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NEDRA W. MOLES, Henderson COUNTY, NC

**RESTATEMENT AND AMENDMENT TO COVENANTS AND RESTRICTIONS
FOR
CUMMINGS COVE**

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RESTATEMENT AND AMENDMENT TO COVENANTS AND RESTRICTIONS FOR CUMMINGS COVE is made this 13th of March, 2012, by CUMMINGS COVE COMPANY, LLC, a Florida Limited Liability Company, hereinafter call "Developer".

WITNESSETH:

WHEREAS, that property known as CUMMINGS COVE was subjected to the Covenants and Restrictions on May 7, 1985, recorded in Deed Book 658 at page 44, Henderson County Registry, which covenants were supplemented by instrument recorded in Deed Book 723 at Page 767, Henderson County Registry; and Restatement and Amendment recorded in Deed Book 1036 Page 499, Henderson County Registry; and to Restatement and Amendment to Covenants and Restrictions dated May 12, 2009 and recorded in Deed Book 1395, Page 171, Henderson County Registry.

WHEREAS, all property recorded in Deed Book 954 at Page 369, Henderson County Registry, and Deed Book 963 at Page 345, Henderson County Registry, and all property shown on Plats currently recorded at the Henderson County Registry for Cummings Cove and on all Plats for Cummings Cove recorded in the future are hereby made subject to this Restatement and Amendment to Covenants and Restrictions; and

WHEREAS, there are certain additional restrictions that pertain to only certain parts or neighborhoods of the development, such as townhouses and condominiums. These additional restrictions are not being amended by this Restatement and Amendment to Covenants and Restrictions. Any reference, however, to the original Covenants and Restriction recorded in Deed Book 658 at Page 44, Henderson County Registry are replaced by this Restatement and Amendment to Covenants and Restrictions; and

WHEREAS, the Covenants and Restrictions for Cummings Cove, both originally and as amended, provides that the Developer may change said covenants in whole or in part; and

WHEREAS, the undersigned is the Developer; and

WHEREAS, said undersigned Developer hereby amends and restates said covenants; and

WHEREAS, this Restatement and Amendment is intended to and shall supercede and replace in their entirety those previous Covenants and Restrictions and Amendments and Restatement applicable to Cummings Cove and set out in instruments of record as follows: Deed Book 658 at page 44, Henderson County Registry; Deed Book 723 at Page 767, Henderson County Registry; Deed Book 1036 Page 499, Henderson County Registry; Deed Book 1395, Page 171, Henderson County Registry.

NOW, THEREFORE, the Developer does hereby make and establish the following Restatement and Amendment to Covenants and Restrictions for Cummings Cove and declares that all property recorded in Deed Book 954 at page 369, Henderson County Registry, and Deed Book 963 at Page 345, Henderson County Registry, and all property shown on Plats currently recorded at the Henderson County Registry for Cummings Cove and on all Plats for Cummings Cove recorded in the future, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words shall have the following meanings:

- 1.1 **"Association"** shall mean and refer to Cummings Cove Community Association, Inc.
- 1.2 **"Board of Directors"** or **"Board"** shall mean Board of Directors of the Association. The Board of Directors of the Association shall be the governing body that manages the affairs of the Association as defined in Article II of these Covenants and Restrictions and Article V of the By-Laws.
- 1.3 **"Boarding, Lodging, or Rooming House"**: A building wherein sleeping accommodations and other services may be provided to any person who is not a member of the family occupying the dwelling unit or for any fee, payment or value to any person. A dwelling rented to one other family during the absence of the family who owns the dwelling unit is not considered to be a boarding, lodging or rooming house.
- 1.4 **"Condominium Association"** means a North Carolina non-profit corporation responsible for administering one or more condominiums, townhouses or villas that may be created in Cummings Cove.
- 1.5 **"Commercial Unit"** shall mean the Cummings Cove Golf & Country Club.

- 1.6 **“Common Properties”** shall mean and refer to those areas of land shown on the site plan of the Properties and intended to be devoted to the common use and enjoyment of all owners within Cummings Cove, in accordance with the terms of this Declaration. Common Properties shall include: the private roads, lakes, entry features, private street lights, drainage systems, as well as any additional parcels of land as the Developer may from time to time designate as Common Properties. Common Properties will not include the swimming pool, tennis courts, lakes and golf course owned or to be owned by the Owner of the Commercial Unit.
- 1.7 **“Developer”** shall mean Cummings Cove Company, LLC, its successors and assigns. Reference to Cummings Cove Company, LLC as the Developer is not intended, and shall not be construed, to impose upon Cummings Cove Company, LLC any obligation or liability for the acts or omissions of third parties who purchase any property within Cummings Cove from Cummings Cove Company, LLC and develop and resell such property.
- 1.8 **“Declaration”** shall mean this Restatement and Amendment to Covenants and Restrictions.
- 1.9 **“Dwelling Unit”** means any residential dwelling unit intended as an abode for one family constructed on the Properties whether subject to fee simple, cooperative, condominium, rental or other forms of ownership and possession.
- 1.10 **“First Mortgagee”** shall mean and refer to an Institutional Lender who holds a first mortgage on a Lot or Dwelling Unit and who has notified the Association in writing of its interest in the Lot or Dwelling Unit.
- 1.11 **“Institutional Lender”** shall mean and refer to one or more commercial or savings banks, savings and loan associations, mortgage companies, insurance companies, pension funds, or business trusts including but not limited to real estate investment trusts, and any other lender engaged in financing the purchase, construction, or improvement of real estate, or any assignee of loans made by such lender or any private or governmental institution which has insured the loan of the lender, or any combination of the foregoing entities.
- 1.12 **“Land Use Documents”** shall mean this Declaration, the Articles, By-Laws and all Rules and Regulations of the Association.
- 1.13 **“Lot”** shall mean and refer to each portion of land shown upon each plat of a Land Segment within the Properties which has been designated by the Developer to contain a single family dwelling.
- 1.14 **“Member”** shall mean and refer to an Owner of a lot or Dwelling, the Owner of the Commercial Unit and the Developer (until Turnover).
- 1.15 **“Owner”** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any but, notwithstanding any applicable theory of the mortgage, shall

not mean or refer to the mortgagee unless and until such mortgagee has acquired fee simple title pursuant to foreclosure or any proceeding in lieu of foreclosure.

