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WILLIAM LEE KING, Henderson COUNTY, NC

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS  
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→ **PREPARED BY  
AND RETURN TO:  
Worley & Peltz, PLLC  
Box 99**

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COUCH MOUNTAIN**

THESE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COUCH MOUNTAIN (the "Declaration") is made this the 7<sup>th</sup> day of October 2019 by Luna Ridge, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

**RECITALS:**

1. Declarant is the owner of that certain tract or parcel of land described on Exhibit "A" attached hereto and made a part hereof (the "Property"), which Property is, at the sole option of Declarant, to be developed in phases or sections and divided into Lots, the entire property to be known as Couch Mountain.
2. Declarant establishes and declares that the Property and any additional property made subject to this Declaration by future amendments or covenants, shall be, at the option of the Declarant, developed -for the maintenance of and protection of the value of Couch Mountain. Declarant contemplates and

reserves the right to submit additional phases of property adjacent or near the property to this Declaration, which shall be in the same scheme of development as other property within Couch Mountain. The covenants, conditions and restrictions contained herein are intended to provide for the orderly development of Couch Mountain as a residential community which is aesthetically pleasing and functionally convenient, a community which will attract residents seeking privacy and harmony with their neighbors; such restrictions are thus designed to protect the investment of the residents within Couch Mountain.

3. Declarant desires, pursuant to the restrictions herein contained, to subject the Property together with any additions thereto, to the covenants, conditions and restrictions as hereinafter set forth.

4. This Declaration is made pursuant to the provisions of the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina.

#### **RESTRICTIVE AGREEMENT:**

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of Couch Mountain and which shall run with the real property described herein and in any supplements or amendments hereto and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

#### **ARTICLE I** **DEFINITIONS**

**SECTION 1.** "ADDITIONAL PROPERTY" shall mean and refer to any real property which may be added to the Property pursuant to Article XI hereof.

**SECTION 2.** "ASSOCIATION" shall mean and refer to Couch Mountain Homeowners' Association, Inc., a nonprofit corporation organized pursuant to North Carolina General Statutes Chapter 55A, commonly known as the North Carolina Nonprofit Corporation Act, its successors and assigns. As of the recording date of this Declaration, "Association" shall mean and refer to the Association which is provided for herein. Declarant may, at its option, subject additional portions of the Property to this Declaration, in furtherance of the scheme of development set forth herein. Owners of Lots in Couch Mountain as described herein shall become members of the Association.

**SECTION 3.** "BYLAWS" shall mean and refer to the Bylaws of the Association as the same may now or hereafter exist.

**SECTION 4.** "COMMON ELEMENTS" shall mean all real property now owned or hereafter acquired by the Association for the common use and enjoyment of Owners and/or shown on a Plat describing portions of the Property, together with any area in which the Association has an easement or right and an obligation of maintenance thereof, including but not limited to any private driveway easement and roadways within the Property that are shown on a Plat.

**SECTION 5.** "COMMON EXPENSES" shall mean and include: (a) all sums lawfully assessed against the Lot Owners by the Association; (b) expenses of administration, operation, maintenance, repair and replacement of the Common Elements and facilities and any reserve funds allocated for the same; (c)

expenses agreed upon as Common Expenses by the Association; and (d) hazard and liability insurance premiums as required.

**SECTION 6.** "COMPLETED RESIDENTIAL STRUCTURE" shall mean and refer to a home or other residential Dwelling unit constructed within the Property, for which a certificate of occupancy has been issued by Henderson County or other applicable municipal authority for the residential structure.

**SECTION 7.** "DECLARANT" shall mean and refer to Luna Ridge, LLC, a North Carolina limited liability company and its successors and assigns. The rights and obligations of the Declarant as described herein may be conveyed and transferred by Declarant by instrument recorded in the Office of the Register of Deeds for Henderson County.

**SECTION 8.** "DECLARANT CONTROL PERIOD" shall mean the time period commencing on the date of recordation of this Declaration in the Office of the Register of Deeds for Henderson County and terminating on the earliest of:

- i. The date on which Declarant no longer owns any of the Property; or
- ii. The date Declarant shall terminate the Declarant Control Period.

**SECTION 9.** "DWELLING" shall mean and refer to a building situated upon a Lot and intended for use and occupancy as a residence.

**SECTION 10.** "GUIDELINES" shall mean and refer to any architectural and landscaping guidelines and requirements promulgated by the Design Review Committee and/or the Declarant.

**SECTION 11.** "LOT" shall mean and refer to any numbered plot of land shown on the Plat, with the exception of the Common Elements.

**SECTION 12.** "MEMBER" shall mean and refer to any person or entity who holds membership with voting rights in the Association, which membership shall be derived from ownership of any Lot within Couch Mountain.

**SECTION 13.** "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of this or subsequent sections within Couch Mountain but excluding those persons or entities having such interests merely as security for the performance of an obligation.

**SECTION 14.** "PLAT" shall mean and refer to any plat of the Property or any part thereof which has been recorded in the Office of the Register of Deeds for Henderson County.

**SECTION 15.** The "PROPERTY" shall mean and refer to that certain real property shown and described on Exhibit "A" as attached hereto, subject to expansion and addition pursuant to Article XI, Section 3 hereof.

**SECTION 16.** "THE ACT" shall mean and refer to the North Carolina Planned Community Act set forth in Chapter 47F of the General Statutes of North Carolina, as it may be amended.

**SECTION 17.** "TRANSFERRING OWNER" shall mean and refer to any Owner, including Declarant, that transfers title to any Lot for consideration.

**ARTICLE II**  
**COMMON ELEMENTS OWNERSHIP AND MAINTENANCE**

**SECTION 1. OWNER'S EASEMENTS OF ENJOYMENT.** Every Owner shall have the right of ingress to and egress from the Common Elements, together with the right of enjoyment in and to the Common Elements, which rights shall be appurtenant to and shall pass with the title to every Lot.

**SECTION 2. DELEGATION OF USE.** Any Owner may delegate his rights of enjoyment of the Common Elements to the members of his family, his tenants, contract purchasers who reside on the Lot, or to his guests. Any tenant, contract purchaser or guest to whom such rights of enjoyment have been delegated shall have the same rights and responsibilities as any other Owner in Couch Mountain. A Lot Owner who has delegated rights in the Common Elements to his tenant shall not, in addition to his tenant, have rights in the Common Elements. Provided, however, in the event an Owner leases a guest house located on the Owner's Lot, the tenant of such guest house and the Owner shall have rights in the Common Elements.

