

COVENANTS & BYLAWS

June 22, 2018

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STATE OF NORTH CAROLINA - COUNTY OF HENDERSON
MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PHASES I, II - "A", AND II "B"

THIS DECLARATION, made on the 2nd day of April, 2018, is a CONSOLIDATION OF DECLARATIONS AND AMENDMENTS TO DECLARATIONS PERTAINING TO THE MILLS RIVER VILLAGE HOMEOWNERS ASSOCIATION, INC. FOR PHASES I, II - "A" AND II - "B" by all of its lot Owners representing affirmative vote of the MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, having its principal offices in Henderson County, North Carolina.

WITNESSETH:

THAT WHEREAS, a DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS of the Mills River Village Homeowners Association, Inc., for Phase I of MILLS RIVER VILLAGE SUBDIVISIONS was made on the 4th day of January 1989, by MILLS RIVER LANDS AND LAKES, INC., a North Carolina Corporation, and recorded in the Henderson County register in Deed book 731 at Page 129; and

WHEREAS, subsequent thereto, an Amendment to said Declaration, entitled third Amendment to DELCARATION OF COVENANTS, CONDITIONS AND RESTICTIONS prepared, executed, recorded and certified in accord with North Carolina general Statutes 47C-2-117 on January 19, 1998 by MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, and recorded in the Henderson County Register in Deed book 953 at Page 568; and

WHE REAS, Subsequent thereto, an Amendment to said Declaration, entitled Fourth Amendment to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Phase II of MILLS RIVER VILLAGE SUBDIVISI ON was prepared, executed, recorded and certified in accord with North Carolina General Statues 47-2-117 on April 28, 1998 by J.M.S. BUILDERS & DEVELOPERS, INC., and the MILLS RIVER VILLAGE HOME OWNER

ASSOCIATION, INC., North Carolina corporations, and recorded in the Henderson County register in Deed Book 953 at page 590; and

WHEREAS, subsequent thereto, an Amendment to said Declaration, entitled Fifth Amendment to DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Phase I and Phase II of MILLS RIVER VILLAGE SUBDIVISION was prepared, executed, recorded and certified in accord with North Carolina General Statutes 47-2-117 on February 6, 2001 by MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, and recorded in the Henderson County register in Deed Book 1052 at Page 163; and

WHEREAS, subsequent thereto, a DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS for Phase II "B" of MILLS RIVER VILLAGE SUBDIVISION as made on the 11th day of April, 2002, by JMS BUILDERS AND DEVELOPERS, INC., a North Carolina Corporation, and recorded in the Henderson County Register in Deed book 1099 at page 662; and

WHEREAS, subsequent thereto, an Amendment to said Declaration, entitled Sixth Amendment to DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS for Phase I and Phase II "A" of MILLS RIVER VILLAGE SUBDIVISION was prepared, executed, recorded and certified in accord with North Carolina General Statutes 47C-2-117 on January 20, 2003 by MILLS RIVER VILLAGE HOMEOWNERS ASSOCIATION, INC., a North Carolina Corporation, and recorded in the Henderson County register in Deed Book 1128 at Page 104; and

WHEREAS, subsequent thereto, an Amendment to said DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS for Phase I and Phase II of MILLS RIVER VILLAGE SUBDIVISION was prepared, executed, recorded and certified in accord with North Carolina General Statutes 47C-2-117 on February 14, 2007 by MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, and recorded in the Henderson County register in Deed Book 1307 at Page 047 to Page 070; and

WHEREAS, subsequent thereto, an Amendment to said DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS for Phase I and Phase II of MILLS RIVER VILLAGE SUBDIVISION was prepared, executed, recorded and certified in accord with North Carolina General Statutes 47C-2-117 on July 7, 2009 by MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, and recorded in the Henderson County register in Deed Book 1400 at Page 143 to Page 164; and

WHEREAS, the MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, desires to consolidate, amend and restate all the aforesaid declarations into one document; and

WHEREAS, MILLS RIVER VILLAGE SUBDIVISIONS is comprised of the following described real Property, such real Property collectively herein below referred to as the "Property";

Being all of "Phase I of MILLS RIVER VILLAGE SUBDIVISION" located on Highway 191, Henderson County, North Carolina, as shown on plat so entitled, prepared by R.L. Greene Surveying and Mapping, dated October 25, 1988, and recorded on Slide 538, In the Henderson County Register of Deeds Office;

Being all of "Phase II of MILLS RIVER VILLAGE SUBDIVISION" located on Highway 191, Henderson County, North Carolina, as shown on a plat so entitled, prepared by William G. Lapsley & Associates PA, dated December 1995, and recorded on Slide 2700, in the Henderson County Register of Deeds Office;

Being all of "Phase II 'A' of MILLS RIVER VILLAGE SUBDIVISION" located on Highway 191, Henderson County, North Carolina, as shown on a plat so entitled, prepared by William G. Lapsley & Associated P.A. dated December 1995, and recorded on Slide 2700, in the Henderson County Register of Deeds Office.