- 1.16 **"Periodic Assessments"** shall mean all assessments, except for special Assessments, described in Article V of the Declaration.
- 1.17 **"Properties"** shall mean and refer to the property described in Paragraph 2.2 of this Declaration and all other portions of the Total Property later committed to this Declaration.
- 1.18 **"Roads"** shall mean those private streets, roads, terraces, drives, cul-de-sacs, courts and avenues including the entire right-of-way as designated and set forth on the various plats and site plans.
- 1.19 **"Supplement"** shall mean any supplemental declaration of covenants and restrictions for Cummings Cove.
- 1.20 **"Total Property"** shall mean all property recorded in Deed Book 954 at Page 369, Henderson County Registry, and Deed Book 963 at Page 345, and all property shown on Plats currently recorded at the Henderson County Registry for Cummings Cove and on all Plats for Cummings Cove recorded in the future.
- 1.21 **"Turnover"** shall mean such time as the Developer is no longer the sole Voting Member.
- 1.22 **"Unimproved Lot"** shall mean and refer to a Lot owned by the Developer for which a certificate of occupancy or completion for a dwelling has not been issued by the appropriate governmental authority.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

- 2.1 **All of Cummings Cove.** It is intended that Cummings Cove be developed as a multi-staged planned residential community. The Association will be responsible for maintaining the various common properties within Cummings Cove.
- 2.2 **Total Existing Property.** The real property that is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Henderson County, North Carolina and is recorded in Deed Book 954 at Page 369, Henderson County Registry, and Deed Book 963 at Page 345 and shown on Plats currently recorded at the Henderson County Registry for Cummings Cove.
- 2.3 **Additions to Existing Property by the Developer.** The Developer may add or withdraw land from the Total Property as follows:

- 2.3.1 Add Land to Existing Property.** The Developer may from time to time bring other land areas under the provisions hereof by recording supplemental declarations (which shall not require the consent of Owners or the Association or any mortgagee) and thereby add to the Properties.
- 2.3.2 Withdraw Land from existing Property.** If the Developer determines at any time, in its sole discretion, that any land parcel within the Total Property shall not become part of the Properties, the Developer may, by its act alone, record a statement to that effect in the public records of Henderson County containing a legal description of the property, in which event such property shall not be subject to, affected by or have any rights under this Declaration, as it may be amended by Supplements.
- 2.4 Additions by Merger.** Upon a merger or consolidation of the Association with another association as provided in the Articles, its properties rights and obligations may by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and Restrictions established by this Declaration within the Properties, together with the covenants and Restrictions established upon any other property as one scheme.
- 2.5 Site Plan Changes.** Developer reserves the right to make such changes and/or modifications to any plat or site plan relating to any of the Properties as are required by appropriate governmental authorities, or at Developer's sole discretion with the approval of the appropriate governmental authorities.
- 2.6 Sewer System.** The Sewer System, including the Sewer Treatment Plant on the Properties and all sewer collection lines throughout the Properties, is specifically not included as Common Properties and is sole property of the Developer. The Developer may manage, sell or gift all or part of the Sewer System to the Association or any other person or entity of its choosing at any time.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION, TURNOVER

- 3.1 Acts of the Association.** Unless otherwise provided in this Declaration, the Articles of incorporation or By-Laws of the Association, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors of the Association, without the consent of the members of the Association, and the Board may so approve an act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken, such action

or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take such action or give such approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

3.2 Membership. The Association shall have members ("Members"). Only those Members designated as Voting Members shall be entitled to vote on matters submitted to a vote of the membership unless otherwise required by these Covenants and Restrictions, the By-Laws, the Planned Community Act (N.C.G.S. 47F) or as requested by the Board of Directors of the Association. The following shall be Members of the Association:

- (a) **Owners.** Each Owner shall be a Member.
- (b) **Commercial Unit Owner.** The Owner of the Commercial Unit shall be a Member.
- (c) **Developer.** The Developer shall be a Member for the period of time beginning with the effective date of the Articles of Incorporation and ending one year after the Developer ceases to own any portion of the Properties or encumber any portion of the Properties.

3.3 Voting Members. The Members of the Board of Directors of the Association shall be the only Voting Members.

3.3.1 Board Members. There shall be a Board of Directors of the Association ("Board") made up of a total of nine (9) Members and the Developer as follows:

- (a) **Developer.** The Developer shall have one (1) seat on the Board for the period of time beginning with the effective date of the Articles of Incorporation, and ending one year after the Developer ceases to own any portion of the Properties or encumber any portion of the Properties, or until such time as the Developer resigns from the Board. At such time, this seat on the Board shall dissolve and not be filled.
- (b) **Owner of Commercial Unit.** The Owner of the Commercial Unit or the corporations whether profit or non-profit, controlling the Commercial Unit, if that is the case, shall designate a person at his or its discretion to be his or its Board Member and shall be entitled to one (1) seat on the Board.
- (c) **Owners.** Owners shall fill the remaining eight (8) seats on the Board by majority vote of the Members of the Association as outlined in the By-Laws.

3.3.2 Initial Sole Voting Board Member. Initially, the Developer shall be the sole Voting Board Member. This shall continue until the occurrence of either of the following events ("Turnover"):

- (a) **The Developer ceases to be a Member.** The Developer ceases to be a Member as outlined in paragraph 3.2(c).
- (b) **The Developer relinquishes its rights.** The Developer relinquishes its right to be the sole Voting Member. The Developer may relinquish its right to be the sole Voting Member and maintain its place on the board as a single voting member of the Board for as long as it is entitled to be a Member as outlined in paragraph 3.2(c).

3.3.3 Voting Members After Turnover by Developer. After the occurrence of either of the above events described in paragraph 3.3.2(a) or (b), all Board Members immediately shall become Voting Members. At Turnover, the Members shall not fill the vacant seat left by the Developer, but shall thenceforth maintain a nine (9) Member Board.

