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NORTH CAROLINA
COUNTY OF MCDOWELL

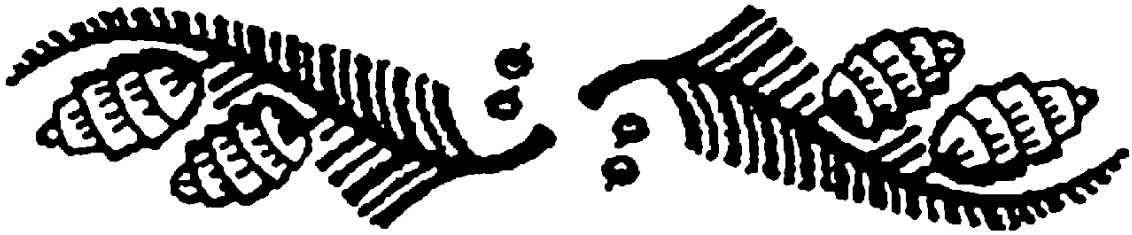
**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

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One Rankin Ave., Third Floor, Asheville, NC 28801

DECLARANT: CRESTON DEVELOPMENT, LLC, a North Carolina limited liability
company

ASSOCIATION: CRESTON PROPERTY OWNERS' ASSOCIATION, INC., a North
Carolina nonprofit corporation

CRESTON



**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

DATED JANUARY 31, 2019

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (as may be further amended, supplemented and/or restated from time to time, this "Declaration"), is made this 31st day of January, 2019, by Creston Property Owners' Association, Inc., a North Carolina nonprofit corporation (the "Association" as defined below) and Creston Development LLC, a North Carolina limited liability company ("Declarant" as defined below).

WITNESSETH:

WHEREAS, the Declarant is or was the owner of certain property known as "Creston" located in Crooked Creek Township, McDowell County, North Carolina, which is more particularly described in part in Exhibit "A" attached hereto and incorporated herein by reference as if fully set forth; and

WHEREAS, Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of North Carolina for the purpose of exercising certain functions at Creston as set forth in this and other related documents; and

WHEREAS, the properties of Creston are subject to those certain covenants, conditions and restrictions as set forth in the following Deed Books and Pages of the McDowell County Deed Registry: (i) Declaration of Covenants, Conditions, and Restrictions of Creston dated February 25, 2003, and recorded in Deed Book 719, Page 772, and re-recorded in Book 785, Page 294, (ii) Amended Declaration of Covenants, Conditions and Restrictions dated June 2, 2003, and recorded in Book 734, Page 733 and re-recorded in Book 785, Page 324, (iii) Second Amendment to the Declaration of Covenants, Conditions and Restrictions dated December 14, 2004, an recorded in Book 806, Page 474, (iv) Third Amendment to the Declaration of Covenants, Conditions and Restrictions of Creston dated July 15, 2006, and recorded in Book 881, Page 683, (v) Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions dated September 8, 2006, and recorded in Book 885, Page 379, (vi) Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions dated March 5, 2007, and recorded in Book 909, Page 28 and re-recorded in Book 910, Page 55, (vii) Sixth Amendment to the Declaration of Covenants, Conditions and Restrictions dated August 30, 2007, and recorded in Book 932, Page 569, (viii) Seventh Amendment to the Declaration of Covenants, Conditions and Restrictions dated February 29, 2008, and recorded in Book 954, Page 936, (ix) Eighth Amendment to the Declaration of Covenants, Conditions and Restrictions dated March 13, 2009, and recorded in Book 988, Page 40, (x) Ninth Amendment to the Declaration of Covenants, Conditions and Restrictions dated January 4, 2010, and recorded in Book 1011, Page 158, (xi) Tenth Amendment to the Declaration of Covenants, Conditions and Restrictions dated January 4, 2010, and recorded in Book 1011, Page 162, (xii) Eleventh Amendment to the Declaration of Covenants, Conditions and Restrictions and First Amendment to Bylaws dated November 26, 2010, and recorded in Book 1034, Page 31, (xiii) Twelfth Amendment to the Declaration of Covenants, Conditions and Restrictions dated December 29, 2010, and recorded in Book 1036, Page 142, (xiv) Thirteenth Amendment to the Declaration of Covenants, Conditions and Restrictions dated December 29, 2010, and recorded in Book 1036, Page 146, (xv) Fourteenth Amendment to the Declaration of Covenants, Conditions and Restrictions recorded on November 6, 2012 in Book 1085, Page 409, (xvi) Fifteenth Amendment to the Declaration of Covenants, Conditions and Restrictions dated July 6, 2013, and recorded in Book 1122, Page 415, and (xvii) Sixteenth Amendment to the Declaration of Covenants,

Conditions and Restrictions dated January 31, 2019, and recorded in Book 1269, Page 334 (collectively, the "Amended Covenants"); and

WHEREAS, pursuant to Article XI, Section 15 of the Amended Covenants, the Amended Covenants may be amended by the affirmative vote of owners of sites to which sixty-seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, at the annual meeting of the Association's membership held on July 7, 2018 pursuant to the Association's Amended Covenants and Bylaws, a vote was taken and approved by owners of sites having not less than sixty-seven percent (67%) of the allocated votes of the Association to amend and restate the Amended Covenants as set forth below; and

WHEREAS, the Declarant has assented to such amendment and restatement of the Amended Covenants as is required by the Amended Covenants.