Being all of "Phase II 'B' of MILLS RIVER VILLAGE SUBDIVISION" located on Highway 191, Henderson County, North Carolina, as shown on a plat so entitled, prepared by Steven Lloyd Wagoneer, Surveyor, dated April 11, 2002, and recorded on Slide 4136, in the Henderson County Register of Deeds Office.

WHEREAS, the undersigned desire to subject the Property to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with said Property 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.

NOW, THEREFORE, it is hereby declared hereby declare that 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 and which shall run with said Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

SECTION 1: "ASSOCIATION" shall mean and refer to MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., its successors and assigns.

SECTION 2: "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 the Properties referred to herein, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 3: "PROPERTIES" shall mean and refer to that certain real Property described herein, which are subject to the easements, restriction, covenants and conditions contained herein.

SECTION 4: "COMMON AREA" shall mean all real and personal Property owned or leased by the Association for the common use and enjoyment of Owners. The Common Area is to be owned by the Association at the time of the conveyance of the first lot is described as follows:

BEING those areas designated "Common Area" and all the road rights of way shown as private roads and cul-de-sacs with the names "Blue Heron Drive, Partridge Berry Loop, Turkey Pine Court, and Brandy Branch Circle" as shown on a Plat of "Phase I of MILLS RIVER VILLAGE SUBDIVISION" prepared by R. L. Greene Surveying and Mapping, dated October 25, 1989, and duly recorded in the Office of the Register of Deeds for Henderson County, North Carolina on Slide 538, reference to which said plat is hereby made for a more particular description of said Common Area.

BEING those areas designated "Common Area" and all the road rights of way shown as private roads and cul-de-sacs with the names "Kingfisher Lane, Beaver Dam Drive, Blue Heron Drive" as shown on a Plat of "Phase II of MILLS RIVER VILLAGE SUBDIVISION, PHASE II" prepared by WILLIAM G. LAPSLEY & ASSOC. PA, dated DECEMBER, 1995, and duly recorded in the Office of the Register of Deeds for Henderson County, North Carolina on Slide 2700, reference to which said Plat is hereby made for a particular description of said Common Area. JMS BUILDERS AND DEVELOPERS shall be responsible for repairs to the above common areas until such time as construction within Phase II "B" is complete.

BEING those areas designated "Common Area" and all the road rights of way shown as private roads and cul-de-sacs with the names "Kingfisher Lane, Beaver Dam Drive, Blue Heron Drive" as shown on a Plat of "Phase II 'B' of MILLS RIVER VILLAGE SUBDIVISION, PHASE II 'B'" prepared by Steven Lloyd Wagoneer, Surveyor, dated April 11, 2002, and duly recorded in the Office of the Register of Deeds for Henderson County, North Carolina on Slide 4136, reference to which said Plat is hereby made for a particular description of said Common Area.

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 Areas and facilities, including recreational facilities, streets, driveways, parking

areas and landscaping; (c) expenses agreed upon as common expenses by the Association; (d) hazard insurance premiums as required; (e) public utilities, including, but not limited to, water, sewer, telephone, gas, cable television and electricity; (f) subdivision signs.

SECTION 6: "LOT" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas. The Ownership of each lot shall include and shall pass with each lot as an appurtenance thereto, whether or not separately described, all the right, title and interest of an Owner in the common area, which shall include, without limitation, membership in the Association. Any combination of two or more lots by an Owner thereof must be accomplished by the due recordation of a recombination plat in the register of Deeds Office for Henderson County.

In like manner, after acquiring approval by Association as provided herein below, any subdivision of a lot into two or more lots must be accomplished by the due recordation of a subdivision plat in the Register of Deeds Office in Henderson County. Each lot resulting from a combination or subdivision of lots shall be counted as one lot for all purposes hereunder.

SECTION 7: "DECLARANT" shall mean and refer to MILLS RIVER VILLAGE HOME OWNERS ASSOCIATION, INC., a North Carolina Corporation, its successors and assigns.

SECTION 8: "LIVING UNIT" shall mean and refer to a building situated upon a lot and intended for use and occupancy solely as a residence. No residence may be used for business or commercial purpose nor may any commercial structure to be constructed within the Development.

SECTION 9: "MEMBER" shall mean and refer to any person or entity that holds membership with voting rights in the Association.

