMMITTEE.**

An Architectural Control Committee, ACC, is hereby created to ensure that all houses, structures and other improvements on the Lots are of appropriate size and harmonious design, properly located in relationship to neighboring structures and adapted to the terrain of each Lot, and will be consistent with the existing aesthetics of the Development. The Board of Directors of the Association shall appoint annually an ACC consisting of three or more competent persons to serve as members until their successors are appointed. A majority of the Board may also designate a representative to act and/or participate on behalf of the ACC. In the absence of such an ACC, the Board shall exercise all architectural control powers recited herein.

The ACC shall prepare and, on behalf of the Association, shall promulgate design standards and procedures ("Architectural Guidelines"). The ACC shall be responsible for preparing and amending the Architectural Guidelines with Board approval. It shall make both available to owners, builders and developers who seek to engage in development of or construction upon all or any portion of the Development, or in making any modifications, additions or alterations to any existing improvements located in the Development who shall conduct their operations strictly in accordance therewith. The Architectural Guidelines shall be explanatory and illustrative of the general intent of the development of the property, both as to architecture and design, and are intended as a guide to assist the ACC in reviewing plans and specifications for improvements. The Architectural Guidelines shall set out, among other things, the procedures for submission, review and approval of plans and specifications, fees to be imposed, preferred materials and architectural themes, and other specifications related to Lot alterations.

**B. PROCEDURE**

1. The ACC's approval or disapproval as required by the Declaration shall be in writing.

2. ACC approval shall not be unreasonably withheld and shall be given or denied by the ACC in writing within thirty days after any such plan and other required information has been properly submitted to the ACC. Denial or approval of the plans, locations, specifications and other matters requiring the approval of the ACC may be based by it upon any reasonable grounds, including purely aesthetic considerations. The ACC and/or the Board have the right to determine all submission and documentation requirements.



3. In the event that the ACC fails to approve or disapprove within thirty (30) days after proper plans and specifications and other required information have been properly submitted to it, the owner requesting approval of plans shall contact the ACC in writing to request a determination. This request shall be sent to the Association's management company or, if the Association is not professionally managed, may be sent to the Association's registered agent with the North Carolina Secretary of State. If no response from the ACC is received within 14 days of service of this communication on the Association, the owner may proceed with initiation of their plans and such plans will be deemed to have been approved by the ACC. Regardless of any other provision contained herein, ultimate authority for architectural issues and approvals ultimately sits with the Board of Directors, which shall have the absolute discretion to grant variances or disapprove applications as it determines, in its sole discretion, is appropriate.

**C. ACTIVITIES EITHER PROHIBITED OR REQUIRING THE ARCHITECTURAL CONTROL COMMITTEE'S APPROVAL**

No single-family dwelling, porch, terrace, shed, garage, driveway, dog house, fence, wall, yard ornament or statue (bird feeders, houses and baths are exempt), grading, drainage or structure of any kind ("Modification") shall be constructed, erected, situated or altered on any Lot until the construction plans and specifications and a plan showing its location on the Lot have been approved by the ACC as to quality of workmanship and materials, appearance, harmony of external designs and external color with existing structures and the natural environment and as to location with respect to topography, its effect on the view from structures already constructed in the front of a house. No chain link fence may be constructed on any portion of a Lot. For purposes of the above, Holiday decorations are exempt (except for inflatable displays) and cannot be displayed more than forty-five (45) days before or fifteen (15) days after the Holiday has occurred.

No permission or approval shall be required to repaint in accordance with originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his or her residence or to paint the interior of his or her residence any color desired.

**D. VARIANCES**

The ACC may recommend to the Board variances from compliance with any of the provisions of the Architectural Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with its duly adopted Architectural Guidelines. Such variances may only be granted, however, when unique circumstance dictate and no variance shall be effective unless in writing, be contrary to the restrictions set forth in the body of this Declaration except to such extent as may be specifically authorized in specified circumstances by the provisions of this Declaration, or estop the Board from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