DECLARATION:

NOW, THEREFORE, the Association and Declarant hereby declare that (i) the Amended Covenants are hereby amended and restated in their entirety as set forth in this Declaration, and (ii) the properties of Creston, are held and shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the following conditions, restrictions, easements, limitations and covenants hereinafter set forth which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding upon all parties having any right, title or interest in and to the described properties or any part thereof, their legal representatives, heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

The following words when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) "Annual General Assessment" shall mean and refer to the Annual General Assessment determined and authorized pursuant to Article IV, Section 3 hereof.
- (b) "ARC" shall mean the Creston Architectural Review Committee approved by the Board and in effect from time to time. The ARC shall consist of five (5) members and shall be duly appointed by the Board as stated in the Bylaws. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association.
- (c) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as may be amended from time to time.
- (d) "Assessment" shall have the meaning given to such term in Article IV, Section 1 hereof.
- (e) "Association" shall mean and refer to the Creston Property Owners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns.
- (f) "Board of Directors" or "Board" shall mean and refer to the board of directors of the Association duly elected pursuant to the Bylaws.
- (g) "Bylaws" shall mean and refer to the bylaws of the Association as adopted by the Members, as may be amended from time to time.

- (h) **“Cabin Site” shall mean and refer to any “Cabin” or “CC” Site as shown on a recorded subdivision map or plat of Creston.**
- (i) **“Common Area” shall mean all real property within Creston, which is not within the boundary of any of the existing or proposed Owner Sites or future development areas, and improvements thereon, along with any additional property or easement rights specifically granted to the Association. The Common Area shall include, but is not limited to, roads, pedestrian paths and recreational areas. The Common Area is subject to utility easements granted on, in and under the Common Area for the benefit and use of the property or individual Sites, including drain fields or wells for individual Sites where necessary and any other recorded easements. The Common Area shall not be used by the general public. The Board of Directors does not have the right either now or at any time in the future to dedicate to public use or permit use of the Common Area by the general public.**
- (j) **“Common Expenses” means the actual and estimated cost of maintaining the roads and other Common Area and operating the Association, including a reasonable reserve fund. Common Expenses must be approved by the Board of Directors.**
- (k) **“Conservation Easement” shall mean any easement granted by the Declarant to a non-profit corporation maintaining a 501-C3 tax-exempt status that restricts all or any portion of the Common Areas from development and serves to protect the conservation value of the property.**
- (l) **“Construction Impact Fee” shall have the meaning given to the such term in Article V, Section 6(f) hereof.**
- (m) **“Cottage Site” shall mean and refer to any “Cottage” or “C” Site as shown on a recorded subdivision map or plat of Creston.**
- (n) **“Creston” shall have the meaning given to such term in the first WHEREAS clause of this Declaration.**
- (o) **“Creston Design Guidelines” or “Design Guidelines” shall mean those certain guidelines administered by the ARC that serve as a minimum set of design principles and standards and are intended to provide a framework to guide Owners in the design and construction of their homes and to achieve the high quality and desired character of Creston, as amended from time to time.**
- (p) **“Declarant” shall mean and refer to Creston Development LLC, a North Carolina limited liability company, its successors and assigns.**
- (q) **“Declaration” shall have the meaning given to such term in the preamble of this Declaration.**
- (r) **“Homestead Site” shall mean and refer to any “Homestead” or “H” Site as shown on a recorded subdivision map or plat of Creston.**
- (s) **“Individual Site Assessment” shall have the meaning given to such term in Article IV, Section 9 hereof.**
- (t) **“Member” or “Membership” shall mean and refer to every person or entity entitled to membership in the Association. Members must be Owners.**
- (u) **“Owner” shall mean and refer to the owner of record, whether one or more persons or entities, of the fee simple title to any Site, but shall not include those having such interest merely as security for the performance of an obligation.**
- (v) **“Site” shall mean and refer to any parcel of land identified by lot or site number on a recorded subdivision map or plat of Creston.**
- (w) **“Special Assessment” shall have the meaning given to such term in Article IV, Section 4 hereof.**
- (x) **“Traditional Site” shall mean and refer to any “Traditional” or “T” Site as shown on a recorded subdivision map or plat of Creston.**

ARTICLE II - PROPERTY RIGHTS

Section 1. Subdividing, Combination and Boundary Relocation

No Site shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Site or part thereof so as to create a Site larger than the original Site by the purchasers. No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assigns except, however, the Declarant hereby expressly reserves to itself, its successors or assigns, the right to re-plat, combine or subdivide any Site or Sites, shown on the recorded plats, prior to the conveyance thereof, in order to create a modified Site or Sites. These restrictions herein apply to each Site which may be so created. Following the combination of two (2) Sites into one larger Site, only the exterior boundary lines of the resulting larger Site shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Site may only be subdivided with the consent of the Declarant, its successors and/or assigns. The Declarant reserves the right but not the obligation to sell or give to the Association for inclusion in the Common Areas unsold Sites or portions of property it does not wish to retain.