- 3.4 Social Membership.** Each Owner shall also automatically have a social membership in the Commercial Unit. Each Owner shall pay an annual fee to the Owner of the Commercial Unit (as same shall be set from time to time by the Owner of the Commercial Unit) for the use of the tennis courts and swimming pool. An Owner shall be obligated to pay the annual fee even if the Owner and the Owner's family elect not to use any of the facilities. Such social membership shall not entitle an Owner to use the golf facilities or the fitness center of the Commercial Unit. Each Owner shall abide by all rules and regulations of the Commercial Unit when using such facilities.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

- 4.1 Members' Easements of Enjoyment.** Subject to the provisions of this Declaration, every Member, his agents, licensees and invitees, shall have a permanent and perpetual easement for the use and enjoyment of the Common Properties and each easement shall be appurtenant to and shall pass with a title to every Lot or Dwelling Unit. Such easements of enjoyment shall include but not be limited to the Member's right of ingress and egress over the streets, roadways and walkways on the Common Properties for purposes of access to the Member's Lot or Dwelling Unit. The above-described right of ingress or egress shall not be subject to any fees or charges described in paragraph 4.3.
- 4.2 Title to Common Properties.** The Developer shall retain the legal title to the Common Properties until such time as it has completed improvements thereon and deeds the Common Property or a portion of the Common Property to the Association.
- 4.2.1 Conveyed Free and Clear of All Liens to Association.** The Developer shall convey (and the Association shall accept such conveyance) the Common Properties to the Association free and clear of all liens and encumbrances, except this Declaration,

covenants and restrictions of record at the time of conveyance of the Common Properties to the Association, real and personal property taxes for the year in which the conveyance takes place, and any easements created or allowed by the terms of this Declaration.

4.2.2 Use of Common Properties. Rights to use the Common Properties shall not be conveyed without conveyance of the Lots.

4.2.3 Conveyance by Association. The Common Properties shall not be conveyed by the Association.

4.3 Limitation of Members' Easements. The rights and easements of use and enjoyment created hereby shall be subject to the following:

- (a) **Right to Charge Reasonable Fees.** The right of the Association to charge reasonable admission and other fees for the use of the Common Properties.
- (b) **Right to Suspend Rights.** The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, or for a period to be determined by the Board of Directors for any violation of this Declaration, the Association's Articles, By-Laws or published rules and regulations.
- (c) **Right to Dedicate or Transfer.** The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Voting Members; provided that no such dedication or transfer, shall be effective unless an instrument signed by the appropriate officers of the Association certifying that a Special Meeting of Voting Members was called for such purpose, of which thirty (30) days' prior written notice was sent to each Voting Member and that a vote of two-thirds (2/3) of the representatives of the Voting Members was obtained, agreeing to such dedication or transfer.
- (d) **Right to Grant Easements and Rights-of-Way.** The right of the Association to grant exclusive easements and right-of-way over certain parts of the Common Properties to members of the Association when the Association deems it necessary, including the right of the Association to transfer easements to the City, County, or State of North Carolina for the roads within the development.
- (e) **Right of a Developer to Dedicate Easements or Rights-of-Way.** The right of the Developer, without approval of the Association, or the Membership, to dedicate easements and right-of-way over the Common Properties in accordance with the terms of this Declaration, including the right of the Developer to transfer easements to the City, County, or State of North Carolina for the roads within the development.

- (f) **Right to Adopt and Enforce Rules.** The right of the Association to adopt and enforce, at any time, rules and regulations governing the use of the Common Properties and all facilities situated thereon including the right to assess late fees against Members as provided in Article V, which rules and/or regulations shall apply until rescinded or modified as if originally set forth at length in this Declaration.
- (g) **Right to Grant Water, Sewer, Drainage and Irrigation Easements.** The right of the Association to grant to governmental agencies and to any private entity providing utility service the right to install and maintain water, sewer, drainage and irrigation facilities within the Common Properties.
- (h) **Right of Developer to Permit Use.** The right of the Developer, its successors and assigns, to permit persons other than Members and designated persons to use certain portions of the Properties and any recreational facilities that may be constructed thereon under such terms as Developer, its successors and assigns, may from time to time desire without interference from the Association. The right to the use and enjoyment of the Common Properties and facilities thereon shall extend to each permitted user's immediate family who reside with the user, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.
- (i) **Right to Provide Security.** The right of the Association to provide guardhouses, use security guards and restrict access on any of the private streets.
- (j) **Right to Grant Other Easement.** The Easements described in paragraphs 4.4, 4.5, 4.6 and 4.7 of this Article IV.

4.4 Utility and Irrigation Easements. There is reserved unto the Developer, so long as it owns a Lot or Dwelling Unit, the right to grant reasonable easements for the installation and maintenance of temporary roads, cable television services, security system services, public utilities and irrigation systems (including the installation of irrigation pumps) on the Common Properties and the Properties in addition to those easements already reserved.

4.5 Drainage Easements. There is reserved unto the Association, and the Developer, so long as Developer owns a Lot or Dwelling Unit, a twenty (20) foot wide drainage easement (ten (10) feet on each side of the property line) along the front, side and rear property dividing lines of all Lots, and the right to go onto any Lot or Common Area at any reasonable time to repair any drainage problem on the Properties. If the Lot line of the subject Lot does not adjoin another Lot in the development or other property owned by the Developer or Association, then the 20 foot wide drainage easements shall be totally within the subject Lot.

4.6 Easements for Golf Balls. All Lots, Dwelling Units and Common Area immediately adjacent to the golf course are burdened with an easement permitting golf balls

unintentionally to come upon the lot, property of the Dwelling Units or Common Area immediately adjacent to the golf course and for golfers at reasonable times and in a reasonable manner to come upon the lot, exterior property of a Dwelling Unit or Common Area to retrieve errant golf balls. However, if the lot or property of any Dwelling Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall the Association be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement.