**E. ACCESS TO LOTS; INDEMNIFICATION**

Upon commencement of any construction or Modification on any Lot, the ACC (and its designees, members and agents) shall be authorized to enter that Lot to confirm that the Modification is being constructed, installed or altered consistent with the approval given by the ACC or Board of Directors. All such entry shall be during daylight hours, and shall be done in such a way as to be as minimally interfering as possible. Whenever possible, 24 hour notice will be provided to the Owner prior to access. By undertaking any Modification on a Lot, the Lot owner authorizes entry onto their Lot and agrees that such entry shall not constitute a trespass or be grounds for damages against the Association, the ACC or any of its designees, members and agents. In the event that a violation of the approved plan for the Modification is identified, the Lot owner shall immediately cease work on the Modification and work with the ACC to remedy the violation. In the event that the ACC or Board of Directors undertakes enforcement action to



enjoin or otherwise address any violation, the violating Lot owner shall be responsible for any and all costs, including reasonable attorney's fees, related to the violation.

The ACC and Board of Directors and/or its representatives shall further have the right to enter any Lot for the purpose of verifying whether or not modifications are being undertaken consistent with ACC approval or without ACC approval.

Neither the ACC, the Association, nor any of their employees, agents or consultants, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In such events, the members of the ACC shall be defended and indemnified by the Association in the same manner and to the same extent as officers and directors are indemnified under the provisions of the Articles of Incorporation and the Bylaws of the Association.

### **ARTICLE III TEMPORARY STRUCTURES**

No structures of a temporary character, including, but not limited to, any trailer, tractor trailer, single-wide or double-wide mobile home/manufactured home, basement, tent, shack, garage, carport, shed or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. There shall be no outside storage upon any road or common area in the development. A short-term variance for special circumstances may be presented to the Board for consideration.

### **ARTICLE IV NUISANCES**

It shall be the responsibility of each Lot owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any plant, substance, animal, thing, device or material be kept upon any Lot that will be noxious, noisy, dangerous, unsightly, or unpleasant or which will emit foul or obnoxious odors or will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of the Development. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property adjacent to the Lot. Construction of Modifications not completed, or upon which construction has ceased for ninety (90) consecutive days or which have been partially or totally destroyed and not rebuilt within (90) days, shall be deemed nuisances. The Association may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's Lot.

Noxious or offensive activity shall include but shall not be limited to (1) a public nuisance or nuisance *per se*, (2) any behavior which is inconsistent with both a reasonable pleasurable use of the properties of the owners of Lots and parcels in the Development, their tenants and guest, and their reasonable expectation of vacationing, year-round living, studying, working and recreating, free of excessively noisy behavior grossly disrespecting the rights of others, (3) flashing or excessively bright lights, (4) racing vehicles (regardless of the number of wheels), (6) the operation of motor vehicles by unlicensed persons on any roads in the Development (including specifically trail motor bikes with two, three or more wheels), (7) offensive displays of public sexuality, (8) public drunkenness, (9) significantly loud electronic music distractions or vibrations which extend beyond property lines, (10) the discharge of fireworks, (11) the assembly and disassembly of motor vehicles and other mechanical devices which might



tend to create disorderly, unsightly or unkempt conditions, (12) parking or storing any junked inoperable or unlicensed automobiles, trucks, or heavy equipment on any Lot or road in the Development, or (13) other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the Lots in the Development.

**ARTICLE V  
MAINTENANCE OF LOTS**

All Lots whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent them from becoming unsightly, unsanitary, a hazard to health or a hazard to property. By way of example only:

A. All natural areas part of the landscape plan around a home shall be covered with pine straw, cedar or other wood mulch to maintain ground cover around bushes and plants. Mulch shall be refreshed as necessary to maintain coverage. Wooded areas do not have to be mulched.

B. Owners shall maintain all landscaped areas free of weeds.

C. In the Fall, owners shall promptly remove fallen leaves from grassed areas and planting beds visible from the street in front of the home.

D. Owners shall maintain retaining walls in good repair.

E. Owners shall promptly remove fallen tree limbs and fallen trees from areas visible from the street in front of the home. Undeveloped Lots may remain in a natural state unless trees or limbs have fallen on Common Area roadways or a neighboring Lot.

F. All structures on the Lots shall be kept free from visible mold or discoloration. All structures shall be periodically painted so as to maintain a uniform color and appearance, free of cracking or peeling, and any approved siding and stonework shall be power washed as needed to remove mold, dirt and debris.