ARTICLE II PROPERTY RIGHTS

SECTION 1: OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every lot, subject to the following provision:

A) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area.

B) The right of the Association to suspend the voting rights and right to use the recreational facilities by an Owner for any period during which any assessment against his/her lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

C) The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority or utility for such purposes and subject to conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by at least one-half (1/2) of the voting members, agreeing to such dedication or transfer, has been recorded in the Henderson County Registry.

D) The right of the Association to impose rules and regulations for the use and enjoyment of the Common Area and improvements thereon, which rules and regulations may further restrict the use of the Common Area.

SECTION 2: DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his rights or enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Property. In any case, the rights to and enjoyment of the Common Area and facilities, including such recreational facilities, shall be limited to those persons actually occupying the living unit; extension of the rights to guests or invitees of such occupants shall be subject to rules and regulations imposed by the Association.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

SECTION 1: Every Owner of a lot 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.

SECTION 2: The Association shall have one (1) class of voting membership:

Members shall be all Owners of lots who shall be entitled to one (1) vote for each lot. When more than one person holds an interest in each 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.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 1: CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: Each Owner of any 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 the Association:

A) Annual assessments or charges: and

B) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

In the event that the status of a lot changes after the annual assessments have been paid, the Owner is deemed to covenant and agrees to pay the remaining prorata share of the annual assessment.

SECTION 2: PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the cost of repairs, materials, management and supervision, any or all of which may be assessed against the Common Area, the procurement and maintenance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

SECTION 3: MAXIMUM ANNUAL ASSESSMENT.

A) The annual assessment may be increased each year not more than five (5%) percent above the assessment of the previous year without an affirmative vote of one-half (1/2) vote of the membership.

B) The annual assessment may be increased above five (5%) percent by affirmative vote of one half (1/2) of the votes cast by members who are voting in person or by proxy at a meeting duly called for this purpose.

C) The lot Owner agrees to pay the full amount of assessments for each lot it owns which contains a residence. Notwithstanding anything contained herein to the contrary, the lot Owner shall be required to pay only twenty-five (25%) percent of the annual or special assessment for lots which do not contain a residence. In the event a vacant lot becomes a living unit after the initial 25% assessment has been paid, the home Owner will be assessed a pro-rata share of the annual assessment less a pro-rata share of the lot assessment already paid. The annual and special assessments, together with interest, cost and reasonable attorney fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made until such delinquent assessment is paid and satisfied in full.

SECTION 4: SPECIAL ASSESSMENTS FOR IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or any other improvement upon or within the Common Area, including fixtures and personal Property related thereto, provided that any such assessment shall be approved by an affirmative vote of one-half (1/2) of the votes cast by members who are voting in person or by proxy at a meeting duly called for this purpose.

Sewer Hook Up Fees: There shall be no sewer hook up fees for lots within Phase II of the Mills River Village Subdivision with regards to the community-owned sewer.

SECTION 5: NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4.

Written notice of any meeting called for the purpose of taking action authorized under Sections 3 or 4 shall be sent to all members not less than fifteen (15) days in advance of the meeting.

At the first such meeting called, the presence of members or of proxies entitled to cast one-half (1/2) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6: UNIFORM RATE OF ASSESSMENT: Annual and special assessments must be fixed at a uniform rate schedule applicable to all lots. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, Architectural Control Committee accelerations, upon ten (10) days written notice of the annual assessments for delinquency. Unless otherwise provided by the Board, the assessments shall be paid in annual installments.

SECTION 7: DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS - DUE DATES: The annual assessments cover the period from January 1 through December 31. The annual assessments provided for herein for lots within any phase within the development shall commence on the first day of the month following the conveyance of the Common Area to the Home Owners Association. The first annual assessment shall be adjusted Architectural Control Committee according to the number of months remaining in the calendar year. At least fifteen (15) days in advance of each annual assessment, the Board of Directors shall fix the amount of the annual assessment against each lot and send written notice of each assessment to every Owner subject thereto.

In the event a vacant lot becomes a living unit after the initial 25% assessment has been paid, the homeowner will be assessed a pro-rata share of the annual assessment less a pro-rata share of the lot assessment already paid.

The due dates of such assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments on a specified lot have been paid.

Lots within Phase II of Mills River Village Subdivision shall be exempt from annual assessments until such time as house built on these lots have received a final Certificate of Occupancy. Lot Owners shall not be entitled to a vote with respect to any lot exempt from Association.

SECTION 8: EFFECT OF NONPAYMENT OF ASSESSMENTS - REMEDIES OF THE ASSOCIATION, "Any assessment not paid by the due date shall bear a penalty of two dollars (\$2) per day from the date of the delinquency. The Board of Directors shall have the authority to make alternate payment arrangements."