- 4.7 Easement for Governmental, Health, Sanitation and Emergency Services.** A non-exclusive easement is hereby granted to the appropriate governmental authorities and to the appropriate private organizations supplying health, sanitation, police services and any emergency services such as fire, ambulance and rescue services, for purposes of ingress and egress over the Common Properties.
- 4.8 Developer's Construction and Sales Activities.** In addition to the property rights granted in this Declaration to the Developer, as an Owner or otherwise, the Developer is extended the right to enter upon the Properties at any time and in any way reasonably necessary to allow the Developer to construct or sell, or promote, in this subdivision or any contiguous subdivision or to carry out any responsibility of the Developer to Owners in such subdivisions, including but not limited to the right to use and close to the public the street in front of the Model Areas designated by Developer for the parking by visitors and staff, to use or to grant an easement across any part of the Common Properties for location of Developer's sales center, to maintain and show model homes, to have signs, to have employees in the offices, and to use the Roads and Common Properties. Notwithstanding any other provisions in this Declaration, the Developer is irrevocably empowered to sell, lease or rent Lots or Dwelling Units on any terms to any purchasers or lessees for as long as it owns any Lot or Dwelling Unit.

ARTICLE V

COVENANTS FOR ASSESSMENTS

- 5.1 Creation of the Lien and Personal Obligation of Assessments.** Except for the Developer's exemptions provided in paragraph 5.7, the Developer, for each Lot and or Dwelling Unit owned by it within the Properties, hereby covenants, and each owner of any Lot or Dwelling Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) Periodic Assessments or Charges; (2) Special Assessments for capital improvements; and other expenditures by the Association hereinafter provided. The Periodic and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when assessment fell due.

5.2 Purpose and Basis of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the Lots or Dwelling Units, including but not limited to, the payment of taxes and insurance on the Common Properties, and repair, replacement, and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

5.3 Special Assessment. After Turnover, a Special Assessment may be levied by the Board in any Assessment year applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Properties, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the Members, voting in person or by proxy (in accordance with the By-Laws) at a meeting duly called for that purpose. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such assessment.

5.3.1 Levy of Special Assessment for Failure to Comply. In addition to all other remedies provided in this Declaration, the Board of Directors, in its sole discretion, may levy a Special Assessment upon an Owner for failure of the Owner, his family, guests, invitees, or employees, to comply with any provision in this Declaration or the Articles, By-Laws or Rules and Regulations of the Association, provided that the following procedures are followed:

- (a) **Notice.** The Association shall notify the owner of the infraction or infractions. The Notice shall include the date and time of the next Board of Directors Meeting at which the Owner shall have the right to present testimony as to why the Special Assessment should not be imposed.
- (b) **Submitted to the Board of Directors.** The noncompliance shall be presented to the Board of Directors at the meeting described in the Notice. At such meeting a hearing shall be conducted to obtain testimony as to the levying of a Special Assessment in the event that it is determined that a violation has in fact occurred. A written decision of the Board of Directors shall be submitted to the Owner not later than twenty-one (21) days after the hearing.

5.3.2 Special Assessment Amount. The Board of Directors may impose the following Special Assessments against the Owner of the lot in the event a violation is found:

- (a) **First Noncompliance for Violation.** A Special Assessment in an amount not in excess of \$250.00.

- (b) **Second Noncompliance for Violation.** A Special Assessment in an amount not in excess of \$750.00.
- (c) **Third and Subsequent Noncompliance Violation or Violations which are of a Continuing Nature.** A fine in an amount not in excess of \$1,500.00 for each violation.

5.3.3 Special Assessment Due Date. A Special Assessment as provided in this Article shall be due and owing no later than thirty (30) days after the written decision as provided in paragraph 5.3.1(b).

5.4 Commencement of Periodic Assessments. The Initial Periodic Assessments on each Lot or Dwelling Unit shall commence, on a pro-rata basis, on the date of conveyance of same by the Developer to an Owner.

5.5 Due Date of All Assessments. The due date of any Periodic or Special Assessment shall be fixed in the resolution authorizing such assessment. The assessments (Periodic or Special) shall be payable in advance in one (1) payment or in monthly or quarterly installments if so determined by the Board.

5.6 Assessments Established by Developer. Until such time as the Developer is no longer the sole Voting Member the Periodic Assessments and Special Assessments for all Members shall be established by the Developer.

5.7 Developer Responsibilities To Pay Assessments. Until the Turnover, the Developer shall only be responsible to pay any Periodic Assessments or Special Assessments as follows:

- (a) **Developer Fee.** The Developer shall pay a Developer Fee of \$500.00 to the Association for any Lot or Dwelling Unit sold in the development.
- (b) **Road Maintenance.** The Developer shall, at its sole expense, maintain all the roads in the Properties that the Developer retains responsibility and/or ownership of. Once the Developer offers ownership of all or a portion of any road in a particular section of the Properties to the Association, and the Association accepts said offer, said road or section of road shall then be maintained by the Association at its expense from the date of said acceptance. The Association shall accept said offer unless road or portion of road is in immediate need of repair.
- (c) **Developer Assessment.** The Developer shall only owe the Periodic and Special Assessments on any Lot or Dwelling Unit in Phase II, or later Phases, if any, of the development it then owns in a particular section or street of the Properties where the Association maintains the roads or section of the road as outlined in Paragraph 5.7(b) above. Developer shall receive a credit against any such Assessments owed by

Developer equal to the number of lots on roads or portions of roads which the Developer continues to maintain and which have not been offered to the Association.

- 5.8 Certain Assessments Shall Be Equal.** The amount of all Periodic and Special Assessments for each Lot shall be the same. The amount of all Periodic and Special Assessments for each Dwelling Unit shall be the same. The amounts of Periodic and Special Assessments imposed upon Lots and those imposed upon Dwelling Units may differ from one another.

5.8.1 Multiple Lots. All Periodic and Special Assessments shall be upon a per Lot basis unless two or more Lots have been recombined in a recorded deed, never to be subdivided, in which case the recombined lot would be assessed as one Lot.

