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Title: Amendment and Restatement of Bylaws of
Devonshire HOA.

Grantor: Devonshire HOA, Inc.

Grantee: _____

Prepared By: _____

Return to: 33 Patton Ave
Suite 201
Asheville NC 28801

AMENDMENT AND RESTATEMENT OF
BYLAWS OF
DEVONSHIRE H. O. A. OF ASHEVILLE
AN **INCORPORATED ENTITY**

ARTICLE I.

Identity

These are the Bylaws of Devonshire H.O.A. of Asheville, Inc., a North Carolina Non-Profit Corporation (herein "Association"), which is the governing body to implement the Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions Governing Devonshire (herein "Declaration").

ARTICLE II

Qualifications and Responsibilities of Members

2.1. Members. Each Owner of a lot or lots in Devonshire Subdivision as shown on plat recorded in Plat Book 60, at Page 151, of the Buncombe County, N.C. Register's Office and future recorded plats thereof and deeds of conveyance which make reference to said Declarations shall be a member of the Association, and shall remain a member until he ceases to be a lot owner.

2.2. More Than One Lot Owner. When there is more than one lot owner, all such persons shall be members of the Association.

2.3. Registration. It shall be the duty of each lot owner to register his or her name(s) and the **address** with the Secretary of the Association. If a lot owner does not so register, the Association shall be under no obligation to recognize his membership.

2.4 Prohibition of Assignment. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his lot.

ARTICLE III

Members' Meetings and Voting

3 .1. Place. Meetings of the members shall be held at a place within Buncombe County, North Carolina as may be designated from time to time by the Board.

3 .2. Annual Meeting. The members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members shall elect members of the Board ("Directors") and may transact any other business properly coming before them.

3.3. Special Meetings. Special meetings of the members may be called at any time by the President or by **a majority of the Board**, or shall be called and held within thirty (30) days after **a written request signed by members of the Association entitled to cast at least ten percent (10%) of the total votes in the Association is delivered to any officer or Director of the Association.** No business shall be transacted at a special meeting except that which is stated in the notice thereof.

3.4. Notices.

Not less than ten (10) nor more than 60 days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot owner, or sent by electronic means to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda.

3.5. Quorum; Adjournment if no Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least fifty-one percent (51%) **majority** of the total votes in the Association. **Once a Member is represented for any purpose at a meeting, the Member is deemed present for Quorum purposes for the remainder of the meeting and for any adjournment of that meeting.** If a quorum is not present at the meeting, the meeting may be adjourned to a later date by the **majority of the votes present in person or by proxy.** The quorum requirement for the continued meeting is **fifty percent (50%) of the quorum requirement applicable to the meeting adjourned for lack of a quorum.** The quorum requirement for additional adjourned meetings will continue to be reduced by 50% of the quorum requirement applicable to the meeting adjourned for a lack of quorum.

3.6. Votes:- The total votes in the Association are allocated to each lot within Devonshire as shown on the plats thereof as recorded from time to time. The votes allocated to each lot shall not be split but shall be voted as a single **vote.** When there is more than one lot owner of a lot, said lot owners shall designate the person authorized to vote for said lot. Owners of more than one lot shall be entitled to one vote for each lot owned, and owners of half lots shall be entitled to an additional half vote. The Association President shall be entitled to cast the votes allocated to any lot owned by **the Association.**

3.7. Manner of Casting Votes. Votes may be cast in person or by proxy. **If only one of the multiple owners of a lot is present at a meeting of the Association or casts votes by proxy, the owner who is present or cast votes by proxy is entitled to cast the votes allocated to that lot.** If more than one of the multiple owners are present or cast votes by proxy, the votes allocated to that lot may be cast only in accordance with the agreement of a majority interest of the multiple owners. Majority agreement is conclusively presumed at a meeting if any one of the multiple owners casts the votes allocated to that lot unless a protest by any of the other lot owners of that lot is made promptly to the person presiding over the meeting. Majority agreement is conclusively presumed if one of the owners cast proxy votes allocated to that lot unless one of the owners of that lot registered a written protest against the submitted proxy votes before the proxy votes are tabulated. If the multiple owners of a lot cannot reach agreement on a vote the vote for that lot is void.