Section 2. Single Family Residential Purposes: Principal Building

All designated Sites on recorded plats shall be used for single-family residential purposes only. No more than one principal building shall be permitted on any Site. Accessory structures may be allowed subject to the ARC approval.

Section 3. Declaration of Use.

Any Owner may delegate to members of his family or tenants his rights of enjoyment to the Common Areas.

Section 4. Regulations of Uses.

The Association reserves the right to further regulate the use of the Common Areas and trails through the establishment of policies, rules and regulations. The following is prohibited in the Common Areas and on all trails:

- (a) Removal of live trees, plants or vegetation, except by the Association for use in other Common Areas.
- (b) Removal of rocks.
- (c) All-terrain vehicles (ATVs), motorcycles or any other vehicles or means of transportation, except those used in maintenance, construction, or sales by the Declarant only. The Association may adopt such other policies, rules and regulations as it deems appropriate for vehicular use, if any, on trails and common areas within Creston.
- (d) Damage to native plants of all types, whether natural or landscaped, when hiking off the trails.
- (e) Removal of any form of wildlife.
- (f) Hunting or trapping.

Section 5. Common Areas and Improvements.

Common Areas and improvements thereon are for the exclusive use of Creston Owners. Visitors and guests will not be permitted to use the Common Areas and improvements thereon at any time unless Owners are on the premises or unless the visitors or guests are in possession of an Owner's house. Violation shall constitute trespass and can be handled accordingly.

Section 6. Reservation of Right to Convey Conservation Easement.

Declarant expressly reserves the right to convey a Conservation Easement on all or a part of the Common Areas.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership.

Every Owner of a Site shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Site.

Section 2. Voting Rights.

Members shall be entitled to one (1) vote for each Site owned. When more than one person holds an interest in a given Site, all such persons shall be Members, and the single vote for such Site shall be determined among them. In no event shall more than one (1) vote be cast with respect to any Site.

Section 3. Suspension of Voting Rights.

No Member Owner of a Site may exercise any voting rights with respect to such Site, so long as (i) any lien has been filed by the Association against any Member Owner of such Site, and such lien is outstanding and remains unsatisfied, or (ii) such Member Owner has failed to pay in full any General or Special Assessment with respect to such Site, within ninety (90) days of the due date thereof. Notification of such action to the Member Owner and subsequent action to suspend voting rights will occur in accordance with the North Carolina Planned Community Act.

ARTICLE IV - ASSESSMENTS

Section 1. Obligation for Assessments.

Each Owner, other than Declarant, for each Site owned within Creston, hereby covenants, and each Owner of a Site 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 the following (each to be known as an "Assessment" and collectively, as "Assessments"):

- (a) Annual General Assessments,
- (b) Special Assessments for the purposes provided in this Declaration,
- (c) Individual Site Assessments for any charges particular to the Site as described in Article IV, Section 9 hereof, and
- (d) A late fee, interest and cost of collection when delinquent, including a reasonable attorney's fee, whether or not suit is brought, will be added if appropriate.

Section 2. Purpose of Assessments.

The Annual General and Special Assessments levied by the Association shall be used exclusively for the improvements, maintenance and operation of the road system and Common Areas, and the management and administration of the Association. Such expenses include the cost of wages, materials, insurance premiums, services, supplies and reasonable amounts, as determined by the Board, for working capital and for reserves. Each Owner shall be responsible for the improvement, maintenance, and repair of their Site with all improvements, including the exterior of buildings in the same condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear. No such costs may be

included within the Annual General or Special Assessments. An Owner who fails to keep his Site and all improvements in reasonable order and repair shall be subject to an Individual Site Assessment for any expenses incurred by the Association in performing such duties. Additionally for such Assessments as may be authorized by the Bylaws of the Association and which may be particular to an individual Site, including but not limited to Assessments for damage and subsequent repairs to common roadways and common property caused during construction or improvements on an individual Owner's Site, such costs may be included with the Annual General or Special Assessments.

Section 3. Maximum Annual General Assessment.

Each fiscal year, the Board of Directors shall determine the Annual General Assessment to be levied against each type of Site. If, within thirty (30) days of receiving notice of a proposed increase in the Annual General Assessment, Members representing a majority of the votes of the Association disapprove of the increase in writing, the Board then may not exceed the greater of the following two (2) maximum assessment levels:

- (a) An increase of not more than fifteen (15) percent above the Annual General Assessment for the previous year.
- (b) An increase in conformance with the rise, if any, of the Consumer Price Index, as published the preceding July.

Any Annual General Assessment increase approved by the Board shall be the same percentage increase for each type of Site (Cottage, Traditional, Homestead and Cabins at Creston). Any further amendment to this requirement of equality of increase shall require a 2/3 vote of the Owners of each type of Site; that is, 2/3 of the Owners of Cottage Sites, 2/3 of the Owners of Traditional Sites, 2/3 of the Owners of Homestead Sites, and 2/3 of the Owners of Cabin Sites must all separately approve any change which provides for an increase in the Annual General Assessment which is not the same percentage for each type of Site (Cottage, Traditional, Homestead and Cabin).

Section 4. Special Assessment.