- 5.9 Assessments Established By the Board After Turnover.** The Board may change the budget and level of Periodic Assessments at a duly constituted meeting of the Board which occurs after the Turnover, provided that written notice containing a copy of the newly adopted budget outlining the assessment change is sent to all Members at least thirty (30) days in advance of the effective date of the adopted change. For each twelve-month period thereafter commencing on the first day of October (hereinafter called an "Assessment Year"), the Periodic Assessments may be adjusted by vote of the Board at a duly held meeting after giving proper notice as described above.

- 5.10 Duties of the Board Regarding Assessments.** The Board shall prepare budgets and a roster of the Lots, Dwelling Units and Commercial Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment for each Assessment year shall be sent to every Owner subject thereto at least fifteen (15) days prior to the commencement of the Assessment Year.

- 5.11 Duties of the Association Regarding Assessments.** The Association shall, upon demand at any time, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

- 5.12 Collection of Assessments.** The Cummings Cove Community Association shall be responsible for collecting all assessments by the Association against Owners.

- 5.13 Effect of Nonpayment of Assessment.** If any assessment against a Lot, Dwelling Unit or Commercial Unit is not paid on the date when due (as established pursuant to paragraph 5.5), then such assessment shall be delinquent and shall, together with such interest thereon and cost of collection thereof, including reasonable attorneys' fees, on such date be a continuing lien against the Lot, Dwelling Unit or Commercial Unit which shall bind such property in the hands of the owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to such assessment shall remain his personal obligation for the statutory period of limitations.

- 5.14 Personal Obligation of the Owner.** No voluntary sale of any Lot, Dwelling Unit or Commercial Unit shall be effective, nor shall any marketable title be conveyed unless and until the seller has obtained from the proper officers of the Association a certificate, in recordable form, attesting to the fact that the seller has paid all assessments to date. If no such certificate is obtained and recorded, the purchaser shall be conclusively presumed by acceptance of the deed to have assumed and to be liable for such past-due assessments. The Owner requesting the certificate shall pay to the Association a reasonable sum to cover the costs of examining records and preparing the certificate.
- 5.15 Lien.** If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the highest rate permitted under North Carolina law, and the Association may bring an action at law against the Owner personally obligated to pay the outstanding assessments and/or bring an action to foreclose the lien against the Lot, Dwelling Unit or Commercial Unit. There also shall be added to the amount of such assessment all costs of collection, including, but not limited to, the cost of any and all reasonable attorneys' fees incident to collection whether or not suit is brought including reasonable attorneys' fees on appeal. In the event a judgment is obtained, such judgment shall include interest on the assessments and a reasonable attorneys' fee to be fixed by the Court together with costs incident to the action.
- 5.16 Subordination of the Lien to Mortgages.** The lien of the assessments against any Lot, Dwelling Unit or Commercial Unit shall be subordinate to the lien of any first mortgage now or hereinafter placed upon the Lot, Dwelling Unit or Commercial Unit by an Institutional Lender. If a First Mortgagee of record, or other purchaser, obtains title to such property as a result of foreclosure of the lien of such First Mortgagee or as a result of a deed given in lieu of foreclosure thereof, such acquirer of title and his successors and assigns shall not be liable for the assessments by the Association chargeable to the former owner of such Lot, Dwelling Unit or Commercial Unit which became due and payable prior to the acquisition of title as a result of the foreclosure or deed given in lieu of foreclosure, unless such assessments are secured by a claim of Lien for assessments that is recorded prior to the recording of such mortgage. Such sale or transfer shall not relieve such Lot, Dwelling Unit or Commercial Unit from liability for any assessments thereafter becoming due, or from the lien of any such subsequent assessment. Any such subsequent assessment shall be subordinate to the lien of a first mortgage placed upon the Lot, Dwelling Unit or Commercial Unit by an Institutional Lender prior to the time of the recording of such subsequent assessment lien.
- 5.17 Exempt Property.** There shall be exempted from the assessments, charges and liens created herein all properties to the extent any easement or other interest therein is dedicated and accepted by the local public authority and devoted to public use.

ARTICLE VI

DESIGN REVIEW BOARD

- 6.1 Members of Board and Term of Office.** The Association may have a Design Review Board (the "DRB") consisting of not less than five (5) persons and not more than fifteen (15) persons. The Developer shall designate the Members of the DRB and their term until all Lots and Dwelling Units have been conveyed by Developer, or any interest that Developer might have in any Lot or Dwelling Unit has been terminated, or sooner at the option of the Developer. Thereafter, each new member of the DRB shall be appointed by the Board of Directors and shall hold office for a term of three (3) years.
- 6.2 Review of Proposed Construction, Alterations, Additions and Builders.**
- 6.2.1 Prior Written Approval by the DRB.** Except for the exemption in paragraph 6.10 below, no building, fence, wall or other structure or improvement (including landscaping) shall be commenced, painted, erected or maintained in the Properties, nor shall any addition, change or alteration visible from the exterior be made, nor shall any awning, canopy or shutter be attached to or placed upon outside walls or roofs of buildings or other improvements, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by the DRB.
- 6.2.2 Design Review Committee.** The DRB may approve the establishment of a Design Review Committee ("DRC") to assist the DRB as needed in accordance with the requirements of this Article.
- 6.2.3 Procedural Rules or Guidelines for Submissions.** The DRB has adopted Design Guidelines that contain the design requirements, design review procedures and construction job site requirements. The Design Guidelines may be amended from time to time by the DRB. Any proposal or plans and specifications submitted in compliance with paragraph 6.2.4 shall be subject to the criteria in effect prior to the date of submission and not to any amendments adopted after that date.
- 6.2.4 Design Review.** The DRB may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. The DRB shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the Properties as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and it's otherwise desirable.
- 6.2.5 Preferred/Approved Builder Program.** Cummings Cove Golf & Country Club has a Preferred/Approved Builder Program. The Design Review Board may require, in its sole discretion, each Applicant submitting plans and specifications for improvements to the Design Review Board to submit a contract with a builder who

is a Preferred/Approved Builder as a condition to commencement of construction of any improvements.