G. Roofs shall be maintained in good repair and condition, without cracked or missing shingles, ridge vents or other structures. Mold shall be periodically removed from roofs to prevent any visible mold growth from the ground.

H. Driveways shall be maintained free of defects, visible damage or debris. If feasible, driveways will be cleaned or power washed to prevent discoloration on a periodic basis.

If not so maintained, the Association shall have the right, through its agents, employees and contractors to do so, the cost of which shall be levied as an assessment against the owner of the Lot. Neither the Association, nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work. The Association shall be entitled to enforce these maintenance restrictions in the same manner as any other violation of the Declaration or any rule and regulation adopted by the Association.

**ARTICLE VI  
ANIMALS**

No animal that spends any portion of its life outside a home, other than dogs and cats, may be kept on any Lot in the Development at any time. No dogs or cats may be kept on any Lot for commercial purposes or breeding. All dogs shall be kept leashed or enclosed within a fence on the Lot, unless they are trained in such a way that they will stay with the owner and under their control when not leashed. While being kept within a physical or electronic fence, no authorized animals shall be chained or restrained by a leash during any time when the Lot owner or some other person is not present with them. All fences and other structures



in which animals are kept or confined must be designed constructed, erected, installed, cleaned and maintained in a manner which has been approved by the ACC.

Any animal shall be muzzled which consistently barks, howls or makes other disturbing noise which might be reasonably expected to disturb any other Lot owner or his tenants or guests. The breach of any of these restrictions, obligations and duties shall be a noxious and offensive activity constituting a private nuisance.

**ARTICLE VII  
SEWERAGE DISPOSAL**

A. No sewerage system shall be permitted on any Lot except such system as is located, constructed, and equipped in accordance with the minimum requirements of the State Board of Health. Approval of such system shall be obtained from the health authority having jurisdiction.

B. The individual Lot owner shall be solely responsible for the septic tank and individual line located on their lot.

**ARTICLE VIII  
COMBINATION AND RESUBDIVISION OF LOTS**

Lot owners may combine any adjacent Lots within the Development that share a common property line. Once combined for taxing purposes, no Lot may be re-subdivided except as provided herein. Lot owners may only divide a Lot by dividing it in such a manner that is either completely absorbed by one or more of the adjoining Lots, thus creating one or more adjoining Lots larger than when originally platted and shown on recorded subdivision plats, or it is partially absorbed by one or more of the adjoining Lots and the remaining portion thereof forms a Lot which is not less than one acre in size, in which case each owner of the Lot(s) absorbing the property shall become responsible for their pro rata share of the absorbed Lot(s)'s applicable assessment. Each owner shall be obligated to pay dues based on the number of originally platted Lots, or parts of Lots, they own. No combination or division of any Lot shall reduce the assessment of these Lots. No owner may combine a Lot with any property that is not part of the planned community.

**ARTICLE IX  
PROHIBITION OF OIL AND GAS WELLS, SUBSURFACE MINING  
AND UNAUTHORIZED GRADING**

No well for the production of, or from which there may be produced, oil, gas or minerals shall be dug or operated upon any Lot, nor shall any machinery, appliance or structure ever be placed, operated or maintained thereon in connection herewith, nor shall there be any subsurface mining or drilling activity thereon; provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities and any activity associated with soil testing, construction of building foundations or master drainage control.

Any grading or other land use which creates erosion runoff into streams or other Lots is prohibited. Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to a noxious or offensive activity as defined in Article V of the Declaration.

**ARTICLE X  
FIREARMS AND OTHER PROJECTILE PROPULSION DEVICES**

The discharge of firearms in the Development, including rifles, guns and pistols of any kind, caliber, or type and any other devices which propel bullets and other projectiles through the air utilizing any method



of propulsion except by security personnel in the course of their duties is prohibited. Notwithstanding anything hereinabove set forth to the contrary, it is specifically understood that the term "firearms" does not include BB guns or pellet guns and that the use of such guns and bows and arrows by property owners on their Lots is not prohibited under the provisions of the Declaration.

**ARTICLE XI**  
**WILLFUL DESTRUCTION OF WILDLIFE**

No trapping or hunting shall be allowed in the Development except under controlled conditions approved by both the Board of Directors and appropriate governmental wildlife authorities for the purpose of protecting property owners, the public and other animals against health hazards, disease, significant wildlife predation and outbreaks of contagious wildlife diseases with the exception that the Association must approve other anomalies resulting from species over-population. Any action to be taken will be communicated to all members of the Association prior to the action being taken.