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Proxy votes are revoked if any owner of that lot attends the meeting and casts votes. A proxy is void if it is not dated. A proxy terminates at the end of the meeting. A photocopy, facsimile transmission, or equivalent reproduction of a writing appointing one or more proxies, shall be deemed a valid appointment form. In addition, a Member may appoint one or more proxies by an electronic mail message or any kind of electronic transmission that provides a written statement appearing to have been sent by the Member or by any kind of electronic or telephone transmission, even if not accompanied by written communication, under circumstances or together with information which can reasonably assure that the appointment or proxy was made or authorized by the Member.

The death or incapacity of the Member appointing a proxy does not affect the right of the Association to accept the proxy's authority unless notice of death or incapacity is received by the Secretary or other Board member or agent authorized to tabulate votes before the proxy exercises authority under the appointment. In this situation, the proxy will not be counted.

3.8. Required Votes. All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Declaration or these Bylaws require a greater vote.

3.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the members may be taken without a meeting if the Association delivers a written ballot, electronic or paper, to every Member entitled to vote that sets forth each proposed action and provides an opportunity to vote for or against each proposed action. The number of votes cast by ballot must, except as noted in Article X, equal a majority of the total votes of the Association. The ballot must indicate the time by which the ballot must be received by the Association to be counted.

3.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

ARTICLE IV.

Directors

4.1 . Number and Qualifications of Directors.- The Board shall consist of seven (7) lot owners as determined at any annual meeting by the members. Past President may serve one year as an ex-officio member of the Board following his (her) term of office. The Past President will have no vote.

4.2 Election of Directors. At each annual meeting, the members shall elect the Directors by a majority of the votes cast in the election.

4.3 Term. The terms of the Directors shall be staggered so that at least two (2) but not more than three (3) Directors are elected at any one meeting. Once elected a Director shall hold office until his successor has been duly elected and has qualified. No Director

shall serve more than two consecutive terms. If any Director is filling an unexpired term of another Director, the amount of time of the unexpired term shall not be counted in computing two (2) consecutive terms a Director may serve.

4.4. Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least fifty-one percent (51 %) of the total votes in the Association, at a special meeting called for such purpose, and a successor **shall** then be elected by the members to serve for the balance of the removed Director's term.

4.5. Vacancies. Any vacancy in the Board shall be filled by act of the remaining Directors and a Director so elected shall serve for the unexpired term of his predecessor in office. **Such Director may be removed from the Board by the Board with or without cause.**

4.6. Meetings. Any member of the Association may observe a meeting or portion of a meeting if the Board has not declared that the meeting or portion of the meeting is closed. **The Board may close a meeting to discuss any litigation the Association is or might be involved with, sensitive personal information of a Member, complaints brought to the Board about other members, or sensitive information that the Board, at its sole discretion, requires the meeting to be closed. The Board may place reasonable restrictions on the number of persons allowed to observe a meeting. Any decisions made by the Board during a closed meeting shall be recorded in the minutes of the meeting. At regular intervals, the Board shall provide members the opportunity to attend and speak to the Board about their issues or concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak. A Member may request to the Board Secretary or President an issue to be included in the agenda of the next or future meetings. The Secretary will notify the requesting Member the date, the time and the place of the meeting which will contain the agenda item requested.**

(i) Minutes of all Board meetings must be kept for a minimum of five (5) years and shall be made reasonably available for examination by Members.

(ii) Members cannot audio or video-record any portion of a meeting unless approved by the Board.

(iii) The Board may allow non-Members, at their sole discretion, to attend a portion of a meeting.

(iv) Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or e-mail, at least seventy-two (72) hours prior to the meeting.

(v). Special Meetings. Special meetings of the Board may be called by the President **or two Board members.** All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

(vi) **Quorum:** A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be **cancelled and rescheduled**. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

(vii) **Manner of Acting.** Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these Bylaws. **A Director cannot transfer by proxy their fiduciary Board responsibilities.**

4.7 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by a majority of Directors.