- 6.2.6 Preferred/Approved Builder List.** The Preferred/Approved Builder List shall be compiled by Developer, until Turnover, and the DRB thereafter, at their sole discretion. The DRB shall provide the list of Preferred/Approved Builders in accordance with the provisions of the Cummings Cove Golf & Country Club Design Guidelines.
- 6.2.7 Conditional Approval.** The DRB may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted.
- 6.2.8 Complete Submittal.** Until receipt by the DRB of any and all required plans and specifications, the DRB may postpone review of any plans submitted for approval.
- 6.2.9 30 Day Approval Period.** The DRB shall have thirty (30) days after delivery of all required materials to approve or reject, in writing, any such plans, and if not rejected in writing within such 30-day period, said plans shall be deemed approved.
- 6.2.10 DRB Shall Be Ultimate Determining Body.** The DRB herein shall be the ultimate deciding body and its decisions shall take precedence over all others, except in the case of an appeal as outlined in Paragraph 6.9. All changes and alterations shall also be subject to all applicable permit requirements and to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees.
- 6.3 Meetings of the DRB.** The DRB shall meet from time to time as necessary to perform its duties hereunder. The DRB may from time to time, by resolution unanimously adopted in writing, designate any DRB representative (who may, but need not, be one of its members) to take any action or perform any duties for and on the behalf of the DRB, except the granting of variances pursuant to paragraph 6.8 hereof. In the absence of such designation, the vote of a majority of the members of the DRB shall constitute an act of the DRB.
- 6.4 No Waiver of Future Approvals.** The approval of the DRB of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the DRB, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval or consent.
- 6.5 Compensation.** The members of the DRB (or any DRC, if established pursuant to paragraph 6.2.1 above) shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder. The DRB (or

DRC, if established), however, shall have the power to engage the services of professionals to serve as members of the DRB for compensation for purposes of aiding the DRB in carrying out its functions, within the Board's approved budget.

6.6 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

- (a) **Written Notice of Completion.** Upon the completion of any work for which approved plans are required under this Article VI, the "Applicant" shall give written notice of completion to the DRB.
- (b) **Noncompliance.** Within thirty (30) days after receipt of the notice of completion, the DRB or its duly authorized representative may inspect such improvement. If the DRB finds that such work was not completed in substantial compliance with the approved plans, it shall notify the Applicant in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and requiring the Applicant to remedy the same.
- (c) **Failure to Remedy Noncompliance.** If, upon the expiration of thirty (30) days from the date of such notification of noncompliance, the Applicant shall have failed to remedy such noncompliance, the DRB shall notify the Board of Directors in writing of such failure. The Board shall then determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.
- (d) **45 Day Period to Remedy Noncompliance After Board Ruling.** If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Applicant does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying improvement or remedy the noncompliance, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Association, the Board shall levy a special assessment against such Applicant for reimbursement.
- (e) **Notice of Noncompliance.** If for any reason the DRB fails to notify the Applicant of any noncompliance within thirty (30) days after receipt of the written notice of completion from the Applicant the improvement shall be deemed to have been made in accordance with said approved plans.

6.7 Non-Liability of DRB Members. Neither the DRB nor any member thereof, nor its duly authorized DRB representative, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance or nonperformance of the DRB's duties hereunder, unless due to the

willful misconduct or bad faith of a member and only that member shall have any liability. The DRB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition on the basis of aesthetic considerations, the overall benefit or detriment which would result to the immediate vicinity and to the Properties, and for compliance with the design review criteria. The DRB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

- 6.8 Variance.** The DRB may authorize variances from compliance with any of the design review criteria when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require. Such variance must be evidenced in writing and must be signed by at least a majority of the members of the DRB. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of the premises.
- 6.9 Appeal of DRB's Decision.** Applicant may appeal a decision of the DRB, one time, to the Board. The appeal must be made in writing to the Board thirty (30) days prior to the next scheduled Board meeting in order for said appeal to be placed on the agenda for that meeting. The Board, after review of the appeal, may elect not to hear the matter. In such case, the decision of the DRB shall stand as the final decision.
- 6.10 Developer's Exemption.** The Developer shall be exempt from the provisions of this Article VI with respect to alterations and additions to be made by Developer and shall not be obligated to obtain DRB approval for any construction or changes in construction that the Developer may elect to make at any time.
- 6.11 Attorneys' Fees.** For all purposes necessary to enforce this article, the Association shall be entitled to collect reasonable attorneys' fees, court costs and other expenses against an owner, whether or not litigation is instituted, and the Board may assess such amounts in the form of a Special Assessment.

ARTICLE VII

INSURANCE

- 7.1 Property and Casualty Insurance.** Property and casualty insurance on the Common Properties shall be maintained through the Association, in an amount equal to the maximum insurable value thereof. All damaged property shall be repaired and restored to the original condition using the proceeds of the insurance. If the insurance proceeds are inadequate to cover the costs of such repair and restoration, the Board may assess such amounts necessary

to cover the costs of repair and restoration, in the form of a Special Assessment. In the event that the insurance proceeds shall be greater than the amount required to repair and restore the damage, the excess shall be deposited with the Association for the operation of the Association and/or maintenance of the Properties. Prior to the end of each policy year, the Association shall cause the insured properties to be reappraised and shall adjust the insurance coverage so that the Common Properties are insured for their maximum insurable value.

- 7.2 Liability and Worker's Compensation Insurance.** The Association also shall purchase liability insurance, Worker's Compensation Insurance and such other insurance as may be necessary on the Common Properties and for purposes of properly operating the Association. The Association may also purchase liability insurance covering the Association's Directors and Officers. The limits of all insurance policies shall be reviewed and approved by the Board.
- 7.3 Insurance Premiums.** The premiums of all insurance policies purchased by the Association shall be deemed to be general expenses for the Association and shall be paid by the Members through periodic Assessments.