SECTION 9: SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate only to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to the first mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability of any assessments thereafter becoming due or from making full payment at its option, of any delinquent obligations of a Property Owner. The Association shall notify by certified mail, return receipt requested, any first mortgages of any delinquency or default in any obligations of an Owner prior to taking any action against such Owner which would affect the first mortgage.

ARTICLE V **ARCHITECTURAL** **CONTROL**

SECTION 1: STRUCTURE. The Architectural Control Committee shall be appointed annually by the Board of Directors of the Association and shall consist of five (5) members in good standing of the Mills River Village Home Owners Association. In the event the committee determines that it is reasonably necessary to hire outside expertise to adequately examine the specifications and plans and to resolve questions relating thereto, the committee shall have the right to hire outside expertise and any reasonable fees incurred in connection therewith shall be paid by the Owner requesting the architectural change. The thirty (30) days may be extended if additional time is required to examine or research the submission.

SECTION 2: RULES AND REGULATIONS. The Architectural Control Committee shall recommend such rules and regulations as are reasonably necessary to implement the general purposes of architectural control set forth herein, to the Board of Directors for approval.

ARTICLE VI
(Alphabetized)
USE, RESTRICTIONS AND REGULATIONS

SECTION 1: ANIMALS. No animals, livestock or poultry may be raised, bred, kept or permitted on any lot with the exception of dogs, cats, or other usual or common household pets in reasonable number. Any pets that endanger the health, make *objectionable noise, or constitute a nuisance or inconvenience* to the Owners of other lots or the Owner of any Property located adjacent to the Properties, in the sole discretion of the Board, may be removed by the Board. Dogs outside the Property of the Owner *must be on a leash*, including on the streets, paths, and Common Areas of the subdivision. The dog Owner shall be responsible to employ a "pooper scooper" or similar clean up device when walking dogs *outside* their own Property. Pets should be *kept indoors* during the hours of 9:00pm to 7:00am except for short periods of time to relieve themselves or supervised time with Owner.

SECTION 2: BUILDING MAINTENANCE. All outside painted areas of houses shall not have peeling paint *visible* from streets and *adjacent* houses. All houses should be identified by street number, visible from street, for purpose of emergencies.

SECTION 3: BURNING. Yard refuse may be burned upon the Properties provided that proper fire safety precautions are taken. Burning containers shall be placed at the rear of lots in a location least visible from the street and surrounding houses. Trash, plastic, cloth, etc. may not be burned. No burning of construction materials is permitted and burning of any material on a construction site is prohibited except that construction site burning of wood *only in small fires* is permitted. Allowing smoke to blow onto surrounding Properties is not permitted insofar as it creates a nuisance under

SECTION 4: CARPORTS. Carports are *not allowed* and all living units, are to be constructed with a minimum two-car attached garage.

SECTION 5: CLOTHESLINES. No drying or airing of any clothing or bedding shall be permitted outdoors on any lot within the Properties other than between the hours of 6:00 AM and 6:00 PM, and only in the *rear* of houses so as to be least visible from the road and surrounding houses. Clothes hanging devices, such as lines, reels, poles and frames, shall be stored *out of sight* other than the times afore mentioned.

SECTION 6: COMPOSTING. Compost must be properly stored in receptacles made for this purpose and *out of sight* from road and adjacent Properties. It is the responsibility of the Owner to maintain compost so as not to attract insects and other animals. Odors arising from composting must not be detectable from adjacent Properties. No carrion, animal wastes, or meat scraps may be composted.

SECTION 7: DRIVEWAYS (HARDSURFACED). All driveways leading from the road right of way to the individual dwelling units shall be *hard surfaced within ninety (90) days* after a certificate of occupancy has been issued by Henderson County.

SECTION 8: FENCES. (YARD) FENCES - On lots not adjacent to the pond, *only three split rail fences* are permitted. Such fence must be in the rear of the home, starting from the sides of the home at a location at least two-thirds (2/3) of the distance from the front face of the home and enclosing the back yard. The materials must be natural wood, maximum height of four (4) feet with matching gates. Certain site restrictions are placed on corner lots where fences would conceivably progress to the streets are not allowed. Each such request will be individually reviewed by the Architectural Control Committee. Enclosures of this type used to keep pets in or out of the yard *need mesh fencing* on the inside face. All requests must be submitted to the ACC for written approval.

FENCES (REAR) - Lots 1 through 11 and lots 24, 25, 27 and 28 in phase I, lots 12 through 17 in Phase II-A, lots 28, 29, 31 through 41 and only the West side of lot 52 in Phase 11-B may have a six (6') fence across the rear line of the Property as a protective barrier. River Lots 18 through 27 in Phases II-A & B are excluded. Said fences to be six feet (6'), constructed of wood with a natural finish material,

and must be consistent with existing lots. Said fences are to meet the specification and are to be given written approval by the Architectural Control Committee.