4.8 Right to Appeal: A Member has the right to appeal to the Board any decision made by the Board or a committee established by the Board by submitting a written request to the Secretary of the Board stating the decision being appealed and the justification for making the appeal. The Member will be scheduled to make an appeal presentation to the Board for evaluation at the next regular meeting or at a special meeting scheduled for the purpose of evaluating the appeal. Members may request voluntary mediation of disputes; however, either party may decline mediation. Disputes related solely to a Member's failure to timely pay an assessment or any penalties or fees associated with the levying or collection by the Association cannot be mediated.

4.9 Compensation of Directors Restricted. Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

4.10 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Declaration, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, and these Bylaws, and shall include, but not be limited to, the following:

(a). To prepare and provide to members annually, a report containing at least the following:

(i). A statement of any **major** expenditures in excess of Five Thousand Dollars (\$5,000.00) anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii). A statement of the status and amount of any reserve or

replacement fund and any portion of the fund designated for any specified project by the Board.

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(iii). A statement of the financial condition of the Association for the last fiscal year.

(iv). A statement of the status of any pending suits or judgments in which the Association is a party .

(v). A statement of the insurance coverage provided by the Association.

(vi). A statement of any unpaid assessments payable to the Association, identifying the lot and the amount of the unpaid assessment.

(vii) A statement each year that Members have the right to request voluntary mediation of disputes except as noted in section 4.8.

(b). To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses

(c). To regulate the use of, and to maintain, repair, replace, modify and improve the front and side yards of lots, sidewalks and Common Areas.

(d). To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof.

(e). To enforce the provisions of the Declaration, these Bylaws, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f). To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration or these Bylaws to be done by the Board or the members

(g). To hire and terminate agents, independent contractors, attorneys, and other outside advisors necessary to conduct the Association's business.

(h). To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or lot owners.

(i). To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money for the maintenance, repair, replacement,

modification or improvement of the sidewalks and Common Areas and to pledge and pay assessments, and any other revenue and income, for such purpose.

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(k) To impose and receive payments, fees and charges for the use, rental or operation of the Common Areas.

(l) To grant easements through and over the Common Areas.

(m) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the evaluation, preparation and recordation of amendments to the Declaration or certificates of unpaid assessments.

(n) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors liability insurance.

(o) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of Declaration, these Bylaws, or the rules and regulations.

(p) Committees

(i) The Board may establish one or more working Committees as deemed necessary by the Board. These Committees will remain in existence until a specific task has been completed. Each new Board of Directors may establish or terminate Committees as they deem necessary.

(ii) The Board will appoint a Committee Chairperson and the Chairperson shall recruit and appoint Committee members. Committee members must be lot owners. The Board, without cause, may terminate a Committee, replace a Chairperson, or remove a member from a Committee with a majority vote.

(iii) The board will establish the purpose, scope of responsibility, and any deadlines for each committee. The Chairperson for each Committee will determine how to manage the Committee relative to meetings, activities, and responsibilities. Each Chairperson will keep the Board fully informed of the Committee's activities, obtain Board approval for implementation of planned activities, and obtain Board approval for financial / resource commitments prior to implementation.

(iv) Working Committees are not required to have formal meetings, maintain minutes of their meetings or activities, and may function formally or informally as determined by the Chairperson of the Committee. Committees shall respect the privacy of any personal information gathered during their work. All activities, financial / resource commitments, and decisions approved by the Board will be documented in the minutes of Board meetings. The Board may delegate certain powers to a Committee, however, it is the Board, being elected members, ultimately responsible for the decisions it makes based on the work of the Committee. The Board cannot delegate to any Committee the authority to

grant or deny a variance to the Declaration of Covenants and Restrictions.

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ARTICLE V

Officers

5.1. Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. Each officer shall be a **lot Owner and an elected Board member**. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may **appoint** an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary. **Officers so appointed have no voting rights unless a Director.**

5.2. Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members.

5.3 Term. Each officer shall serve until his successor has been duly elected and has qualified.

5.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

5.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

5.6. Powers and Duties of Officers.

(a). **President.** The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation, including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b). **Vice President.** The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President. **The Vice President shall be responsible for developing and implementing a three year plan for major repairs and replacements**

(c). **Secretary.** The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the

Directors and members; shall keep the records of the Association, except those

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kept by the Treasurer; shall perform all other duties incident to the office of a Secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d). Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

5.7. Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments shall be executed by the President or Vice President with an attest by the Secretary (or Assistant Secretary if appointed), **if needed**, or by such other person or persons as maybe designated by the Board.