ARTICLE VIII

MAINTENANCE RESPONSIBILITIES OF THE ASSOCIATION

- 8.1 General Maintenance Responsibility.** The responsibility for the maintenance of the Properties is divided between the Association, the Condominium Associations and the Owners. Maintenance of Lots, Dwelling Units and Commercial Units is the responsibility of its Owners. The maintenance of the Common Properties is the responsibility of the Association, except as set out below. The Association shall have the right to enforce any and all of the rights and obligations of a Condominium Association in the event of a failure by the Condominium Association to enforce or abide by its or an Owner's respective maintenance obligations and the use restrictions pertaining to Condominium Associations and Owners. Any costs and expenses incurred by the Association in such enforcement shall be assessed to the Owner(s), as applicable.
- 8.2 Unsightly or Unkempt Conditions.** All portions of the Lots, Dwelling Units and Commercial Units outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored, or kept outside of enclosed structures which, in the determination of the Board of Directors, causes an unclean, unhealthy, or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on a lot, the exterior portions of Dwelling Units, or on the Commercial Unit shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty, dilapidated or otherwise fallen into disrepair.

- 8.3 Lakes, Canals and Drainage Areas.** The Association shall have the obligation to maintain all lakes, canals and drainage areas on Common Property in good condition as to aquatic weed control and any other maintenance and drainage problems not handled by Henderson County or other governmental agency.
- 8.4 Roads.** The Association shall maintain the Roads or portions of Roads within the Properties that have been deeded by the Developer to the Association.
- 8.5 Dissolution of Association.** In the event of the dissolution or termination of the Association, Henderson County shall not be obligated to carry out any of the maintenance obligations of the Association unless such obligations are undertaken by way of a resolution of the Henderson County Commission.
- 8.6 Management Services.** The Association may contract for the management of all or part of the Common Properties or any other Association duties for purposes of carrying out all or a portion of the maintenance services provided for in this Declaration.
- 8.7 Utility Services.** The Association may contract with public or private utility companies for purposes of supplying utility services to the Properties and may assess the costs and expenses charged by such utility companies as part of the Periodic Assessments or as a Special Assessment.

ARTICLE IX

PERMITTED AND PROHIBITED USES

- 9.1 Mining or Drilling.** Except by unanimous decision by the Board of Directors at a duly called meeting thereof, there shall be no mining, quarrying or drilling for minerals, oil, gas or otherwise. Dredging and excavation, and installation of wells and pumps for irrigation purposes, are permitted in connection with the construction or reconstruction of Common Properties or Dwelling Units.
- 9.2 Offensive Hobbies and Motor Vehicle Repair.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve hours.
- 9.3 Dumping.** No owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, lake or on any Lot, whether he/she owns the Lot or not, or

elsewhere within the Properties, except that fertilizers may be applied to landscaping provided care is taken to minimize runoff. Owner may, however, maintain a reasonable compost pile so long as it does not disturb any adjoining Owner. No part of the Common Properties shall be used or maintained as a dumping ground for trash, rubbish or garbage.

9.4 Parking. Vehicles shall be parked only in garages, driveways and designated parking areas.

9.4.1 Commercial and Recreational Vehicles, Boats and Campers. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailer (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the board.

9.4.2 Disabled and Stored Vehicles. Disabled vehicles, stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. For purposes of this paragraph, a vehicle shall be considered "disabled" if it is put up on blocks or covered and remains on blocks or so covered for seven (7) consecutive days without the prior written approval of the Board and a vehicle shall be considered "stored" if it remains in the same place on the Properties for 48 hours or longer without prior written approval by the Board.

9.4.3 Service Vehicles. Service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot, Dwelling Unit or the Common Area.

9.4.4 Parking Enforcement. Any vehicle parked in violation of this Article or additional parking rules promulgated by the Board may be towed at the vehicle owner's expense. The Board or Directors is specifically granted by this Declaration the right to enforce this Declaration and the parking regulations by authorizing and directing, or contracting with a duly licensed towing company for the towing of vehicles which are in violation of the parking regulations.

9.4.5 Additional Parking Rules and Regulations. The Board of Directors is specifically authorized to promulgate additional rules and regulations pertaining to parking.

9.5 Prohibited Vehicles. No improperly mufflered vehicle or other vehicle from which emanates excessive noise, smoke or vibration shall be operated within the Properties, regardless of whether the same is licensed or operated on a road. Motorcycles may be driven from the front gate directly to a specific Lot or Dwelling Unit. No motorcycle may be driven within the properties for the purpose of sightseeing or joy riding.

- 9.6 Signs.** No sign of any kind, including, without limitation, "for sale" and "for rent" signs, shall be erected within the Properties without prior written consent of the DRB, except entry and directional signs installed by the Developer or Association. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Developer and the DRB shall have the right to erect signs as they, in their discretion, deem appropriate or to adopt rules and regulations at any time for the use and placement of signs within the Properties. Except as provided above, no signs or similar items advertising or providing directional information with respect to activities being conducted within or outside the Properties shall be displayed or posted within the Properties.
- 9.7 Additional Temporary or Permanent Structures.** No structure of a temporary or permanent character, including but not limited to, retaining walls and fences shall be used or erected on any of the Properties without Prior written approval of the DRB.
- 9.8 Animals and Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Properties, except dogs, cats and other usual and common household pets may be permitted within the Properties. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger health or safety, make objectionable noise, or constitute a nuisance or inconvenience to the other Owners shall be removed upon the request of the Board. If the owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. All dogs and cats shall at all times whenever they are outside a Dwelling Unit be confined on a leash held by a responsible person. The Board also shall have the authority to restrict or prohibit the keeping of breeds of dogs with a known history of dangerous or vicious behavior.
- 9.9 Boarding, Lodging and Rooming Houses.** Boarding, Lodging and Rooming Houses are prohibited in the Cummings Cove Community.
- 9.10 Nuisance and Trespassing.** Nothing shall be done on any part of the Properties that may be or may become an annoyance or nuisance. The question of whether something constitutes annoyance or nuisance shall be submitted to the Association for a decision in writing. Such written decision from the Association shall be final. The Board of Directors shall have the authority to have any unauthorized person or vehicle arrested or removed from the Properties.
- 9.11 Weeds, Refuse or Unsightly Objects.** No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of the Properties, and no refuse pile or unsightly objects shall be allowed to be placed or to remain anywhere thereon. In the event that any owner shall fail or refuse to keep his Lot or Dwelling Unit free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon such Lot or Dwelling Unit and remove the same at the expense of the Owner, and such entry

shall not be deemed a trespass. The question of whether something is unsightly shall be submitted to the Board of Directors for decision, which decision is final.