**SECTION 3. RIGHT TO USE ROADWAYS.** Each Lot shall be conveyed to its Owner with a perpetual, non-exclusive right to use any roadway and private driveway easement which may be constructed by the Declarant as part of the Common Elements, which shall also be deemed to include perpetual, non-exclusive right to use any roadway and private driveway easement in subsequent phases of Couch Mountain as shown on subsequent Plats and Supplemental Declarations.

**SECTION 4. RULES AND REGULATIONS.** The Executive Board of the Association shall have the power to formulate, publish and enforce reasonable Rules and Regulations concerning the use and enjoyment of the Common Elements. Such Rules and Regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Common Elements on behalf of the Association and available to the Members for inspection during normal business hours, or at the designated office of the Association, if there is no property manager.

**SECTION 5. DECLARANT'S CONVEYANCE OF TITLE TO COMMON ELEMENTS.** At such times as it deems appropriate, but not later than at such time as one hundred percent (100%) of the Lots of all phases of Couch Mountain have been sold, Declarant shall convey fee simple title to the Common Elements to the Association, which conveyances may be by phases. The Association shall accept the conveyance of all such Common Elements pursuant to this Section.

**SECTION 6. MORTGAGING COMMON ELEMENTS.** The Association shall have the power to borrow money for the purpose of improving the Common Elements, and pursuant thereto, to subject the Common Elements or any portion thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same approval of the membership which is required for special assessments for capital improvements.

**ARTICLE III**  
**THE ASSOCIATION: MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1.** Every Owner in Couch Mountain which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**ARTICLE V**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant hereby covenants and each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments to be established and collected as hereinafter provided. The Association shall bear the responsibility of maintenance of all the Common Elements whether or not the same is owned by the Declarant or the Association from the time of the recording of this Declaration. Upon the conveyance of a Lot to an Owner other than the Declarant, such Owner shall assume the obligation of maintenance of the Lot(s) conveyed. Assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall be the personal obligation of the person or entity who was the Owner of a Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**SECTION 2. INITIAL ASSESSMENTS.** In order to create a reserve fund for the Association, the Declarant shall collect at each closing of the sale of a Lot from Declarant to the first purchaser of the Lot, Set Up fee of \$1,000.00 per Lot, which assessment shall be paid by the purchaser to the Association and deposited in its general account.

**SECTION 3. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used to maintain Common Elements, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, procurement and maintenance of insurance related to the Common Elements, their facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. Any assessment charged and collected shall relate to the cost of maintenance of the Common Elements and those costs associated with such maintenance and shall include a reserve fund in reasonable amount in anticipation of such costs. The provisions herein, including the responsibility of maintenance of the roadways within Couch Mountain, shall control as well as the terms of that Road Maintenance Agreement recorded in Deed Book 3315, at Page 610 in the Henderson County Register of Deeds (the "RMA") shall apply to the rights of way and easements referenced in the RMA. Further, the Declarant's cost of maintenance required by the RMA shall be included in the assessment of the Common Elements.

**SECTION 4. PAYMENT OF ANNUAL ASSESSMENTS: DUE DATES.** Each Owner of a Lot shall pay to the Association annual assessments levied by the Association ("the Annual Assessments") as follows:

A. The Annual Assessment provided for herein for any Lot shall become binding on the Owner upon the sale of a Lot from the Declarant to a third-party purchaser. Declarant shall have no obligation for any assessment of whatever type unless Declarant constructs a Dwelling upon a Lot, in which case Declarant's obligation to pay Assessments for such Lot shall commence thirty (30) days after the issuance of a certificate of occupancy from the appropriate governing body.

B. Subject to paragraph A. above, the Annual Assessments for each Lot shall be collected annually and shall be due and payable on the first day of January. Provided, however, that the Board, in its sole discretion and without the approval or consent of any Association Member or Owner, may provide that Annual Assessments be paid in installments other than annually (i.e., quarterly, semi-annually). Upon such decision by the Board, such Annual Assessments will be paid in the manner prescribed by the Board.

Members shall be all Owners, including Declarant upon the termination of the Declarant Control Period as defined above, each of whom shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**SECTION 2. ORGANIZATION OF THE ASSOCIATION.** Couch Mountain Homeowners' Association, Inc. shall be organized pursuant to North Carolina law as a non-profit corporation.

**SECTION 3. POWERS OF THE ASSOCIATION.** Pursuant to Section 3-102 of the Act, the Association shall have all those powers enumerated in said Section. The Executive Board of the Association shall be organized and run pursuant to Section 3-103 of the Act (the "Board" or "Executive Board"). The Association shall adopt Bylaws in accordance with Section 3-106 of the Act. Meetings of the Association shall be held as provided for in Section 3-108 of the Act. Unless altered by a vote of the Association and amendment of the Bylaws, the necessary quorum at an Association shall be those minimum requirements set forth in Section 3-109 of the Act. Qualifications for voting and use of proxies shall be as provided for in Section 3-110 of the Act, except that Subsection 3-110(c) of the Act shall not be applicable to the Association.

Declarant shall act as the Executive Board of the Association during the Declarant Control Period, or, pursuant to Section 3-103(d) of the Act, during the Declarant Control Period, Declarant shall have the right to appoint and remove members of the Executive Board of the Association.

Notwithstanding the above, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by the Association Members shall be required in order for the Association to (a) file a complaint with any governmental agency or body politic that has regulatory or judicial authority over the Property or any part thereof, if such complaint is on account of an act or omission of Declarant; or (b) assert a claim against or file suit against Declarant.

#### **ARTICLE IV** **THE BOARD**

**SECTION 1. BOARD MEMBERS.** Until the termination of the Declarant Control Period, the members of the Board shall be appointed by Declarant. The number of members of the Board shall be determined by the Bylaws. Upon the termination of the Declarant Control Period, the members of the Board shall be elected by the Association pursuant to the Bylaws. Declarant reserves the right to, in its sole discretion, relinquish its right to appoint the members of the Board prior to the termination of the Declarant Control Period, whereupon the members of the Board shall be elected by the Association pursuant to the Bylaws.