5.8. Compensation of Officers Restricted. No officer shall be compensated for services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VI.

Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Officers and Directors Liability Insurance.

ARTICLE VII.

Fiscal Management

7.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository. Withdrawal of funds from such depository shall be only by checks signed by one officer of the Association, and any other persons authorized by the Board.

7.2. Fidelity Bond. Fidelity bonds may be maintained by the Association, in an amount determined by the Board, covering each director and officer of the Association,

any employee or agent of the Association and any other person handling or responsible for handling funds of the Association.

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7.3. Payment Vouchers. Payment vouchers shall be approved by the Board, provided that the Board may delegate such authority to any officer or managing agent of the Association.

7.4. Annual Audit. **The Board or any Member may request an audit or examine the financial records of the Association. If such an audit or examination is performed, a report shall be prepared and furnished to each Member within 90 days of completion. Any costs incurred resulting from a request by the Board shall be for the account of the Association. Any costs incurred by a Member request shall be for the account of the Member.**

7.5. Fiscal Year. The fiscal year of the Association shall be the calendar year provided that the Board, from time to time, by resolution, may change the fiscal year to some other designated period.

ARTICLE VIII

Assessments

8.1. Obligation of Members to Pay Assessments; Amount of Levy. **The Association shall levy a Common Expense assessment, to cover payment of all accrued expenses of the maintenance, upkeep and undertaking of the Association related to front and side yards of lots, sidewalks and Common Areas (herein "Common Expenses"). Each Lot Owner shall be personally and severally liable for the Common Expenses that are levied against his or her Lot while a Lot Owner. Each Lot shall be assessed in accordance with its fractional interest as determined with all platted lots within Devonshire being the denominator and the lot being the numerator of 1.**

8.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Lot in accordance with its percentage of Common Expenses, and, if allocated, shall be owned by the Owner of that Lot and, if allocated, may be paid to the Lot Owner or credited against that Lots share of Common Expenses subsequently assessed. **Budgeting for accumulation of a surplus in the General Operating Fund is not allowed.**

8.3. Preparation of Budget and Levying of Assessment For each fiscal year, the Board shall prepare and adopt a budget, including estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the Board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's Lot based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. The Quarterly **assessment** fee shall be delinquent if not paid by the 15th day of the first month of each calendar quarter.

8.4. Assessment A Lien. Every assessment shall constitute a lien upon each **Lot** assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that **Lot**, (ii) all mortgages having a perfected, recorded deed of trust securing a loan upon the Unit.

8.5. Payment of Assessments. Assessments shall be payable when notice is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Except for special assessments, 1/4th of the assessment shall be paid on or before the fifteenth day of each calendar quarter of the fiscal year of the Association. Payments shall be made to the Association:

8.6. Lien as Against First Mortgagees. The lien of assessment shall be superior to the lien of a deed of trust filed subsequent to the recording of a lien allowed by Section 34B of the Declaration.

8.7. Funds and Reserves. All sums collected by the Association from assessments may be accounted for as follows:

(a). Reserve Fund for Major Repairs, Replacements and Improvements. To this fund shall be credited all funds collected for the purpose of effecting major (in excess of \$5,000.00) repairs, restoration, reconstruction, improvements and replacements of, sidewalks, the pond and other Common Areas of Devonshire and not to be credited to the General Operating Fund. This Reserve Fund shall not be used for General Operating Expenses. To this Reserve Fund shall be credited collections from the Buyer of each House in the Devonshire subdivision an amount equal to 100% of the current calendar year Devonshire's Home Owners Association's assessment for a single lot (front and side yard maintenance only excluding backyard). At the discretion of the Board, additional funding may be obtained from the General Operating Account. The collection of fees for the Reserve Fund from Buyers of Homes in Devonshire will be required only on homes that are sold after March 31, 2008. "Sold" is defined as the final home purchasing transaction being "closed" by all appropriate parties. A purchase offer made and accepted before April 1, 2008 is not considered as a home being sold. The \$8,100.00 collected from the Original Buyers purchasing a NEW home in Devonshire will be credited to the Reserve Fund.