- 9.12 Additional Rules and Regulations.** The Developer, until the Turnover, and thereafter the Board, may establish such additional rules and regulations as may be deemed in the best interests of the Association and its Members for purposes of enforcing the provisions of this Article IX.
- 9.13 Right to Abate Violations.** The Association or the Developer, prior to the Turnover, and the Association thereafter, after reasonable notice and opportunity to cure a violation given to an Owner, may cure the violation and charge the cost thereof against the Owner as a Special Assessment.
- 9.14 Exemption for Developer.** The Developer, provided that it owns any Lot or Dwelling Unit in the Properties or in the event that the Developer is doing construction work within the Properties, shall be exempt from the provisions of Article IX and Article VIII.

ARTICLE X

ENFORCEMENT PROVISIONS

- 10.1 Rules and Regulations.** The Board or Directors is specifically granted the power to pass rules and regulations for purposes of enforcing this Declaration.
- 10.2 Enforcement - General.** Failure of an Owner to comply with a provision in this Declaration or a provision in the By-Laws, Articles or Rules and Regulations of the Association shall provide the Association and each Owner with the right to bring legal action in law or in equity, including but not limited to an action for injunctive relief, damages, or a combination thereof. All costs and expenses incurred by the Association in terminating or resolving a violation of this Declaration, including reasonable attorneys' fees (whether or not litigation is instituted) shall be the responsibility of the Owner determined by the Association to be in violation. Collection of such reasonable attorneys' fees may be enforced by any method in this Declaration providing for the collection of Assessments, including but not limited to, a foreclosure proceeding. Failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so in the future.
- 10.3 Special Assessment for Noncompliance.** In addition, there may be levied a special assessment for noncompliance as described in Article V, paragraph 5.3.1 of this Declaration.

ARTICLE XI

GENERAL PROVISIONS

- 11.1 Duration.** The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After the original thirty (30) year period, the covenants and restrictions contained in this Declaration shall be automatically extended for successive period of ten (10) years, unless prior to the end of such thirty (30) year period, or successive ten (10) year period, an instrument signed by the then Owners of two-thirds (2/3) of the Lots or Dwelling Units agreeing to terminate the covenants and restrictions at the end of such thirty (30) year or ten (10) year period, has been recorded in the Public Records of Henderson County. No such agreement to terminate the covenants and restrictions shall be effective unless made and recorded at least ninety (90) days in advance of the effective date of such change. This Section may not be amended.
- 11.2 Planned Community Act.** The provisions of Chapter 47R of the North Carolina General Statutes referred to as the "Planned Community Act", as amended from time to time, shall be applicable to these covenants and to the Properties.
- 11.3 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which, shall remain in full force and effect.
- 11.4 Amendment by the Members of the Association.** This Declaration may be amended from time to time by recording among the Public Records of Henderson County, North Carolina, an instrument executed by the President and attested to by the Secretary of the Association, indicating that a Meeting called for purposes of Amendment was held, and that a majority of the votes of all Members of the Association approved of such Amendment.
- 11.4.1 Consent of the Developer.** As long as the Developer owns a Lot or Dwelling Unit in the Properties, no Amendment may be made without the consent of the Developer.
- 11.4.2 Vested Rights.** No Amendment shall affect or interfere with vested property rights previously acquired by an owner or a First Mortgagee.
- 11.4.3 Termination of Covenants.** The complete termination of the covenants and restrictions of this Declaration is governed by paragraph 11.1 of this Article.
- 11.5 Amendment by Developer.** The Developer, as long as it owns a Lot or Dwelling Unit, without the joinder or approval of the Association, the Board, or the Voting Members may record any amendment to this Declaration without the approval of the Association, the Board, or the Members, except any amendment which would interfere with vested property rights previously acquired by a first mortgagee.
- 11.5.1 Amendment to Correct Errors.** Developer shall have the right at any time within five years from the date of this Declaration to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist in this

Declaration. The Developer shall notify the Board of Directors of all amendments made by the Developer.

- 11.6 Temporary Committees.** The Developer, prior to Turnover, at its sole discretion, may create temporary committees for the purpose of aiding in the transition of the Association from Developer control, to control by the Members.
- 11.7 Conflict.** This Declaration shall take precedence over conflicting provisions in the Articles of Incorporation and By-Laws of the Association and the Articles shall take precedence over the By-Laws.
- 11.8 Withdrawal of Properties.** Anything herein to the contrary notwithstanding, the Developer reserves the absolute right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Properties from the provisions of this Declaration.

IN WITNESS WHEREOF, this Restatement and Amendment to Covenants and Restrictions for Cummings Cove has been signed by Developer, the day and year first above set forth. The undersigned Managing Member signs for and on behalf of Developer, with full authority to do so from all of the general partners of Developer.

CUMMINGS COVE COMPANY, LLC

By:

 (SEAL)
CUMMINGS COVE COMPANY, Managing Member

ATTEST: _____ (SEAL)
Secretary

(Corporate Seal)

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

On the 13th day of MARCH, 2012, before me personally appeared Shannon Ginn, to me known, who being by me duly sworn, deposes and says that he is the Managing Member of CUMMINGS COVE COMPANY, LLC., a Florida Limited Liability Company, and that the seals affixed to the foregoing instrument in writing are the seals of CUMMINGS COVE COMPANY, LLC, and that the writings have been signed by him on behalf of CUMMINGS COVE COMPANY, LLC.

WITNESS my hand and notarial seal, this the 13th day of MARCH, 2012.

Susan Jordan
Notary Public

My Commission Expires: 5/11/2013