**ARTICLE XII**  
**CLOTHESLINES, GARBAGE CANS, TANKS, WOODPILES, ETC.**

All clotheslines, garbage cans, above-ground tanks, woodpiles, and other similar items shall be located or screened so as to be concealed from view of the other Lots, streets and areas in the Development outside of the Lot on which such items are located. Each Lot owner shall provide closed sanitary receptacles for garbage and all rubbish, trash, and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. Trash receptacles must be put on street only on the day of pickup. Furthermore no bedding or clothing of any type nor any towels, clothes or other items of wearing or cleaning apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any Lot in the Development in such a manner as to be visible from any street, or other Lot area located in the Development.

**ARTICLE XIII**  
**TREE REMOVAL, SITE CLEANING, UNDER BRUSHING AND BURNING**

No trees, including, but not limited to, mountain laurel, wild azaleas and rhododendron shall be removed or topped from any Lot prior to proper approval of such removal or topping by the ACC or such other committee which may be delegated the right to make such approval by the Association. Such approval shall not be unreasonably withheld and shall be given or denied by the committee having the authority to give or deny such approval in writing within thirty (30) days after written plans showing such proposed removal or topping and any other information requested by such committee relating to such topping or removal have been submitted to such committee. Denial or approval of such removal or topping may be based by such committee upon any reasonable ground, including purely aesthetic considerations. In the event such committee or its designated representative fails to approve or disapprove any matter involving the removal or topping of trees, brush or shrubs from any Lot which is properly submitted for its approval hereunder within thirty (30) days after proper plans and any other requested information have been submitted, approval shall not be required and the provisions of the Declaration specifying the manner in which any such proposed trimming or removal must be approved shall be deemed to have been fully complied with. No open burning of any kind, with the exception of ACC approved fireplaces/firepits, shall be done before the Lot owner has obtained the written permission of such committee. Fallen trees which are on roadways, Lot frontage, common area or encroaching on neighboring Lot shall be promptly removed by owner of fallen tree. The Board, at its discretion, and after appropriate notification to the Lot owner, may cause the removal of any fallen trees at the expense of the owner.



**ARTICLE XIV  
NON-DISTURBANCE NEAR STREAMS**

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Page 633

The areas within thirty (30) feet of the edge of all streams within the Development in The Homestead at Mills River, as partially described in Deed Book 1159, at Page 717, Henderson County Registry, shown as The Homestead at Mills River on those certain plans prepared by Associated Land Surveyors, dated June 29, 2004, entitled The Homestead at Mills River, Phase I, recorded in Plat Slide 5040A, and Plat Slide 5040A, and Plat Slide 5040B, Henderson County, N.C. Registry, and plats of The Homestead at Mills River which are recorded in the future in the Henderson County Register of Deeds office, shall be maintained in perpetuity in their natural condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activity, nor cut, remove, or harm any vegetation, nor construct any structure, nor allow animal grazing or watering or any other agricultural use on such above referenced thirty (30) foot wide areas. This restriction does not prohibit normal pruning of trees and other vegetation, and does not prohibit removal of dead or dying trees or other dead or dying vegetation. This covenant is intended to ensure continued compliance with the mitigation condition of an authorized issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, Action ID \_\_\_\_\_, and therefore may be enforced by the United States of America. This covenant is to run with the land, and shall be binding on the owners, and all parties claiming under the owners.

The above paragraph cannot be amended without the express written consent of the U.S. Army Corps of Engineers, Wilmington District. Its restrictions shall further apply to areas within thirty (30) feet of the edge of streams within Phases II and III of the community.

**ARTICLE XV  
LANDSCAPING**

No landscaping, tree removal or topping, grading, excavation, filling or any other construction improvements may be made without prior written approval by the ACC. All landscaping must be in compliance with then current Architectural Guidelines.