SECTION 9: FIREARMS. Discharge of firearms, fireworks, and explosives is not allowed within MILLS RIVER VILLAGE SUBDIVISION.

SECTION 10: FLOOR PLAN (MINIMUM SIZE): The floor area of any single story living unit, exclusive of porches, decks, and garages, *shall not be less* than Fourteen Hundred and Fifty (1,450) square feet of heated living space. The floor area of a two-story living unit, exclusive of porches, decks, and garages, shall *not be less* than Eighteen Hundred (1,800) square feet of heated living space with the bottom story being *no less* than One Thousand (1,000) square feet of heated living space. The house plans are to be submitted to the Architectural Control Committee for approval.

SECTION 11: GARDENING: Small vegetable gardens on lots are permitted provided they are kept neat and blend with landscape. Garden patches may not exceed three hundred (300) square feet in size. Low protective or decorative borders are permitted around gardens provided they do not exceed eighteen inches (18") in height, subject to approval by the Architectural Control Committee.

SECTION 12: GARDEN POOLS AND FOUNTAINS: Garden pools and fountains are permitted as part of general landscape plan. Garden pools shall *not exceed* more than fifty (50') square feet in size. Fountains shall not exceed four feet (4') in height.

SECTION 13: LANDSCAPING All persons, corporations, or members who will perform *major* landscaping on any lot must first obtain approval of their landscaping plan from the Architectural Control Committee. The Committee shall approve or disapprove said landscaping plans based on the nature, kind, shape, height, and location of all plants and plant materials to be included in said plans, taking into consideration the harmony of design and relation to surrounding structures, topography and indigenous plant life in the area.

SECTION 14: LIGHTS (EXTERIOR). Lights attached to outside of the house or garage, yard lights, flood lights, and sidewalk lights shall be located so as *not to shine annoyingly into* other houses or yards. No *'all night vapor'* lights are allowed.

SECTION 15: LOT MAINTENANCE. Landscaping of Property, planting of grass, trees shrubs, etc., should be done as to compliment surroundings and blend in with the community. Planting of natural fences for privacy may *not create a traffic hazard or obstruct or interfere* with the view from any other Property. Owners of unimproved lots shall keep said lots clear of fallen trees and limbs, rubbish and construction debris in order to maintain an attractive neighborhood. Improved lots need to be mowed and water on a regular basis, weed removed and shrubs trimmed. Grass clippings are to be kept off the road. If the said lots are neglected, they will be issued a violation letter followed by a \$25 fine if there is no follow up.

SECTION 16: MAILBOXES AND NEWSPAPER TUBES. Only mailboxes and newspaper tubes meeting the design standards of the Architectural Control Committee shall be permitted. If the mailbox turns *rusty*, it must be replaced or painted within two (2) weeks. Box numbers must be attached not less than one inch ("1") high on the side of the box visible to the carrier. If your mailbox is not located on your Property, any design, other than a standard mailbox, must be approved in writing by Architectural Control Committee prior to being erected. Location of your mailbox is determined by the mail carrier in compliance with postal regulations. When postal regulations permit, mailboxes shall share a common post and be of the same size and style. Newspaper tubes shall share a common post with the mailbox when possible.

SECTION 17: MOTOR VEHICLES. All motor vehicles shall be maintained in proper operating condition so as *not to be a nuisance by noise, exhaust emissions* or otherwise. The term "motor vehicle" as used herein shall include, but is not limited to, motor homes, boats, trailers, motorcycles, scooters, mini-bikes, go-carts, dune buggies, ATVs, trucks, vans, pickups, campers, buses and automobiles. Except for maintenance, no person shall *repair or restore* any vehicle upon any portion of the Properties. Commercial vehicles, "for hire" or "for rent" vehicles, delivery vans or trucks, etc. with commercial lettering exceeding 5" and signs exceeding 22" X 24" are not permitted unless garaged or the commercial signs covered.

"Go-carts" *may not be driven* on paved or unpaved roads within the subdivision.

"Off-road" vehicles *may not* be driven/ridden *on unpaved roads, pathways, Jots, or Common Areas.* Motorcycles, mini-bikes, dune buggies, ATVs or similar recreational vehicles may *only be* operated within the bounds of Mills River Village while riding to and from a residence to the public road and *may not* be driven/ridden within the bounds of Mills River Village for any other purpose.

The speed limit on all roads within Mills River Village is *twenty-(20)* miles per hour and local traffic laws and regulations apply within the subdivision.