**SECTION 2. LIMITATION ON LIABILITY.** Neither Declarant, the Association, any Member, any officers, directors, or managers of the Association, nor any agents or employees of the aforementioned shall be personally liable for (a) debts incurred by the Association; (b) the tortious act of any other Member; or (c) any incidental or consequential damages for failure to inspect or repair any premises, improvements or portions thereof, regardless of whether such Member was acting on behalf of the Association. The Association shall, to the extent permitted by applicable law, indemnify, hold harmless and defend all members of the Board against all liability and damage, real or alleged, arising from or relating to the performance by the Board of its duties and obligations, except, however, from any such loss, cost, expense, damage liability, action or cause of action resulting from the gross negligence or willful misconduct of the person or persons to be indemnified.

**ARTICLE V**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS.** The Declarant hereby covenants and each Owner of a Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments to be established and collected as hereinafter provided. The Association shall bear the responsibility of maintenance of all the Common Elements whether or not the same is owned by the Declarant or the Association from the time of the recording of this Declaration. Upon the conveyance of a Lot to an Owner other than the Declarant, such Owner shall assume the obligation of maintenance of the Lot(s) conveyed. Assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall be the personal obligation of the person or entity who was the Owner of a Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**SECTION 2. INITIAL ASSESSMENTS.** In order to create a reserve fund for the Association, the Declarant shall collect at each closing of the sale of a Lot from Declarant to the first purchaser of the Lot, Set Up fee of \$1,000.00 per Lot, which assessment shall be paid by the purchaser to the Association and deposited in its general account.

**SECTION 3. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used to maintain Common Elements, including, but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, procurement and maintenance of insurance related to the Common Elements, their facilities and use in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. Any assessment charged and collected shall relate to the cost of maintenance of the Common Elements and those costs associated with such maintenance and shall include a reserve fund in reasonable amount in anticipation of such costs. The provisions herein, including the responsibility of maintenance of the roadways within Couch Mountain, shall control as well as the terms of that Road Maintenance Agreement recorded in Deed Book 3315, at Page 610 in the Henderson County Register of Deeds (the "RMA") shall apply to the rights of way and easements referenced in the RMA. Further, the Declarant's cost of maintenance required by the RMA shall be included in the assessment of the Common Elements.

**SECTION 4. PAYMENT OF ANNUAL ASSESSMENTS: DUE DATES.** Each Owner of a Lot shall pay to the Association annual assessments levied by the Association ("the Annual Assessments") as follows:

A. The Annual Assessment provided for herein for any Lot shall become binding on the Owner upon the sale of a Lot from the Declarant to a third-party purchaser. Declarant shall have no obligation for any assessment of whatever type unless Declarant constructs a Dwelling upon a Lot, in which case Declarant's obligation to pay Assessments for such Lot shall commence thirty (30) days after the issuance of a certificate of occupancy from the appropriate governing body.

B. Subject to paragraph A. above, the Annual Assessments for each Lot shall be collected annually and shall be due and payable on the first day of January. Provided, however, that the Board, in its sole discretion and without the approval or consent of any Association Member or Owner, may provide that Annual Assessments be paid in installments other than annually (i.e., quarterly, semi-annually). Upon such decision by the Board, such Annual Assessments will be paid in the manner prescribed by the Board.

SECTION 5. AMOUNT OF ANNUAL ASSESSMENTS.

A. The Board shall annually prepare a budget (the "Annual Budget") which shall depict the estimated costs of operating the Association for the coming calendar year.

B. The Annual Assessments shall be \$1,950. This amount shall be the Annual Assessment until January 1, 2022. After such date, the Annual Assessments shall be established by the Board pursuant to this Section.

C. The Annual Assessment for each Lot shall be established as follows:

1. For calendar year 2022 and for all years thereafter prior to the termination of the Declarant Control Period, the Board may, by a vote by the Board pursuant to the Bylaws and without the vote of the Association Members, increase the Annual Assessments for each Lot by a maximum of ten percent (10%) of the previous year's Annual Assessment. The Board may also decrease the Annual Assessments pursuant to the Bylaws and without the vote of the Association Members.

2. For each calendar year after the termination of the Declarant Control Period, the Board shall prepare a proposed Annual Budget. Such proposed Annual Budget or a summary thereof and a notice of a meeting for ratification of such proposed Annual Budget shall be provided to all Association Members within thirty (30) days of such meeting. The notice shall be sent not less than ten (10) days nor more than sixty (60) days prior to the date of such meeting and shall include a statement that such Annual Budget may be ratified without a quorum, which is not necessary for ratification of such proposed Annual Budget. Such Annual Budget is ratified unless at such meeting a majority of the Association Members reject such Annual Budget. If the Annual Budget is rejected, the most recent budget ratified by the Association Members, including the initial Annual Budget, shall be continued until a new Annual Budget is ratified by the Association Members. The Board shall set the amount of the Annual Assessment based upon the Annual Budget.

SECTION 6. UNIFORM RATE OF ASSESSMENT. Assessments must be fixed at a uniform rate for all Lots, except for the special assessments provided for in Section 10 of this Article or if one of the exceptions listed in Section 3-115(c) of the Act applies. The amount of the annual assessment shall not increase more than ten percent (10%) in any calendar year, unless the increase is approved by the Lot Owners at a special meeting of the members called for such purpose.

SECTION 7. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days of the due date shall bear interest from the due date at a rate of eight (8%) per cent per annum. There may also be an additional fee levied if the assessment is not paid within (120) days of the due date. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose its lien against the Lot against which the delinquent assessment has been levied. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Elements or abandonment of his Lot.

SECTION 8. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of an Owner. The Association shall notify by registered mail,



return receipt requested, any mortgagee of any delinquency or default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgagee.

SECTION 9. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the Annual Assessments, the Association may levy a special assessment for payment of a repair, replacement or improvement upon the Common Elements. Such special assessment must have the approval of two-thirds (2/3) of the votes of members who are voting at a meeting duly called and noticed for this particular purpose.

SECTION 10. SPECIAL INDIVIDUAL ASSESSMENTS. The Board may levy special assessments against individual Owners (i) for the repair, construction, reconstruction, or replacement of any damaged area or component of the Common Elements when such damage is a result of the acts of the Owner or the Owner's agent or (ii) for the payment of fines, penalties or other charges imposed against an Owner as a result of such Owner's failure to comply with the terms contained herein, the Bylaws or any rules and regulations promulgated thereunder. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessments except with Declarant's prior written approval. The Board shall establish the payment due date for any such special assessment within the Board resolution authorizing such special assessment. Upon establishment of such special assessment, the Board shall send written notice of the amount and due date of the special assessment to the affected Owner or Owners at least thirty (30) days prior to the due date of such special assessment.