**ARTICLE XVI  
SIGNS**

Subject to the following exceptions, no signs shall be placed on any Lot. One property address sign of not more than two square feet and, during the construction of an authorized structure on a Lot, one sign of not more than four square feet identifying the builder or contractor provided that the content and design of all such signs has been approved by the ACC after a copy of such sign has been submitted to said committee for its approval. Political signs may not be placed on any Lots. Notwithstanding anything hereinabove set forth to the contrary, the Association shall have the right to erect reasonable and appropriate signs on the common area, and each Lot owner shall have the right to erect a mailbox on his or her Lot with the property address inscribed thereon provided that the type of mailbox, the manner that the property address has been inscribed thereon and the support post for such mailbox has been approved by the ACC which shall have the right to specify uniform standards for mailboxes and support posts which shall be applicable to all Lots. Realtor sale signage must be in compliance with Architectural Guidelines and provided, at owns cost, by approved vendor.



**ARTICLE XVII  
OUTDOOR LIGHTING**

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Page 634

All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by the ACC which shall have the right at any time to prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other Lot owner and such other Lot owner's use and enjoyment of his Lot at any time.

**ARTICLE XVIII  
SATELLITES AND ANTENNAS**

With the exception of one satellite dish not greater than one meter in diameter necessary for the receipt of direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, one antenna that is one meter or less in diameter and is designed to receive video programming services via broadband radio service (wireless cable), or to receive or transmit fixed wireless signals other than via satellite, and one antenna that is designed to receive local television broadcast signals., no radio, television or other aerial, antenna, satellite dish, tower or other transmitting or receiving structure or support thereof shall be erected, installed, placed or maintained on any Lot unless so erected, installed, placed or maintained entirely within the enclosed portion of the individual residence or garage. For any satellite dish or antenna allowed above, such satellite dish or antenna be installed in a location on the home or Lot not visible from any road in the Development, and/or in a way designed to minimize the visual impact of such satellite dish or antenna from any location outside of the Lot unless other placement is required for signal reception and documented by vendor.

**ARTICLE XIX  
UTILITY LINES**

No overhead utility lines, including lines for cable television, shall be permitted on any Lot without the written approval of the Association.

**ARTICLE XX  
ENERGY CONSERVATION EQUIPMENT**

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC with the approval of the Board.

**ARTICLE XXI  
AIR CONDITIONING UNITS**

Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed in any house or other structure which is located on any Lot.

**ARTICLE XXII  
ARTIFICIAL VEGETATION, EXTERIOR SCULPTURES AND SIMILAR ITEMS**

Artificial vegetation, exterior sculptures, fountains, flags and similar items must be approved in writing by the Architectural Control Committee before being placed on any Lot. No flag poles may be erected on any Lot unless they extend from the front elevation of a home and are not supported or placed in the ground.



**ARTICLE XXIII  
IRRIGATION**

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No irrigation system of any type which draw upon water from wells, community water systems, creeks, streams, rivers, lakes, ponds or other waterways within the Development shall be installed, constructed or operated within the Development unless prior written approval has been received by the ACC and approved by the Board of Directors.

**ARTICLE XXIV  
POOLS, SPAS, WATER FEATURES**

No pool, spa, or water feature shall be erected, constructed or installed on any Lot without the express written permission of the ACC. Any variance must be received by the ACC and approved by the Board of Directors. The ACC and Board shall have the absolute right in its sole discretion to deny such permission on any reasonable grounds.

**ARTICLE XXV  
EASEMENTS**

The following easements over each Lot or parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to the Association:

**A. UTILITIES**

A five (5) foot wide strip running along the inside of all Lot lines other than those Lot lines which extend along the center of streams. Said strips shall be used for the installation, maintenance and operation of utilities, including radio and television transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut trim or remove trees and plantings wherever necessary upon such Lots in connection with such installation, maintenance and operation.

**B. ROADS**

An easement on, over and under all roads in the Development may be used for the purpose of installing, maintaining and operating utilities thereon or thereunder; for the purpose of drainage control; and for the purpose of maintenance of said roads. All roads located in the Development are private roads owned by, and maintained by all property owners. No Lot owner may utilize any private roadway within the Development to gain access to any property outside of the Development. Additionally, no Lot owner may install or use a roadway to access any property outside of the Development.

**C. SIGHT EASEMENTS**

Such sight easements, if any, of the sizes and locations as may be shown on recorded plats of portions of the Development are reserved for the purpose of ensuring that visibility at road intersections shall be unimpeded. No fence, wall, hedge, tree or shrub which obstructs sight lines at elevations between two (2) and eight (8) feet above roadways shall be placed or permitted to remain within sight easements.