SECTION 18: 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.

SECTION 19: PARKING. Overnight parking of all recreational vehicles, recreational equipment, trailers, mobile homes, boats, horse trailers, or other similar types of vehicles shall be allowed for a *maximum* of three (3) consecutive days per event (extensions for extenuating circumstances may be granted by the Board), *unless in an enclosed garage* and completely *hidden* from view. Motor vehicles must be parked in garage, on the driveways, or on an adjacent *paved parking area.* The Homeowners Association shall have the right and authority to formulate rules governing the *size and weight of* vehicles which may be parked or stored within MILLS RIVER VILLAGE SUBDIVISION. *No overnight parking* shall be allowed on the road rights of way. Carports *are not allowed* and all living units are to be constructed with a minimum two-car attached garage.

SECTION 20: PLAY YARDS, PLAY HOUSES, PLAY EQUIPMENT (GYM SETS, ETC) Play yards, houses, and equipment, which includes but is not limited to, such items as trampolines, volleyball and badminton nets, children's pools swings sets tetherball, etc. shall be placed *at the rear* of the Property.

Skateboard ramps and devices of similar nature are not permitted.

Only portable toy playhouses are permitted *at the rear of the Property - and* none may be affixed at a permanent location.

Basketball hoops are permitted and may be located in the front or side of a house so as to use the driveway as a playing court.

SECTION 21: POND. No swimming or boating is allowed. Fishing is permitted *on/yon a catch and release basis*, but *restricted to* Association members, their *families, tenants or guests.* The homeowner or tenant is to be *at the home* to verify permission.

SECTION 22: RESIDENTIAL USE. All lots shall be used, improved and devoted exclusively to *single* family residential use. Nothing herein shall be deemed to prevent the Owner of any lot from leasing a lot, subject to all provisions of this Declaration and the Bylaws.

SECTION 23: RESTRICTION ON FURTHER SUBDIVISION. No lot shall be further subdivided or separated into smaller lots by an Owner and no portion less than all of any such lot nor an easement or other interest less than the entire fee therein shall be conveyed or transferred by an Owner, except as herein authorized or as may be required due to the exercise by a governmental body of power of eminent domain.

SECTION 24: RETAINING WALLS/PILLARS.

(a) Retaining Walls associated with a landscape scheme require approval as part of the general landscaping plan as submitted to the Architectural Control Committee. Retaining walls for the purpose of erosion prevention require the approval of the Architectural Control Committee. Retaining walls constructed of materials not otherwise permitted must be covered by approved material. For example, if the construction of a retaining wall required the use of cement block, then stone or brick *must cover the* exposed block. Approved materials are: stone, brick stucco, or landscaping timbers. The construction of walls must be "finished" in a technique appropriate and customary to the material. For example, a brick wall must be mortared, have a cap and finished ends.

(b) Ornamental Walls are permitted providing they do not exceed a height of eighteen inches (18") and are constructed of stone, brick, or stucco to be approved by the ACC.

(c) Pillars or other similar constructs, such as one might place at the beginning of the driveway, walk-way, or as an elevated base for sculpture or a planter, are permitted provided the height *does not exceed thirty-six* (36"). Stone, brick, stucco, and landscaping timbers are the approved construction materials by the Architectural Control Committee.

SECTION 25: ROOF PITCH. The minimum roof pitch allowed is 7/12.

SECTION 26: SATELLITE DISH. Exterior satellite dishes shall be no greater than (36") inches in diameter and shall be mounted on the rear of the house or garage. A post within 18" of the rear of the house is acceptable. Variances to the above shall require the approval of the Architectural Control Committee.

SECTION 27: ABUTTED STORAGE SHEDS. Prefabricated purchased sheds *are not* permitted (*ie, from Lowes or similar providers.*) The location of the shed is to be approved by the ACC. Sheds are permitted if attached or abutted to the rear of the house providing they do not exceed a size of eight feet by ten feet (8'X10'), a height of eight feet (8') and not to exceed the house eight (8')soffit height. (*Underneath-the overhang*) The siding and roofing material shall match with the exterior house plans and architecture. The floor must be either concrete or wood on a block/brick foundation. All requests must be accompanied with samples of the proposed building materials prior to approval. Written approval of the ACC is required prior to construction.

SECTION 28: RULES. The Board of Directors may from time to time *without consent* of the members, promulgate, modify or delete use restrictions and rules and regulations applicable to the Common Area. Such regulations and use restrictions shall be binding on all Owners and occupants *until and unless overruled, cancelled or modified* in a regular or special meeting by the Association. All general rules and subsequent amendments thereto shall be placed in the Association's book of resolutions and shall be open to inspection by members of the Association during normal business hours.