In addition to the Annual General Assessments authorized above, the Association may levy, in any Assessment year, a special assessment (each a "Special Assessment" and collectively, "Special Assessments") applicable to that year for the purpose of defraying, in whole or in part, the following:

- (a) The cost of any construction, reconstruction, repair, or replacement of a capital improvement authorized by the Board of Directors upon the road system and Common Areas, including, but not limited to, fixtures and personal property, if any, related thereto.
- (b) The cost of any unusual emergency (including, but not limited to, after depletion of any reserves, any unexpected expenditures not provided in the budget or unanticipated increases in the amounts budgeted).

The Board's decision to levy a Special Assessment shall be deemed approved by the Membership unless, within thirty (30) days of receiving notice of the proposed Special Assessment, Members representing a majority of the votes of the Association disapprove in writing.

Section 5. Notice and Quorum.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 above shall be sent to all Members not less than fourteen (14) days or more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of a majority of

Members or of proxies entitled to cast a majority of all of the votes of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the first meeting.

Section 6. [Reserved].

Section 7. Annual General Assessments: Due Date

- (a) The Board shall fix the amount of the Annual General Assessment for each Site at least thirty (30) days in advance of each fiscal year and send notice of such Assessment level to each Owner. The due dates shall be established by the Board, and unless the Board determines otherwise, each Owner shall be required to pay the stated Annual General Assessment in a single, annual installment. The failure or delay of the Board in setting the Annual General Assessment level shall not constitute a waiver or release of an Owner's obligation to pay the Annual General Assessment whenever the amount of such Assessment is finally determined, and in the absence of notice of the new Annual General Assessment level, each Owner shall continue to pay the Annual General Assessment at the previous rate until notified otherwise.
- (b) The Annual General Assessments for the Declarant recorded Sites shall be at a rate of 20% of the prevailing Annual General Assessments. The Declarant has the right to convey by deed unsold Sites to the Association in lieu of falling under the Annual General Assessment. The Association must accept these unsold Sites as part of the general Common Areas.

Section 8. Property Tax Assessment.

The state and local real property taxes assessed on the Common Areas shall be paid by the Association. Upon transfer of title to a Site, the real property taxes shall be adjusted and apportioned to the Owner.

Section 9. Individual Site Assessments.

The Association may levy at any time an Individual Site Assessment against a particular Site (each an "Individual Site Assessment") for the purpose of removing debris that can be seen from the streets or other Sites. Such debris is defined as leftover building materials, trees down from storm damage that can be easily seen from the road, material from Site clearing, or other offensive material not present when the Site was purchased. The Association may levy an Individual Site Assessment for the unauthorized removal of any trees, rhododendrons, mountain laurel or hemlocks on an Owner's Site. Tree replacement costs are predicated on the cost of five thousand dollars (\$5,000.00) per tree for all trees measuring (excluding invasive trees of Tree of Heaven or Paulownia) six (6) inches on the stump. Trees measuring more than six (6) inches on the stump will cost five hundred dollars (\$500.00) for each additional inch of stump diameter. Native rhododendrons, mountain laurel and hemlocks will cost five hundred dollars (\$500.00) per cut plants.

Section 10.1. Non-Payment of Assessment.

Any Assessments levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest and other costs as set out elsewhere in this Declaration, thereupon become a continuing lien upon the Site which shall bind the Site in the hands of the then Owner and the Owner's successors and assigns. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest at a reasonable rate of

ten percent (10%) per year or at such other reasonable rate set by Association in its minutes, not to exceed the maximum amount allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Site, in either of which events interest, costs and reasonable attorneys' fees shall be added to the amount of each Assessment. No Owner may waive or otherwise escape liability for the Assessments by non-use or waiver of use of the Common Areas or by abandonment of his Site.

Section 10.2. Priority of Association Lien.

The lien provided for in this Article IV shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed of record before a claim of this lien hereunder has been docketed in the office of the clerk of superior court in McDowell County, and may be foreclosed in the same manner as a mortgage on real property under power of sale in an action brought by the Association in accordance with the North Carolina Planned Community Act. The Association is entitled to recover its reasonable attorneys' fees and court costs and collection costs, as part of the lien. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 10.3. Disputes as to Common Expenses; Adjustments.

Any Owner who believes that the portion of Common Expenses chargeable to his Site, for which an Assessment lien has been filed by the Association, has been improperly charged against his or her Site, may bring an action in an appropriate court of law.

Section 10.4. Purchaser at Foreclosure Sale Subject to Declaration, Bylaws, Policies, Rules and Regulations of the Association.

Any purchaser of a Site at a foreclosure sale shall automatically become a Member of the Association and shall be subject to all the provisions of this Declaration, the Bylaws and the policies, rules and regulations of the Association.

Section 10.5. Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses.

When the holder of a first mortgage or first deed of trust of record or other purchaser of a Site acquires title to the Site as a result of foreclosure of the first mortgage, first deed of trust or by deed in lieu of foreclosure, such acquirer of title, his, her or its successors and assigns, shall not be solely liable for the share of the Common Expenses or other Assessments by the Association chargeable to such Site which became due prior to the acquisition of title to the Site by such acquirer, other than Assessments for which a claim of lien has been docketed with the McDowell County Clerk of Superior Court prior to the recordation of the lien being foreclosed. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Sites, including that of such acquirer, his, her or its successors or assigns. This provision shall not relieve the party acquiring title or any subsequent Owner of the subject Site from paying future Assessments.