SECTION 11. EXEMPT PROPERTY. All property donated or dedicated to, and accepted by, a public authority or charitable or non-profit organization exempt from taxation by the State of North Carolina shall be exempt from the assessments herein described. Except, however, no land or improvements used as a Dwelling shall be so exempt from such assessments.

SECTION 12. STORMWATER RETENTION SYSTEM. There is in place upon the Property a Stormwater Retention System required by the applicable local ordinances (the "Stormwater System"). Such Stormwater System shall be maintained by the Association. The cost of such maintenance may be included in the Assessments or by additional assessments as required to maintain the Stormwater System.

## ARTICLE VI ARCHITECTURAL CONTROL

SECTION 1. DESIGN REVIEW COMMITTEE. Unless otherwise provided herein upon the formation of the Association as provided for herein, a design review committee (the "DRC") shall be organized by the Board. The DRC shall consist of five (5) members, at least three of whom at all times shall be designated by the Declarant. The remaining two (2) members shall be appointed by the Board and may be a landscape architect and an architect. During the Declarant Control Period, the Declarant shall appoint the members of the DRC or may act as the DRC solely during that period. The terms of all DRC members shall be for two (2) years; provided, however, that the terms of those elected by the Board shall be staggered such that the terms of two (2) members of the DRC shall expire each year. The DRC shall select its own chair, who shall call meetings of the DRC by providing at least twenty-four (24) hours' notice to each member of the DRC. A quorum of the DRC shall consist of a majority of its members and a majority of such members at a meeting where a quorum is present may act. All other workings and organizational matters of the DRC will be determined by the DRC.

SECTION 2. APPROVAL OF PLANS AND SPECIFICATIONS. No building, fence, wall, deck, mailbox or other structure shall be commenced, erected or maintained within Couch Mountain, nor shall any exterior addition to or change or alteration, including but not limited to any planting or landscaping on

any Lot, therein be made until the plans and specifications have been submitted to and approved in writing by the DRC pursuant to the procedure therefor set forth in the Guidelines. DRC approval is not required for the replacement of diseased or dead plants as long as such plants are replaced with the same species in the same location.

The DRC shall have the right to charge a reasonable fee for receiving each application for approval of plans and specifications in an amount set forth in the Guidelines. All proposed plans and specifications must first be submitted to the DRC which shall review such plans in accordance with the Guidelines. If within forty-five (45) days after its receipt of such plans and specifications contained in an Owner's application, the DRC does not give such owner written notice of disapproval and reasons therefor, the plans and specifications shall be deemed to be approved. Refusal of any plans or specifications by the DRC shall be based on lack of conformity to the published Guidelines or upon a determination by the DRC that the planned improvement is likely to cause a violation of the restrictions contained herein. The DRC must, however, state in writing the reasons for any such refusal. Upon giving approval to such plans and specifications, the Owner shall be obligated to begin construction and complete the same in conformity with such plans as have been previously approved by the DRC, and the DRC shall be entitled to stop, through injunction or other legal means, any construction which is in violation of this Declaration or the Guidelines. Any violation of the Guidelines could be deemed a violation of this Declaration.

**SECTION 3. MAINTENANCE.** The Association shall maintain the Common Elements. Each Owner shall be responsible for the exterior maintenance of his or her Dwelling and Lot, including but not limited to all landscaping, sidewalks, improvements and buildings. The Association shall have the power, upon the recommendation of the Board or upon its own initiative, to perform exterior maintenance on an Owner's Lot or Dwelling if such Owner has been negligent or failed to maintain such Lot and/or exterior of his or her Dwelling in a manner consistent with other Lots and Dwellings in Couch Mountain. Provided, however, that the Association shall first give written notice to the Owner of the specific items of maintenance the Association intends to perform. Such Owner shall thereafter have forty-five (45) days from the date of such notice within which to perform such exterior maintenance. While the determination as to whether an Owner has neglected or failed to maintain his or her Dwelling in a manner consistent with the other Dwellings in Couch Mountain shall be made by the Association, the Association shall take into consideration all recommendations of the Board. Any determination by the Association that an Owner has neglected or failed to maintain his or her Dwelling in a manner consistent with the other Dwellings within Couch Mountain shall be made in good faith.

The Association hereby reserves the right to unobstructed access over and upon each Lot at all reasonable times to perform exterior maintenance as provided for herein. In the event that the Association performs such exterior maintenance, the cost of such maintenance shall be added to and become part of the assessment to which such Lot is subject.

**SECTION 4. LIMITATION OF LIABILITY.** Neither the Board, the Association, the DRC nor any representative or representatives thereof, including their successors and assigns, shall be liable to anyone submitting plans and specifications for approval, or to any Owner, arising out of or in connection with the approval, disapproval or failure to approve any such plans and specifications. Every person, corporation, partnership or other entity that submits plans and specifications to the Board, Association or DRC for approval agrees that by such act, and every Owner agrees by acquiring legal title to any Lot or any interest therein, it will not bring any action, proceeding or suit against the Board, the Association, the DRC or any representative thereof to recover any such damages. The approval of any such plans and specifications shall be given solely to protect the appearance of the Property, and shall not be in any way deemed a warranty, representation or covenant that the proposed work complies with any applicable laws, rules or regulations or any standard of care regarding structural design and construction.

**ARTICLE VII**  
**PROTECTIVE COVENANTS**

**SECTION 1. RESIDENTIAL USE AND RENTAL OF LOTS.** All Lots shall be used, improved and devoted exclusively to single-family residential use. No trade or business shall be carried on upon any Lot, but this restriction shall not prohibit a home occupation which does not unreasonably increase traffic or cause any noxious or offensive activity within Couch Mountain, provided such home occupation is only open during customary normal business hours. No signs or advertising shall be allowed for such occupations. No structure, except as herein stated, shall be constructed upon any Lot other than one (1) single-family Dwelling. Provided, however, Declarant or any successor Declarant may construct and use a structure on any Lot as a model for sales purposes or construction office. Provided further, an Owner may construct a guest house upon a lot provided the same complies with the ordinances, statutes or regulations of the local governing body, including but not limited to Henderson County and provided further that such guest house cannot be rented by such Owner separate and apart from renting the main Dwelling upon the Lot unless such guest house is rented for a term of seven (7) days or more. Provided further, an Owner may construct accessory structures upon a lot provided such structures comply with the Design Guidelines and are approved by the DRC.