SECTION 29: SIGNS. No signs shall be displayed to public view on any lot or unit or in the Common Area *except the* sign which specifically complies with the rules and regulations set by the Association *or approved by* the Architectural Control Committee. No signs other than "For Sale", "For Rent", "No Parking", "Dead end", "Private Road", "Miles per Hour", "Children at Play", "Garage Sale", "Yield", etc., of typical customary, or appropriate size and appearance shall be displayed to public view on any lot or unit or in the Common Area.

SECTION 30: STRUCTURE. No building, wall, backyard enclosure, home exterior additions/changes/alterations or major landscaping changes shall be commenced, erected or maintained upon the Properties *until the plans* and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and *approved* in writing by the Architectural Control Committee.

SECTION 31: SWIMMING POOLS: Swimming pools are not permitted in Mills River Village. Children's wading pools are permitted *in the backyard*.

SECTION- 32: TENTS, Tents are permitted but limited to enclosed camping style tents. Tents are further limited to a time period of a consecutive 72 hours (3days) every 30 days and must be kept to the backyard. Tents staying erected longer than this time period are not permitted.

SECTION-33: TRELLISES, Freestanding trellises, lattice and trellises against the house are permitted. Arbors are permitted provided they *do not exceed* a height of seven feet (7'), a width of four feet (4') and a depth of two feet (2'), more or less.

SECTION 34: TRASH RECEPTACLES. Storage, collection and disposal of trash shall be in compliance with rules set by the Association. All lot Owners have the responsibility of keeping their lots neat and all rubbish in approved trash receptacles not visible from the road.

No unsanitary condition shall be permitted. Trash, garbage or other wastes shall be kept in proper containers until disposed of. These containers may *not be visible from* the road. No trash may be piled on the lawn, street or undeveloped lots and allowed to remain for more than twenty-four (24) before picked up.

No liquid waste of any description may be drained, dumped or disposed of in any way into open ditches, storm drains or waterways. No lot or common area may be used or maintained as a dumping ground for rubbish. No outside storage shall be permitted.

SECTION 35: TREES (CUTTING OF). No trees of any size or shape greater than 8" in diameter may be cut without the prior written approval of the Architectural Control Committee. Architectural Control Committee approval is required prior to the removal or "topping" of trees with a diameter of eight inches (8") or greater. All downed trees and tree limbs are to be disposed of *within* thirty (30) days. Trees or limbs that pose an immediate safety threat may be removed *without* Architectural Control Committee approval. Fireplace logs shall be stored or stacked neatly *in rear* of the house, in a location least visible from street and surrounding houses, and *are not* allowed on front decks or porches.

SECTION 36: UTILITY AND DRAINAGE EASEMENTS. Utility and drainage easements are reserved five (5) feet in width along all sides and back lot lines and ten (10) feet in width along front lot lines, for installation and maintenance of utilities and drainage facilities which builder/ developers or the Association may grant, without the permission of lot Owners, to utility companies and others. Neither the builder, developer, the Association, nor any other person using the easements herein referred to will be liable for any damage done by them to shrubbery, trees, or to the Property of said lot Owners situated on the land covered by these easements.

ARTICLE VII

PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

SECTION 1: EXISTING PROPERTY. The real Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain real Property as the same is more particularly described hereinbefore.

SECTION 2: ADDITIONS TO EXISTING PROPERTY. Additional Properties may become subject to this Declaration pursuant to an affirmative vote of one-half (1/2) of the members entitled to vote in person or by proxy at a regular meeting of the Association or at a meeting duly called for this purpose.

Any addition authorized under Section 1 or 2 above shall be made by the filing of record in the Office of the Register of Deeds for Henderson County, North Carolina, an amended declaration of covenants, conditions and restriction and by the filing with the Association of a general plan of development for the proposed additions to said Properties.

SECTION 3: EXCEPTIONS. Lot # 52 of Phase II "B", being a unique Property is however subject to all conditions and restrictions as enumerated herein before and hereafter with the exception that the Owner of lot # 52 may build a guest house of no less than 1000 square feet heated living space. There shall be no storage of construction equipment on lot # 52.

The Owner of lot # 52 may construct a storage building on the most northerly portion of the lot for the purpose of storage, maintenance, shelter, and farming, with a size no greater than 1000 square feet and said building to be fully enclosed. All buildings and landscaping changes are to be approved by the Architectural Control Committee. (Article V, Section 1)

ARTICLE VIII

CONVEYANCE OF COMMON AREA TO THE ASSOCIATION

SECTION 1: TITLE TO THE COMMON AREA. Titles of the Common Areas as shown on the plats recorded in the Henderson County Register of Deeds Office for MILLS RIVER VILLAGE SUBDIVISION shall be held in the name of the Association.