Section 10.6. Liability for Assessments Upon Voluntary Conveyance.

In a voluntary conveyance of a Site, any grantee or his or her first mortgagee shall inform the Board of Directors in writing of such contemplated conveyance and such grantee or first mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid Assessments (including current Assessments) against the grantor due the Association. Neither the grantee nor the mortgagee shall be personally obligated for any delinquent Assessments, but such delinquent Assessments, along with interest, late charges, costs and reasonable attorneys' fees shall be a lien against the Site in accordance with Section 10.1 and

Section 10.2 hereof.

Section 10.7. Late Charge.

The Association may impose a charge against any Site Owner who fails to pay any amount assessed by the Association against his Site within ten (10) days after such Assessments are due and payable and who fails to exercise his rights under this Declaration or under the laws of the State of North Carolina to successfully contest such Assessment. The amount of the late charge shall be the greater of (a) twenty and 00/100 Dollars (\$20.00), or (b) twenty percent (20%) of the delinquent amount, or such other amount as may be determined by the Association from time to time. Additionally, if a Site Owner shall be in default in payment of an installment upon an Assessment or of a single monthly Assessment, the Association has the right to accelerate all monthly Assessments remaining due in the current-fiscal-year. The total of such Assessments, together with the delinquent Assessments shall then be due and payable by the Site Owner no later than ten (10) days after the delivery of written notice of such acceleration to the Site Owner or twenty (20) days after mailing of such notice to him by certified mail, whichever occurs first. If such accelerated amount is not paid by the due date, the above-described late charge may be imposed on the part of such accelerated amount not paid by the due date.

Section 10.8. Miscellaneous.

- (a) The Association may change the interest rate due on delinquent Assessments (including any late charges), except that the rate cannot be changed more often than once every six (6) months. As of its effective date, the new interest rate will apply to all Assessments then delinquent.
- (b) The Owner has the sole responsibility of keeping the Association informed of the Owner's current address if different from the Site owned. Otherwise notice sent by the Association to the Owner at the Site address is sufficient for any notice requirement under this Declaration.
- (c) The lien under this Article IV arises automatically, and no notice of lien need be recorded to make the lien effective.
- (d) The Assessment lien includes all collection costs, including demand letters, preparation of documents, reasonable attorneys' fees, court costs, filing fees, collection fees, and any other expenses incurred by the Association in enforcing or collecting the Assessment.
- (e) Any Assessment otherwise payable in installments shall become immediately due and payable in full without notice upon default in the payment of any installment. The acceleration shall be at the discretion of the Board.
- (f) No Owner of a Site may exempt himself or herself from liability for his or her contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his or her Site.
- (g) Sections 10.1 – 10.8 apply to every type of Assessment.

Section 11. Exempt Property.

All properties dedicated to and accepted by a local public authority shall be exempt from Assessments. However, no land or improvements devoted to residential use shall be exempt from such Assessments.

ARTICLE V - ARCHITECTURAL REVIEW

Section 1. Construction Subject to Review.

In accordance with the Bylaws, an Architectural Review Committee is established. No

construction, modification, alteration or improvement of any nature whatsoever (except interior alterations not affecting the external structure or appearance of a house) shall be undertaken on any Site unless and until a plan of such construction or alteration shall have been approved in writing by the ARC in accordance with the policies and procedures as set forth in accordance with this Article. Modifications subject to architectural control specifically include, but are not limited to, repainting with a new color(s) or other alteration of a building (including doors, windows, porches, decks and roof); installation of antennas, satellite dishes or receivers over 18 inches in diameter, solar panels or other devices; construction of swimming pools or ponds; construction of walls or fences, entrance gates or any other ornamentation visible from the roads or other Sites, and any alteration of the landscaping topography of the Site, including without limitation the removal of any vegetation not within a 10 foot radius of the dwelling.

Section 2. Procedures.

All plans shall be submitted for approval by the ARC as outlined by the Creston Design Guidelines. If the ARC fails to approve or disapprove the plans within thirty (30) days after submission of all requested plans and specifications, approval shall be deemed to have been granted unless the applicant agrees to an extension. The Creston Design Guidelines shall be in writing, and available upon request from any Owner of a Site in Creston. The Design Guidelines may be amended from time to time, as necessary, by the ARC in accordance with the procedures shown in Section 2.1 hereof and contain provisions regarding fees for the architectural review, the basis for the decisions and many specific details of construction of Sites at Creston. An approved N.C. licensed landscape architect/land planner or other qualified N.C. engineering professional must be used to evaluate and properly site all homes in Creston when an Owner is not using the services of a N.C. licensed architect.

Section 2.1 Changes to the Design Guidelines.

Changes to the Design Guidelines shall be made in a manner that makes it clear to Owners exactly what is being proposed and why. Changes shall be proposed by the ARC, or by Owner(s), and presented to the Board for consideration.