**SECTION 2. BUILDING SETBACK.** No building or structure shall be located on any Lot nearer to the front line or nearer to the side street line than the minimum building setback lines as shown on the Plat. In any event, no building or structure shall be located nearer than fifteen (15) feet to the front line, or nearer than fifteen (15) feet to any side street line, or nearer than fifteen (15) feet to the rear Lot line. No building shall be more than thirty-five (35) feet in height. The Declarant reserves the right, in its discretion, to waive violations of this section by recording in the Office of the Register of Deeds for Henderson County a written waiver of the violation, when, in the opinion of the Declarant the violation was unintentional or caused by some unavoidable condition of the Lot in question.

**SECTION 3. NUISANCES.** No noxious or offensive activities shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No plant, animal, device or thing of any sort whose normal use or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in Couch Mountain by the Lot Owners, tenants and guests thereof may be maintained.

**SECTION 4. ANIMALS.** Generally recognized house pets, in reasonable numbers, may be kept and maintained at a Lot, provided such pets are not kept or maintained for commercial purposes. All pets must be kept under the control of their Owner when they are outside the occupant's Dwelling and must not become a nuisance to other residents at any time. The keeping of pets shall be subject to reasonable rules and regulations promulgated and published by the Association. All animal waste must be contained and disposed of by the owner of such animal. All pets must always be current on all vaccinations and medications, including, but not limited to rabies vaccines, flea and tick prevention. Each Owner shall be responsible for any damage done by his/her pet to the landscaping or improvements on any Lot. No pet may be tied or otherwise attached to any Dwelling at any time nor may any pet be left unattended. No livestock or animals other than chickens, bees, dogs, cats or other common household pets may be kept or maintained within Couch Mountain. Chickens shall be limited to a maximum of four (4) hens per Lot and must be fenced. No roosters shall be permitted within Couch Mountain. Beehives shall be limited to a maximum of four (4) hives per lot. The beehives must be located in the rear two-third (2/3) of the property and shall be no closer than twenty-five (25) feet from any property line.

**SECTION 5. PARKING AND MOTOR VEHICLES.** No parking of unlicensed, uninspected or non-operable vehicles shall be allowed on any Lot outside a Dwelling. Except for emergency repairs, no person shall repair, restore or store any vehicle, boat, trailer or recreational vehicle upon any Lot outside a

Dwelling. No boats, motor homes, travel trailers or other recreational vehicles may be stored upon any Lot for more than three (3) consecutive days unless the same is within an enclosed garage.

All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles shall be driven on pathways, unpaved Common Elements, or roadway shoulders within Couch Mountain.

Nothing herein shall prohibit the use of golf carts or recreational vehicles within the roadways of the Property or trails designated therefor.

SECTION 6. OUTSIDE ANTENNAE. Any outside antennae shall be governed by the Guidelines.

SECTION 7. TRASH RECEPTACLES. The location and nature of all trash receptacles shall be governed by the Guidelines.

SECTION 8. SIGNS. No signs of any kind, including but not limited to political or "for sale" signs, shall be displayed to the public view on any Lot. Nothing in this paragraph shall be construed to prevent the Declarant from erecting entrance display signs or signs designed to designate areas within Couch Mountain, including street signs. Declarant shall be allowed to post "For Sale," "Open House," "Model" and other signs at any location until all Lots are sold.

SECTION 9. FENCES. The location and nature of all fences shall be governed by the Guidelines.

SECTION 10. TEMPORARY STRUCTURES. No improvement or structure of a temporary nature shall be erected or allowed on any Lot or the Common Elements unless and until permission for the same has been granted by the Association. No basketball goals shall be allowed in the street or set up in a way that protrudes into the street.

SECTION 11. USE OF COMMON ELEMENTS. The Common Elements shall not be used in any manner except as shall be approved or permitted by the Association; provided, however, that so long as Declarant owns any portion of the Property, Declarant shall have the exclusive right to use any portion of the Common Elements for sales purposes, including but not limited to any promotional activities. The establishment of the Common Elements does not grant in any way to the public or to any adjacent or surrounding landowners the right to enter upon or use such Common Elements without the express written consent of the Declarant or the Association. The establishment of Common Elements does not in any way place an affirmative burden upon the Declarant to provide for any particular improvements or to extend to any Owner any service of any kind.

SECTION 12. ACCESS TO LOTS. The Association, its agents and employees shall have access to each Lot during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Elements, or facilities situated upon any Lot that serve such Lot or another Owner's Lot. Declarant reserves unto itself, its successors and assigns the right to go onto, over and under the Property to erect, maintain and use all equipment necessary for the conveyance and use of all utilities or public conveniences in the Common Elements. This reservation and right expressly includes the right to cut trees, bushes or shrubbery, grade the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations and tanks within the Common Elements. Such rights may be exercised by any licensee or employee of the Declarant, but this reservation shall not be construed as an obligation of the Declarant to provide or maintain any such utility or service. Where the Declarant is allowed by this Declaration to

enter any Lot or Common Elements to provide any service to the Property, the act of entering the Property and taking any such action shall not be deemed a breach of this Declaration by Declarant

SECTION 13. PLUMBING. All plumbing, dishwashers, toilets and sewage disposal systems shall be connected to either the central sewer system available to the Lot or the approved septic system for that Lot. All potable water shall be supplied by individual wells which shall be dug on such Owner's Lot at such Owner's expense.

SECTION 14. MAINTENANCE, GARDENS AND LANDSCAPING. All maintenance and landscaping of Lots shall be governed by the Guidelines. Similarly, individual gardens are encouraged. The design and placement shall conform with the standards as described in the Guidelines.

SECTION 15. ACCESS. There shall be no vehicular access to any Lot except from designated roads lying within the Common Elements as shown on the Plat.

SECTION 16. HUNTING PROHIBITED. The hunting of birds or animals within the Property or from the Property is prohibited. The discharge of firearms, of any sort, within the Property is strictly prohibited.