SECTION 2: CONSTRUCTION /IMPROVEMENT

- A) All construction, utility and service traffic shall have full rights of ingress and egress to and through, over and about any of the subdivision roadways during such period to time as they are engaged in any construction or improvement work.

- B) No homeowner, his guests or invitees, shall in any way interfere or hamper contractors, utilities or service providers and their employees, it being understood and agreed that the construction, installation and service activities of said contractors, utilities or service providers and their employees shall, so far as practical, not interfere with the resident or their quiet enjoyment of MILLS RIVER VILLAGE SUBDIVISION.
- C) No Owner, his guests or invitees, shall in any way interfere or hamper contractors, utilities or service providers and their employees, it being understood and agreed that the construction, installation and service activities of said contractors, utilities or service providers and their employees shall, so far as practical, not interfere with the resident or their quiet enjoyment of MILLS RIVER VILLAGE SUBDIVISION.

ARTICLE IX
OBLIGATION TO MORTGAGES

The following provision is established for the benefit of holders of mortgages (the definition of mortgage to include deeds of trust or other security instruments) encumbering any lots located within MILLS RIVER VILLAGE SUBDIVISION:

The Association shall be obliged 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 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.

ARTICLE X
OBLIGATION TO LOT OWNERS

A) Written notice by the Association shall be sent to the lot Owners setting forth the purpose of the meeting not less than fifteen (15) days in advance of any meeting being called for the purpose of amending, extending or renewing any of the provisions of this Declaration of 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 lot Owner within MILLS RIVER VILLAGE SUBDIVISION:

B) Unless at least one-half (1/2) of the Owners of the lots within MILLS RIVER VILLAGE SUBDIVISION 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 Area owned, directly or indirectly, by the Association for the benefit of the lots in MILLS RIVER VILLAGE SUBDIVISION. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Association shall not be deemed a transfer within the meaning of this clause;

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 exterior appearance of lots or the maintenance of the Common Areas in MILLS RIVER VILLAGE SUBDIVISION;

4) fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in the amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost);

5) use hazard insurance proceeds for losses to any Common Area Property for other than the repair, replacement or reconstruction of such Common Area Property.

ARTICLE XI
GENERAL PROVISIONS

SECTION 1: DURATION. The covenants and restrictions 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, after which time, such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each.

SECTION 2: AMENDMENT. This Declaration may be amended at any time by an instrument executed by the holders of one-half (1/2) of the votes of members as described in Article III hereof and recorded in the Office of the Register of Deeds for Henderson County, North Carolina.

SECTION 3: ENFORCEMENT. The Association, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservation, liens and charges now or hereafter imposed by the provision of this Declaration. The Board of Directors shall have specific discretionary authority to impose fines for violations of rules and regulations, the Declaration of Bylaws of the Association. Any violation may carry a maximum fine of twenty-five (\$25) per day and the Board, at its discretion, may impose lesser fines as it deems appropriate to a violation. Any such fines shall be collected as assessments pursuant to Article IV herein. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the covenants are challenged and/or a court hearing or attorney expenses are necessary to resolve the issue, the home owner shall be responsible for the Home Owners Association's reasonable costs and attorney's fees in the event that the Home Owners Association prevails.

SECTION 4: SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision of this Declaration, which shall remain in full force and effect.

SECTION 5: MANAGEMENT. The Association reserves the right to enter into a contract with a management firm, which said contract shall provide for payments to said firm for services rendered on behalf of the Association in connection with maintenance and control of the Common Areas and all other duties delegated herein to the Association. The contract shall have terms not to exceed one (1) year and shall be cancelable by the Home Owners Association upon the giving to said management firm of ninety (90) days written notice prior to such cancellation. The contract shall be terminable for cause upon thirty (30) days notice.

SECTION 6: MINIMUM SHORT TERM LEASE. Any lease or other rental of lots within MILLS RIVER VILLAGE SUBDIVISION shall not be for a term less than thirty (30) days in duration.

SECTION 7: INDEMNIFICATION. The Association shall indemnify officers and directors against any and all expenses, including attorney fees incurred during their service on the Board or resulting there from in connection with decisions made during such period of service.

SECTION 8: CONSTRUCTION. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

SECTION 9: REPEAL OF PRIOR DECLARATIONS: Upon the recordation of this AMENDED, CONSOLIDATED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PHAES I:II "A" AND II "B" all prior declarations and restrictions of record shall be deemed repealed with respect to any and all actions, issues, situations, applications for approval, or violations, etc. arising after such date of recording in the Henderson County Register of Deeds Office.