**D. OTHER EASEMENTS**

Any other easements shown on recorded plats of portions of the Development.



**E. USE OF EASEMENTS BY OWNERS**

The areas of any Lots affected by the easements reserved herein shall be maintained continuously by the owners of such Lots, but no structure, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owners of said improvements except those for which a public authority or utility company is responsible.

**ARTICLE XXVI**

**THE HOMESTEAD AT MILLS RIVER PROPERTY OWNERS ASSOCIATION, INC.**

**A. MEMBERSHIP**

1. **Membership.** Every person (or entity) who/which is a record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall be deemed to have a membership in The Homestead at Mills River Property Owners Association, Inc. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold interests merely as security for the performance of an obligation and the giving of a security interest shall not terminate the owner's membership. No owner, whether one or more persons, shall have more than one membership per Lot owned. In the event that an owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in the bylaws and rules and regulations of the Association.

2. **Voting.** Every Lot owner shall be entitled to one vote per Lot owned, regardless of the number of persons or other entities owning an interest in a particular Lot.

**B. ASSESSMENTS**

Each Lot in the Development is served by roads which connect the Development with the public road. The owner of each Lot shall, by the acceptance of a deed or other conveyance for such Lot, be deemed obligated to pay to the Association an annual assessment or charge for the purposes stated within this article to be fixed, established by the Association and pursuant to reasonable advance notice given in writing to all Lot owners. Upon demand, the Association shall furnish to any owner or mortgage a certificate showing the assessments or charges or installments thereof due as of any given date. Each Lot made subject to these restrictions is hereby made subject to a continuing lien to secure the payment of each assessment or charge when due.

The funds collected from said assessments may be used, but not limited to, any or all of the following purposes as approved by the Board: expenses related to the community operations; maintenance of all common elements; capital expenditures; taxes and other indebtedness of the Association; and, in addition, doing any other things necessary or desirable in the opinion of the Association to maintain the Development.

**C. ENFORCEMENT PROCEDURES FOR NONPAYMENT OF SUMS DUE TO THE ASSOCIATION**

1. Upon the failure of the owner of any Lot to pay any assessment or charge when due, the Association shall have the right to collect the amount thereof by an action at law against the owner as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be available, consistent with the terms of N.C. Gen. Stat. § 47F-3-116. Such rights and powers shall continue in the Association and the lien of such charge shall be deemed to run with the land; and the successive owners of each Lot, by the acceptance of deeds therefore, shall be deemed personally to assume and agree to pay all unpaid assessments or charges or additional assessments which have been levied against the property and



all assessments or charges or additional assessments which shall become a lien thereon during their ownership.

2. Any assessment or charge levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot. Such lien may be foreclosed upon consistent with the terms of the Act and Article 2A of Chapter 45 of the North Carolina General Statutes.

3. All sums due to the Association shall bear interest at the rate of one and one half percent (1½%) per month from the due date. The Association shall be further entitled to assess a late charge of \$25.00 on any amount unpaid for thirty days or longer, and to recover any and all costs of collection, including any fees charged by any management company employed by the Association and attorney's fees, as part of the balance owed to the Association.

4. All owner payments shall be applied first to all costs (including costs of collection, and court costs, if any) and attorney fees, then to late charges, then to interest, then to delinquent assessments. Any lien filed by the Association shall be promptly removed upon full payment of all assessments and other charges, costs and fees owed.

#### ***ARTICLE XXVII STREAMS***

No Lot owner shall pollute any stream or lake in the Development nor shall any Lot owner cause or allow any stream in the Development which may flow across his Lot to be diverted in part or in whole from its natural direction and course of flow. No solid or liquid waste of any kind shall be drained, dumped or disposed of in any way into open ditches or water courses.

#### ***ARTICLE XXVIII EROSION CONTROL***

Each owner of a Lot in the Development must submit in writing to the Association or its designated assigns, an engineered soil erosion control plan for said Lot before any construction, clearing, excavation, grading or any other improvement begins on a Lot. The plan must be approved by the Association or the ACC, prior to any construction, clearing, excavation, grading or any other improvement begins on said Lot. In addition, Lot owners are responsible for ongoing erosion control on their property.