SECTION 17. NO ABOVE GROUND POOLS. No above ground swimming pools may be installed, placed or erected upon any Lot.

SECTION 18. FUEL TANKS OR CONTAINERS. All fuel tanks or oil tanks or containers shall be enclosed within a structure, in a manner consistent with normal safety precautions, and no fuel tank or container may be installed within or under a Lot or buried underground without the express written consent of the Association.

SECTION 19. RECONSTRUCTION. Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or any other act of God or by an intentional act must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of any construction thereon with reasonable promptness; provided, however, that any such reconstruction must be commenced within six (6) months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within six (6) months of such destruction. All work performed pursuant to this Section shall be pursuant to the Guidelines.

SECTION 20. SUBDIVISION. No Lot shall be subdivided or its boundary lines changed without the written consent of Declarant. Declarant hereby reserves unto itself, its successors and assigns, the right to replat any Lots.

SECTION 21. LEASING. Any Completed Residential Structure on any Lot may be leased so long as: (a) such lease is for a term of at least seven (7) consecutive days; and (b) use of the Lot by the tenant of a lease shall be in conformity with this Declaration and the By-Laws, Rules and Regulations of the Association.

SECTION 22. HAZARDOUS ACTIVITIES. Nothing shall be done or kept on any Lot or in any Common Element which will increase the rate of insurance on the Common Elements or any other Lot or which would be in violation of any law, ordinance, regulation or similar rule without the prior written consent of the Association and Lot Owner. No Owner shall permit anything to be done or kept on his or her Lot or in the Common Elements which would result in the cancellation of insurance or increase in insurance premiums on any part of the Common Elements, or which would be in violation of any law, ordinance, regulation or similar rule.

**SECTION 23. REGULATIONS.** Reasonable regulations governing the use of the Common Elements and external appearance of all structures located upon all Lots may be made and amended by the Association; provided, however, that all such regulations and amendments thereto shall be approved by a majority vote of the Owners before the same shall become effective. Copies of such regulations and any amendments thereto shall be furnished to each Owner by the Association upon request. Notwithstanding the foregoing language, prior to the termination of the Declarant Control Period, the Association shall pass no regulations under this Section without the express written consent of the Declarant.

**SECTION 24. CONSTRUCTION DAMAGE.** It shall be the obligation of the Owner of a Lot to repair any damage to curbs, shoulders, guttering, paving, water lines, electric lines, or any other improvements within Couch Mountain which occurs during the period of construction and is caused by contractors or subcontractors involved in construction on the Owner's Lot. In case of any such damage to improvements, the Declarant or the Association may immediately take such action as is necessary to repair such damage; the Owner of the Lot shall, within thirty (30) days, reimburse the Declarant for the cost of such repair. The Owner of such Lot is similarly responsible for proper removal of any trash or debris which is a result of such construction which is located on such Lot. Notwithstanding the above, the provisions of this paragraph apply to any Lot Owner and not the Declarant. Declarant has the right, by and through the DRC or Guidelines or otherwise, to require a construction deposit prior to commencement of any construction upon a Lot by an Owner.

**SECTION 25. COMPLIANCE.** In the event that the Owner of any Lot fails to comply with any of the restrictions set forth in this Article or any rule or regulation promulgated by the Association, the Association shall have the right to enter any Lot and undertake any necessary action in order to cure such Owner's noncompliance. All expense and costs incurred by the Association in curing such noncompliance shall be charged to the noncomplying Owner and shall be payable by such Owner to the Association immediately upon demand.

**SECTION 26. EROSION CONTROL.** The Owner of any Lot shall, by acceptance of a deed for a Lot, be obligated to provide adequate erosion control measures as a part of the construction process in order to minimize siltation or erosion of areas outside the Lot of such Owner. It shall be the duty of such Owner to design and execute such control measures so as to avoid damage to adjoining Lots or properties. If such Owner has not provided adequate control measures which comply with applicable erosion control regulations, or if the Owner is in violation of this Section, Declarant may, after five days written notice to such Owner, perform such measures, in which case the Owner agrees to reimburse Declarant within thirty days the cost of such control measures performed by the Declarant. Notwithstanding the above, the provisions of this paragraph apply to any Lot Owner and not the Declarant.

**SECTION 27. DRAINAGE.** The Owner of any Lot shall not, by acceptance of a deed for a Lot, perform any act which will impede the water drainage for such Lot or any other Lot within Couch Mountain. It shall be the duty of all Owners to refrain from constructing, placing or planting any structure, plant or other object that impedes the proper water drainage upon the Lots within Couch Mountain.

**SECTION 28. STORMWATER MANAGEMENT PROVISIONS.** The following covenants are in furtherance of compliance with Henderson County Stormwater Management Permit Number 2019-05-03, as issued by the Henderson County Water Quality Division under the Stormwater Management Regulations. The Henderson County Water Quality Division is a beneficiary of this Section 28 to the extent necessary to maintain compliance with the stormwater management permit. The covenants in this Section 28 shall be appurtenant to the Property and may not be altered or rescinded without the express written consent of the Henderson County Water Quality Division. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Henderson County Water Quality Division. The maximum allowable built-upon area per Lot is 15,000 square feet. This allotted amount

includes any built-upon area constructed within the lot property boundaries, and that portion of the right of way between the front Lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, and coquina, but does not include raised, open wood decking, or the water surface of swimming pools. In the case of a Lot within CAMA's regulated AEC, where the Division of Coastal Management calculates a different maximum allowable built-upon area for that Lot than is shown herein, the governing maximum allowable built-upon area for that Lot shall be the most restrictive of the two. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings is strictly prohibited by any persons. Each Lot will maintain a 30 foot wide vegetated buffer between all impervious areas and surface waters. All roof drains shall terminate at least 30 feet from the mean high water mark of surface waters.

## **ARTICLE VIII INSURANCE**

Each Owner shall secure and maintain in full force and effect at such Owner's expense one or more insurance policies insuring Owner's improvements for the full replacement value thereof against loss or damage from all hazards and risks normally covered by a standard "Extended Coverage" insurance policy, including fire and lightning, vandalism and malicious mischief.