Changes which pertain to the administration of the architectural review process and Site related issues during construction, including, but not limited to review procedures, Owner compliance requirements, erosion control, enforcement of the Design Guidelines or any change not affecting the standards to which Site improvements must comply, may be approved by the Board.

All changes not otherwise provided for, including, but not limited to changes related to architectural design, building materials, landscaping, and the appearance of the Site following construction, must receive an affirmative vote or written approval of Owners representing sixty-seven percent (67%) of the votes cast, subject to the requirement that the total votes cast represent a majority of Owners entitled to cast votes.

If the Board determines that no Owner concurrence is needed for some changes, this determination shall be overturned upon request by ten percent (10%) of Owners and they shall be made in a manner that makes it clear to Owners exactly what is being proposed and why. Changes shall be proposed by the ARC, or by Owner(s), and presented to the Board for consideration. The ARC proposed administrative changes that reflect modifications to clarify or improve the architectural review process may be approved by the Board. All other changes must receive an affirmative vote or written agreement signed by Owners of Sites to which sixty-seven percent (67%) of the votes in the Association are allocated. If the Board determines that no Owner concurrence is needed for some changes, this determination shall be overturned upon request by ten percent (10%) of Owners and the issue shall be submitted for a vote of the full

Membership.

Section 3. Architectural Review Fee.

It is the Site Owner's responsibility to obtain a topographical site survey as specified by the Design Guidelines of the proposed building area prior to beginning the design process. At the time the first Home Sketch and Site Approval submittal is made, a non-refundable fee of one thousand five hundred dollars (\$1,500.00) made payable to the Association shall be due. Said fee shall be utilized by the ARC for obtaining professional architectural services to review house plans for site suitability and to conduct building and progress inspections during construction. If house/guest house plans are presented for approval at the same time, only one fee of \$1,500.00 will be due. Plans which are incomplete may be subject to an additional review fee upon re-submittal as determined by the ARC. This fee may be adjusted from time to time as necessary to cover increased costs.

Modifications or changes to any part of the home building process after the submittals are approved by the ARC, and requiring a duplication of any part of the plan review and approval process will result in additional architectural review fees at the prevailing rate for architectural services.

Additional steps required due to incorrect submissions, including additional review of redesigned plans based on errors and omissions from what is required by the Design Guidelines and/or additional Site visits, beyond the usual and normal review and approval process, due to the above mentioned situations will result in additional review fees at the prevailing rate for architectural services.

A complete resubmittal of plans (not revised plans as a result of the ARC recommendations) may require a full submittal fee at the current rate.

Section 4. Basis for Decision.

The ARC's refusal or approval of plans, specifications, materials, colors, or location of any structure may be based upon any grounds, including purely aesthetic considerations, which at the sole discretion of the ARC, for projects within Creston, shall be deemed sufficient.

Notwithstanding that improvements meet or exceed specified minimum size requirements, the quality and attractiveness of every structure must also meet high neighborhood standards and the ARC is hereby granted broad discretion in judging the compatibility of proposed structures for the neighborhood. The ARC will disapprove simple box or rectangular structures that do not have added architectural interest through extensive covered porches, decks, roof detail or other significant architectural features that add character to simple forms. The ARC shall also have the right to determine the type and number of structures which may be constructed on a Site. They shall use as a guide the Creston Design Guidelines, as that code is amended from time to time. The ARC reserves the right to grant variances from the Creston Design Guidelines based on architectural merit and on existing topographic conditions.

Section 5. Construction.

If approval is given, construction may begin in accordance with the submitted plans and specifications. The Association shall have the right to enjoin any construction not in conformance with approved plans and specifications, and shall have all other remedies at law or equity.

Section 6. Contractors Eligibility and Rules.

General grading or general construction contractors must be appropriately licensed by North

Carolina. Contractor rules are the responsibility of the Site Owner for enforcement.

- (a) The ARC has the right to restrain or enjoin construction noise outside of normal working hours in its sole discretion.
- (b) Contractor to be made responsible for mud matt at entrance of Owner's construction site to prevent mud and other debris from being placed on Creston roads.
- (c) Intermediate size heavy equipment for clearing and grading are adequate for site preparation. Tandem trucks are not to exceed 16 tons of material hauled. Track hoes cannot exceed 42000 lbs. and need to be brought in on short trailers. All equipment must come in on properly sized trailers to properly distribute the load on the roadways.
- (d) The building contractor is responsible for informing his workman and subcontractors not to throw any form of trash out within Creston. The cost of any such cleanup will be the responsibility of the Owner.
- (e) [Reserved.]
- (f) At the time of the submission of the building contractor form, the Owner is required to include in the submission a fee of five thousand dollars (\$5,000.00) (the "Construction Impact Fee") payable to the Creston Property Owners' Association, Inc. This fee will be returned to the Owner minus a one thousand dollar (\$1,000.00) nonrefundable portion and less any expenses used to repair damage to Common Areas and/or noncompliance Site issues which are not repaired by the builder during construction. Said nonrefundable portion of the fee shall be credited to the Creston road reserve fund to help compensate for the added wear and tear imposed by heavy construction vehicles.
- (g) The Site Owner shall be liable for any damage to roadways within Creston that exceeds the received five thousand dollars (\$5,000.00) Construction Impact Fee.