(b). General Operating Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during period of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies. The above funds shall be maintained only in such amounts as deemed necessary or desirable by the Board. To the extent maintained, funds herein shall be held in such accounts and with such depositories as the Board, in its discretion, selects.

8.8. Special Assessments. In addition to the assessments levied pursuant to Section 8.3., the Board, in its discretion, may levy special assessments at such other and

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additional times as in its judgment are required for:

(a). Maintenance, repair, restoration and reconstruction of the sidewalks, lights, other facilities and Common Areas owned by the Homeowners Association.

(b). Alterations, improvements, and additions to the sidewalks, lights and the Common Areas owned by the Devonshire Homeowners Association; provided, however, that any such special assessment involving an expenditure in excess of Fifteen Thousand Dollars (\$15,000.00) shall be first approved by the members entitled to cast at least fifty-one percent (51%) of the total votes in the Association at a regular or special meeting of the Association **or 67% of the total votes of the Association without a meeting.**

(c). Payment of costs and expenses incurred in curing defaults pursuant to Sections 9.1. and 9.3. hereof. Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.9. Common Expenses Associated with Items Benefiting Less Than All Units.

The Association may assess any item of Common Expense benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

8.10. Failure to Prepare Budget and Levy Annual Assessment: Deficiencies in Procedure.

The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.3., each member shall continue to pay the assessment then previously levied pursuant to Section **8.3 and 8.8.** in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment

8.11 Default and Enforcement. If any assessment, or installment thereof,

remains delinquent for ten (10) days, then that assessment, and all other assessments then a lien against that Lot may be declared by the Board to be immediately due and payable in full, with interest at the highest legal rate in the State of North Carolina, without further notice, and may be foreclosed by the Association in the manner provided by Article 2 · of Chapter 44 of the North. Carolina General Statutes. All fees, late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

In addition to the foregoing, and without waiving its lien, the Association may sue

to obtain a money judgment for the amount of any delinquent assessment, or installment

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thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the dates incurred until paid.

8.12 Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall be subject to a penalty at the rate set forth in the notice levying the assessment, which includes, among other costs, interest not exceeding the highest rate of interest allowed by North Carolina law, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by North Carolina Law. All payments upon account shall be applied first to the penalty and then to the assessment, or installment thereof, longest delinquent. All such penalties shall have the same priority as the assessment on which such penalty accrues.

8.13 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses or by any specific provision of these Bylaws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the sidewalks, streetlights and Common Areas; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees, **maintenance of Common areas, office supplies, and miscellaneous expenses of the Association**, costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section **4.10(h)** hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association ; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Areas, or incurred by the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Areas, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VI hereof.

ARTICLE IX

Compliance, Enforcement, Fines and Penalties

9.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Declaration, or these Bylaws, or the rules and regulations, as the same may be amended from time to time, by any **Lot Owner** or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, and action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination

thereof, and which relief may be sought by the Association, an aggrieved **Lot Owner**, or by any person or class of persons adversely affected. Also, if any member fails to

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perform any obligation under the Declaration, these Bylaws, or such rules and regulations, then the Association may, but is not obligated to, perform the same for the Member's account. The Association also shall be entitled to suspend the right of a defaulting **Lot Owner** to vote as a member of the Association until the default is cured.

9.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting Members written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony, as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and Board has made its determination and served upon or mailed the same to the defaulting member. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony the Board, at the hearing, or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting Member a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

9.3. Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 9.2. hereof, whichever is applicable, where the default is a structure, thing, or condition existing in or on the premises of the Member's ~~Unit~~ **Lot**, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's **Lot** in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefore as provided in Section 9.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

9.4. Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar

relief, without first using the procedure established by Section 9.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

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

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

9. 7. Assessment Liens. Assessments liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article IX.