## **ARTICLE IX EASEMENTS**

**SECTION 1. EASEMENTS RESERVED BY DECLARANT.** Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, water lines, telephone lines, electric power lines, cable lines, sanitary sewer and storm drainage facilities, pumping and lift stations, drainage ditches and all other utility installations and maintenance over the Property and Common Elements. Declarant also specifically reserves a five (5) foot easement along the side Lot line of each Lot a ten (10) foot easement along the rear Lot line and front Lot line of each Lot and a ten (10) foot easement along each side of stormwater lines. Each Owner, by his acceptance of a deed from Declarant for a Lot, and the Association by its acceptance of a deed from Declarant for the Common Elements, acknowledges such reservations and the rights of Declarant to transfer such easements to the Association or to such utility companies or public service companies as Declarant might choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of Couch Mountain. Certain easements reserved by the Declarant and the Association are as shown on the Plat. Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant and the Association shall have the continuing right and easement to maintain all sewer and water lines located on the Lots and Common Elements, including the right to go into a Dwelling and disturb the same in order to maintain those lines located within or under said Dwelling.

**SECTION 2. EASEMENT FOR LANDSCAPING.** The Association is hereby granted an exclusive easement for the purpose of landscaping all Common Elements, in the sole discretion of the Association. Provided, however, that until the termination of the Declarant Control Period, the Declarant shall also have such an easement to exercise in the sole discretion of the Declarant.

**ARTICLE X**  
**OBLIGATIONS TO MORTGAGEES**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgage to include deeds of trust or other security instruments) encumbering any Lots located within Couch Mountain:

A. The Association shall be obligated to notify the holder of any first mortgage on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any of such Owner's obligations described herein (including failure to pay assessments as and when due) which is not cured within sixty (60) days from the date of such default.

B. Written notice by the Association shall be sent, upon request, to the holder of all first mortgages encumbering any of the Lots located within Couch Mountain setting forth the purpose of the meeting not less than thirty (30) days in advance of any meeting being called for the purpose of amending, extending or renewing any of the provisions of this Declaration or the Articles of Incorporation or Bylaws of the Association. No such amendment, extension or renewal shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot located within Couch Mountain unless such mortgage holder shall consent thereto in writing.

C. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) and Owners (other than the Declarant) of the Lots in Couch Mountain have given their prior written approval, the Association shall not be entitled to:

- (1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements owned, directly or indirectly, by the Association for the benefit of the Lots in Couch Mountain. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Association shall not be deemed a transfer within the meaning of this paragraph;
- (2) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;
- (3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the maintenance of the Common Elements, or the upkeep of lawns and plantings in Couch Mountain;
- (4) fail to maintain fire and extended coverage on insurable Common Elements on a current replacement cost basis in an amount not less than one hundred per cent (100%) of the insurable value (based on current replacement cost); and
- (5) use hazard insurance proceeds for losses to any Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

D. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Elements and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots in Couch Mountain duly executed by the Association, and an original or certified copy of such agreement shall be furnished to Declarant.

E. No provision shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in Couch Mountain pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Elements.



**ARTICLE XI**  
**GENERAL PROVISIONS**

**SECTION 1. DURATION.** The covenants, restrictions, easements and all other controls contained in this Declaration shall run with and bind the properties which are made subject hereto for a period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds for Henderson County, North Carolina. At the end of such twenty (20) year period, the covenants and restrictions contained in this Declaration shall be automatically extended for successive periods of ten (10) years each, unless, prior to the expiration of a respective period, there shall be a resolution adopted by the Association to terminate these covenants and restrictions. Such resolution must be approved and passed by a two-thirds (2/3) vote of the Association Members. Nothing contained herein shall limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof, as such right is described below.

**SECTION 2. AMENDMENT.** This Declaration may be amended:

A. Prior to the conveyance of all the Common Elements from Declarant to the Association, by the Declarant, for any reason in Declarant's reasonable discretion, or to issue rules or regulations which interpret, explain or make more definite and certain provisions hereof and are in furtherance of this Declaration, which amendment may be made without the joinder or approval of Lot Owners or the Association; and

B. By the Association by a vote of at least sixty-seven percent (67%) of all votes entitled to be cast by the Association Members, which vote is taken at a duly held meeting of the Association at which a quorum is present, all in accordance with the Bylaws. Provided, however, that if sixty-seven percent (67%) of all votes entitled to be cast by the Association Members cannot be obtained at such a meeting, then this Declaration may be amended by obtaining the vote of sixty-seven percent (67%) of all votes present at a duly held meeting of the Association Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Association Members holding a sufficient number of votes to comprise, along with such voting Association Members, a total of sixty-seven percent (67%) of all votes entitled to be cast by Association Members. Further provided, that any amendment or modification to this Declaration must be consented to by the Declarant so long as Declarant is the Owner of any Lot or any portion of the Property, which consent Declarant may grant or withhold in its sole discretion.

Any amendment or modification upon which the vote of Association Members is required pursuant to this Section shall become effective when an instrument executed by the Association Members voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Henderson County, North Carolina; provided, however, that such an amendment or modification, in lieu of being executed by the Association Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Association Members. In addition, Declarant, without obtaining the approval of any Association Member or any Owner or Owners other than Declarant, may make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially affects the rights, duties or obligations specified herein. In addition, Declarant may amend and modify this Declaration and any additional Declaration without the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such additional Declaration to comply with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency.

SECTION 3. SPECIAL DECLARANT RIGHTS. Pursuant to Section 1-103(28) and 2-121 of the Act, the Declarant does hereby reserve the following "special Declarant rights":

A. The right to enter the Lots shown on the Plat and the Common Elements shown thereon for the purpose of construction and maintenance of improvements located thereon or indicated on the Plat;

B. The right to maintain while it owns Lots it holds for sale a sales office and model homes, together with the right to erect signs advertising Lots for sale;

C. The right to make full use of easements or rights of way over and upon the Common Elements for the purpose of making improvements within Couch Mountain, particularly the right to use said easements and rights of way in adding new phases of Couch Mountain to that shown on the Plat;

D. The right to appoint or remove any officer or Executive Board member of the Association during the Declarant Control Period as provided for in Article VI hereof; and

E. The right, but not the obligation, to add new phases of Couch Mountain which lie within or outside the boundaries of the Property, to subject the same to this Declaration, to make all easements, rights of way and improvements of each phase of Couch Mountain equally accessible to all phases thereof, and to allow Owners of Lots in additional phases of Couch Mountain to become members of the Association with the same rights and obligations as those of the Owners of Lots within Couch Mountain as described herein.