#### ***ARTICLE XXIX PARKING OF VEHICLES***

Vehicles owned by the property owner/resident or guests of the owner may park along the roadway, if necessary, when vehicles are unable to park in the driveway of the home. In no case can vehicles be parked in the roadway for more than a five day period without notifying the property management company and getting permission to do so. Any violation of this Article is a violation of the Declaration and will be treated as such.

No trailer, tractor trailer, bus, commercial truck, camper or boat may be parked on a driveway or on the property or along the roadway except for commercial trucks designated for home moving or delivery. Construction and commercial vehicles may be parked during day light hours in the immediate vicinity of the work location along the road. They may not block traffic or driveways and must allow clearance for emergency vehicles. No parking is allowed in any grass areas along the roadway at any time.



**ARTICLE XXX  
AMENDMENT**

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This Declaration may be amended at any time and from time to time either by the recordation in the office of the Register of Deeds for Henderson County, North Carolina, of a written amendment to these restrictions signed by the owners of at least sixty-seven percent (67%) of the Lots in the Development, or by the recordation in said office of a document prepared and executed by the Secretary of the Board of Directors certifying that the amendment to the declaration set out therein has been approved by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association. The signatures appearing on such documents shall be properly notarized and any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Henderson County, North Carolina, unless a latter effective date is specified therein.

**ARTICLE XXXI  
TERM**

All of the restrictions, conditions, covenants, charges, easements and agreements contained in this Declaration shall run with the land and be binding on all parties and all persons claiming under them in perpetuity.

**ARTICLE XXXII  
GRANTOR'S ACCEPTANCE**

Each grantee or purchase of any Lot or parcel shall, by acceptance of a deed conveying title thereto, accept such deed upon and subject to each and all of the provisions of this Declaration and all amendments thereto, and to the jurisdiction, rights, powers, privileges and immunities of the Association herein provided for. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenants, consent and agree to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration, and all amendments and supplemental declarations thereto.

**ARTICLE XXXIII  
SUSPENSION OF RESTRICTIONS**

The provisions of this Declaration which are applicable to improvements, use and occupancy shall be suspended as to any Lot, parcel or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such Lot, parcel or area for the purposes for which it was acquired or leased. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such owner shall not have rights as a member of the Association nor shall it be liable for any Association assessments.

**ARTICLE XXXIV  
COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES,  
OTHER THAN ASSESSMENT LIENS**

**A. DEFAULT AND REMEDIES.**

A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot owner or occupant, other than for non-payment of assessments, shall be grounds for



relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Declaration, the Bylaws, the Articles or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. Any entry made by the Association to abate a violation on a Lot shall not be considered trespass. The Association also shall be entitled to suspend the right of a defaulting Lot owner to use the Common Elements and its facilities until the default is cured.

**B. RECOVERY OF ATTORNEYS' FEES AND COSTS.**

In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court with interest thereon at the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

**C. NONWAIVER OF COVENANTS.**

The failure of the Association or of any member thereof to enforce any term, provision, right covenant, or condition that may be granted by the Declaration, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

**ARTICLE XXXV  
SEVERABILITY**

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

*SIGNATURE APPEARS ON FOLLOWING PAGE.*



IN WITNESS WHEREOF, the undersigned President of the Homestead at Mills River Property Owners Association, Inc. has set their signature, by and with the consent of the requisite vote of the membership, evidence of which shall be maintained in the books and records of the Association.

**THE HOMESTEAD AT MILLS RIVER PROPERTY OWNERS ASSOCIATION, INC.**

Marc Weinstein  
President  
Print name: MARC WEINSTEIN

STATE OF NORTH CAROLINA

COUNTY OF Henderson

I, Yesenia Rodriguez, a Notary Public of the County and State aforesaid, certify that Marc Weinstein personally came before me this day and acknowledged that they are the President of the Homestead at Mills River Property Owners Association, Inc., a North Carolina non-profit 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.

Witness my hand and official stamp or seal, this 24 day of January, 2020. 2022

[Signature]  
Notary Public

My commission expires: 04/20/2022

YESENIA RODRIGUEZ  
NOTARY PUBLIC  
Henderson County  
North Carolina  
My Commission Expires 04/20/2022