ARTICLE X. Amendment

An amendment to these Bylaws shall be made and approved in the manner whereby at an annual or specially called meeting of the members **sixty seven percent (67%)** of the Association members vote in favor of an amendment and once made, shall become effective and shall apply to all lot owners.

ARTICLE XI. General Provisions

11.1. Rules and Regulations.

(a). By the Board. The Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Areas so as to promote the common use and enjoyment thereof by Lot Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Lots to provide for the common good and enjoyment of all Lot Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these Bylaws with respect to leases or tenants. There shall be no Amendment to these Bylaws or Declaration which prohibits leasing of **Residences or Lots** by Lot Owners so long as leases exceed thirty (30) days in duration or otherwise approved by the Board.

(b). By the Association. Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and

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regulations may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c). Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit Owners, Occupants and Units, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(d). Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members from the Secretary of the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

(e). Rules Hereby Established.

(i). No Owner shall post any advertisements or posters of any kind in or on anyone's lot or on the Common Property, except as authorized by the Board of Directors.

(ii). No garbage or trash shall be thrown or deposited outside the disposal installations provided for such purposes.

(iii). Any lease of all or any part of a Unit shall contain a covenant by the lessee to abide by the terms and conditions of the Declaration and these Bylaws and a failure by the Lessee to so abide shall be a default thereunder.

(iv) The names and addresses of all officers and Board members of the Association (HOA) shall be published to all Members of the Association within thirty (30) days of their election.

(v) American flags and North Carolina flags (no larger than 4 ft X 6 ft) are allowed to be displayed external to a house. The Board may have any other flag removed and not displayed publicly in Devonshire. If the Board agrees by a simple majority vote that a flag is to be removed, the Board will send a written notice to the property owner requiring that the flag be removed within 24 hours.

(vi) Political signs are allowed no earlier than forty-five (45) days before or later than seven (7) days after an election. Signs shall comply with local ordinance. If no local ordinance is in effect, only one sign (maximum 24 inches X 24 inches) per lot is allowed.

11.2. Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall

govern the conduct of Association proceeding when not in conflict with the Declaration,

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these Bylaws, or any statutes of the State of North Carolina applicable thereto. The chairman of the meeting shall have the authority to appoint a parliamentarian.

11.3. Notices Whenever in the Declaration, or these Bylaws it shall be required or permitted that notice or demand be given or served on notice, such notice or demand shall be given in writing by registered or certified mail, postage prepaid, to the respective addresses as hereinafter set forth. All notices or demands provided under the terms of the Declaration, or these Bylaws shall be effective when actually received by a party entitled to notice or when attempted to be delivered as authorized above. The addresses of a party entitled to notice may be changed, from time to time, by either party serving notice as above provided

LOT OWNER AT: THE ADDRESS GIVEN AND ON FILE WITH THE ASSOCIATION

ASSOCIATION: **Devonshire HOA
c/o Brad Pippinger
40 Arlington Street
Asheville, NC 28801**

11.4 Interpretation of By Laws. These By Laws are set forth to comply with the requirements of the Declaration. In the event that any of these Bylaws conflict with the provisions of the Declaration, it is hereby agreed and accepted that the provisions of the Declaration will apply.

11.5. Authority to Amend By-Laws. The Developer(Grant Development Company, Inc.) transferred control of the Devonshire Development and the Devonshire Homeowners Association to Devonshire H.O.A. of Asheville, Inc. on March 20, 2003. The amendments to the By-Laws of Devonshire H.O.A. of Asheville, Inc. have been approved at the annual meeting of the Association held on **January 17, 2018** by an affirmative vote of at least **sixty-seven percent (67%)** of the voting members of the Association ...

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In Witness Whereof, DHOA, a North Carolina Non-Profit Corporation, has caused this instrument to be signed in its corporate name by its President, a duly authorized officer, this 16th day of August, 2023

DHOA, Inc.

By: Keith Olbrantz 8-16-23 DHOA President

Keith Olbrantz, President

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I Christopher Shepherd a Notary Public of the County and State aforesaid, certify that Keith Olbrantz, President, personally came before me this day and acknowledged that he is President of DHOA, a North Carolina Non-Profit Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as President.

Witness my hand and official stamp or seal this the 16th day of August 2023

My Commission Expires: 11-30-2025