SECTION 4. ENFORCEMENT. The Association, any Owner or the Declarant shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 5. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

SECTION 6. CONSTRUCTION. This Declaration is made pursuant to the Act and shall be construed and controlled by and under the laws of the State of North Carolina.

SECTION 7. POWER OF ASSOCIATION AGAINST DECLARANT. No act by the Association shall prevent Declarant from completing the development known as Couch Mountain as currently contemplated.

SECTION 8. AGREEMENT TO ENCOURAGE RESOLUTION OF DISPUTES WITHOUT LITIGATION. It is in the best interests of Declarant, the Owners, the Association and its officers, directors, and committee members (the "Parties") to encourage the amicable resolution of disputes involving Couch Mountain without litigation.

A. APPLICABILITY. Each Party agrees that before it files any suit in any court, it will first submit to the alternative dispute resolution procedures set forth below with respect to any claim, grievance or dispute arising out of or relating to the following:

1. the interpretation, application or enforcement of the Declaration;
2. rights, obligations and duties of any Party described in the Declaration or

3. the design or construction of improvements within Couch Mountain, other than matters of aesthetic judgment under Article VI, which shall not be subject to review.

The alternative dispute resolution procedures shall not be required for the following unless all Parties to the matter agree to submit the matter to the alternative dispute resolution procedures:

1. any suit by the Association to collect assessments or other amounts due from any Owner;
2. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce provisions of this Declaration;
3. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Declaration;
4. any suit in which any indispensable party is not bound by this Section; and
5. any suit as to which any applicable statute of limitations would expire within 180 days after giving the Notice required by the alternative dispute resolution procedures, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such claim for such period as may reasonably necessary to comply with this Section.

#### B. DISPUTE RESOLUTION PROCEDURES.

1. **Notice.** The Party asserting a claim (the "Claimant") against another Party (the "Respondent") shall give written notice to each Respondent and to the Board stating (i) the nature of the claim, including the parties involved and the Respondent's role in the claim; (ii) the legal basis of the claim; (iii) the Claimant's proposed resolution or remedy; and (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the claim.

2. **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation.

3. **Mediation.** If the parties have not resolved the claim through negotiation within thirty (30) days after the date of the notice described in subsection (1) of this Section (or within such period as the Parties may agree), the Claimant shall have thirty (30) additional days to submit the claim to mediation with an independent agency providing dispute resolution services in Henderson County, North Carolina. If the Claimant does not submit the claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the claim, and the Respondent shall be relieved of any and all liability to Claimant on account of such claim. Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally any fees charged by the mediator.

4. **Arbitration.** If the Parties do not settle the claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter have thirty (30) additional days to submit the claim to arbitration with an independent agency providing dispute resolution services in Henderson County, North Carolina. The Claimant shall not be entitled to file suit in the event of a failure to settle through mediation or arbitration. The final decision of the arbitrator shall be adhered to by all parties involved in the action. Each Party shall bear its own costs of the arbitration, including attorneys' fees, and each Party shall share equally any fees charged by the arbitrator.

4. **Settlement.** Any settlement of the claim through negotiation or mediation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party all costs incurred in enforcing such agreement or award, including all attorneys' fees.

**SECTION 9. NOTICE.** Except as otherwise set forth herein, whenever written notice to an Owner or Member (including Declarant) is required hereunder, such notice shall be given via first-class mail, postage paid, to the address of such Owner or Member appearing on the records of Declarant or Association. Declarant's address as of the date of the recording of this Declaration is 15 Parkland Grove, Asheville, NC 28805.

**SECTION 10. TITLES.** The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

**SECTION 11. NO EXEMPTION.** No Owner or other party may exempt himself or herself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot or Lots or the Common Elements.

**SECTION 12. CHANGES TO THE PLANS FOR COUCH MOUNTAIN.** Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any unrecorded plans or proposals promulgated by Declarant with respect to the development of Couch Mountain. Declarant reserves the right to change any plans for Couch Mountain at any time and from time to time as Declarant may determine necessary or desirable. Any unrecorded plat or plans of Couch Mountain shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any portion thereof. Declarant reserves the right to change, from time to time, the uses and densities that exist on any portion or portions of the Property owned by Declarant, subject to this Declaration.

**SECTION 13. WAIVER.** Declarant has the right to waive any unintentional violation of this Declaration by an appropriate instrument in writing.

**SECTION 14. CONFLICTS BETWEEN DOCUMENTS.** If any amendment to Declaration which shall be recorded in the Office of the Register of Deeds for Henderson County contain provisions which are in conflict with any provisions of this Declaration, then the provisions of the amendment shall control and be binding on those Owners of Lots who take title to a Lot within that portion of Couch Mountain described in the amendment. The Association provided for herein shall have the standing and authority, but not the obligation, to enforce the provisions which are in conflict with this Declaration.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized member, who has signed and sealed this instrument, this the 7<sup>th</sup> day of October 2019.

SIGNATURE APPEARS ON FOLLOWING PAGE

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**DECLARANT:**

**Luna Ridge, LLC**

By: 

Name: ANDREW BAKER

Title: MANAGING MEMBER

STATE OF North Carolina  
COUNTY OF Madison

I, Leslie Oberauer, a Notary Public of the County and State aforesaid, certify that Andrew Baker, Manager of Luna Ridge, LLC, a North Carolina limited liability company, personally appeared before me this day and (I have personal knowledge of their identity) (I have seen satisfactory evidence of their identity by a current state identification with their photograph in the form of a \_\_\_\_\_); and acknowledged their voluntary execution of the foregoing instrument as Member/Manager on behalf of and as the act of said limited liability company.

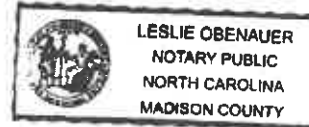
Witness my hand and official stamp or seal, this the 7 day of October, 2019.



Notary Public

Printed name: Leslie Oberauer

My Commission Expires: 10/5/20



**EXHIBIT "A"**

**BEING ALL OF THAT PROPERTY** shown on that plat recorded in Book 2019, at Page 12105 in the Office of the Register of Deeds for Henderson County, North Carolina, reference to which is hereby made for a more particular description thereof, together with and subject to all rights of way and easements shown on said plat.