Section 7. Liability.

Approval by the ARC shall not constitute a basis for any liability of the Association or any officer thereof as regards failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements.

Section 8. Owner's Responsibility.

It is the Site Owner's responsibility to advise their architect, landscape architect, builder, subcontractor, or any other design or building professional, or service provider of all Creston covenants and Design Guidelines.

ARTICLE VI - USE RESTRICTIONS

Section 1. Trees.

Trees and shrubs located within approved driveway and parking areas, and within fifteen (15) feet of a house perimeter can be relocated or removed.

Prior to any construction at a Site, the trees and shrubs not being removed from the approved building, driveway, paving area, and septic locations shall be completely cordoned off for full protection.

Trees, six (6) inches or more in diameter, measured at four (4) feet above the natural grade, shall not be cut down on a Site without written permission from the ARC. Native shrubs located outside the approved removal areas shall not be cut down. Should violations occur, the

Association/ARC and/or its agents may enter the property to determine the nature and extent of tree/shrub cutting/removal. The Owners shall be charged with a violation and fines imposed per Article IV, Assessments, Section 9 hereof. The fines will be used at the sole discretion of the Association and may pay for the proper replacement of trees and shrubs. The locations of the replanting are at the sole discretion of the Association/ARC and may not necessarily be on the Site where plants were removed or destroyed.

Unapproved felled trees cannot be removed from the place they have fallen due to the additional damage that will be sustained to surrounding trees and shrubs except by the prior written approval of the ARC/Association.

There may be no clear cutting of trees on any Site. When the general selection of trees on the Site are less than six (6) inches, the Owner may flag the trees that may be removed and contact the ARC or Association to make a determination as to the selection of thinning.

Pruning of native shrubs to a minimum of three (3) feet is allowed.

Contact the ARC/Association immediately if there is a tree that is posing a threat to life or a building. If the ARC/Association is contacted and there is no response within a reasonable time, the tree may be removed without written consent.

Section 2. Use of Buildings-Residential/Business/Community Building.

Sites shall be for residential purposes only and exclusively for the construction of single-family residences. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained on said sites, except for Declarant's right to construct and operate a sales office pursuant to Article VI, Section 12 hereof.

Except for "home occupations" as defined below, no commercial or industrial enterprise, undertaking or use is permitted within Creston, unless specifically shown on a recorded map or plat that has been signed by Declarant. If no such enterprise, undertaking or use is shown on a signed recorded map or plat, then no such enterprise undertaking or use is permitted. Notwithstanding the above, a "home occupation" on a Site is allowed wherein not more than 30% of the residence is dedicated to business use and there is no vehicular traffic generated by the business.

Section 3. Camping.

The Declarant or the Association may designate a specified area within Creston for RV sites and camper storage not to exceed twelve (12) acres in a suitable remote location. This area may be used by the Owners, their house guests, or employees of the Declarant, and for overnight use of prospective purchasers, as per the policies, rules and regulations set forth by the Declarant or the Association.

Section 4. Temporary Structures.

No structures of a temporary nature, including mobile homes, trailers, tents, shacks, playhouses, barns, detached carports, supply structures or other similar structures shall be erected or allowed anywhere within a home Site. Basements or partially completed single-family residences will be considered temporary and may not be inhabited.

Section 5. Off-Street Parking Space.

Each Cottage, Traditional and Homestead Site shall contain sufficient off-street parking space for at least two (2) automobiles. Subject to approval by the ARC, Cabin Sites may have one or more

approved off-street parking places.

Section 6. Motor Vehicles.

- (a) **Vehicles.** The Board shall have the power to place any reasonable restrictions upon the use of roadways. This includes but is not limited to the types and sizes of vehicles, including motor cycles, the maximum and minimum speeds of vehicles, all necessary traffic and parking regulations, and the maximum noise level of vehicles.
- (b) **Parking.** Motor Vehicles may be parked only in designated parking areas in accordance with the policies, rules and regulations of the Association. No stripped, partially wrecked, or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on any Site. All motor vehicles of any type kept on any Site shall be kept in good running repair and shall have current registration and inspection certificates. Repair of vehicles (other than emergency repair) is not permitted within the property. No vehicle of any type shall be parked on any street within Creston. No truck, van, heavy equipment or other vehicle in excess of a one-ton load capacity shall be parked or kept overnight or longer, on any Site.
- (c) **Recreational Vehicles, Campers, Boats.** Motor homes, campers, or boats may be stored on individual Sites as long as they are not visible from other Sites or the roads. Proper screening may be required by the ARC. Storage is only permitted after the primary residence is occupied.

Section 7. Outdoor Storage, Storage Tanks and Service Areas.

Outdoor storage and service areas must be provided by each Owner for refuse containers and all other garbage. Garbage containers must be animal proof. Storage/service area must be well maintained. Underground or above ground gasoline storage tanks are not permitted within Creston. Propane tanks must be underground.

Section 8. Other Personal Property.

All recreational equipment, outdoor artistic elements, yard ornaments, and other personal property, such as play structures, etc., shall be concealed by approved screening or so placed as not to be visible from other Sites or the road system. Exceptions shall be approved in writing by the ARC, its successor, or assigns.

Section 9. Mailboxes, Utilities Location and Outside Lighting.

No mail or newspaper box shall be located on any Sites except such receptacle as shall be the standard design or designs approved by the ARC. All dwelling connections for utilities including but not limited to water, electricity, telephone and television shall be located and run underground from the proper connecting points to the dwelling structure.

Automatic security lighting provided by the power company is prohibited. The Association has the right without trespass to remove such lights if installed. Exterior lights cannot be left on all night except for low voltage path/patio hooded lighting. All exterior lights must be shielded and/or directed in such a way as to prevent the light being visible from neighboring Sites, Common Areas or roadways.

Section 10. Good Order.

- (a) No Site shall be used in part for the storage of rubbish of any character whatsoever nor for the storage of any property or thing that will cause such Site to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Site that will emit foul or obnoxious odors, or that will cause any noise that will disturb the peace, quiet, comfort, or serenity of the

occupants of surrounding property. All lumber piles or building supplies shall be regularly used or removed and shall not be allowed to be accumulated, dumped or burned on any Site or Common Areas within Creston. Dumping of limbs, trees or other debris on adjacent property or unsold Sites, or Common Area is prohibited. The cost of any necessary cleanup as determined by the Board, will be payable as an Individual Site Assessment to the Site Owner.

- (b) If fire or other casualty damages or destroys a house or any other improvements on a Site, the Owner of that Site shall immediately proceed to rebuild and restore the improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the ARC. If such Owner refuses or fails to begin to repair and rebuild any and all damage within thirty (30) days or fails to continue such repair or restoration in an expeditious manner, the Association, by and through its Board, is hereby irrevocably authorized by such Owner to repair and rebuild any such improvement, the cost of which shall be charged to the Owner as an Individual Site Assessment. The Owner may elect to clean the Site of all remnants of damage or destruction, restore the Site to a natural condition with appropriate seeding or plantings in lieu of rebuilding.
- (c) If the ARC determines in its discretion that an Owner has failed to maintain that portion of his Site which is visible from the roadway, including improvements, in reasonable order and repair, free from debris, the Association, by a majority vote of the ARC and ten (10) days after notice to the Owner, shall have the right without liability to enter such Site to correct, repair, restore, and maintain any part of the Site and to have objectionable items removed. All costs related to such action shall be assessed to the Owner as an Individual Site Assessment.
- (d) In order to implement effective fire control and for trash or construction debris removal that is visible from the roadways within Creston, the Association and its agents shall have the right to enter upon any Site within Creston. Such entry may be deemed necessary in the sole opinion of the Association, for the above-described purposes. The cost of such maintenance and control shall be paid by the Owner of the Site as an Individual Site Assessment. Such entry for the aforesaid purposes shall not be deemed a trespass. The provisions of the paragraph shall not be construed as an affirmative obligation on the part of the Declarant or Association to provide the aforesaid maintenance and control services.
- (e) No noxious, offensive or illegal trade or activity shall be carried on upon any Site nor shall anything be done thereon tending to create danger, destroy or diminish the enjoyment, cause discomfort, annoyance, or nuisance to other Site Owners or the neighborhood. The Board has the right in its sole discretion to determine what constitutes a nuisance, and upon written notification from the Board the activity must immediately cease.
- (f) No farm animals, livestock or poultry of any kind shall be raised, bred or kept on any Site. Not more than four (4) dogs and cats may be kept by the homeowner as pets. It is further stipulated that such pets shall not cause a disturbance or annoyance, or constitute a danger or nuisance to other Owners, guests, or wildlife of Creston as determined by the Board at their sole discretion. Pets, when unattended, must be kept strictly within the boundaries of a Site Owner's property.
- (g) Whenever the Association is permitted by the covenants to correct, maintain, repair, clean, preserve, clear out or take any action on the property of any Owner or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

Section 11. Limitation.

The Association shall not have any authority to require any modification to the interiors of residences not visible from outside the building.

Section 12. Marketing and Maintenance Facilities.

It shall be expressly permissible for the Declarant or Declarant's agent to maintain a sales office and/or construction maintenance facility and storage area.

Section 13. Signage.

No signs shall be displayed for public view on any portion of Creston except as described in this section. One "For Sale" sign, no greater than five square feet, is permitted per Site. Site Owners may also place one sign identifying Owner or residence and street number within public view. Such signs must be no more than 1.5 square feet in size, and should be made of wood or other natural material and are subject to approval by the ARC. The Declarant, his agents, successors and assigns, shall be permitted to post directional and informational signs, as well as signs which are appropriate to its sales efforts. A general contractor may post a five square foot sign on the Site during home construction.

Section 14. Noise Pollution.

Discharge of firearms and operation of unmuffled vehicles or unmuffled gasoline engines of any kind are prohibited within Creston. No stereo system or other device shall be used in such a manner as to be a nuisance to Owners.

ARTICLE VII - EASEMENTS

Section 1. Utilities

- (a) **Common Area Utility Easements.** The Declarant or Association hereinafter may grant easements for utility purposes over, under, along and through the Common Areas for the benefit of Creston and the Sites now or hereafter located thereon.
- (b) **Site Utility Easements and Rights of Way.** Easements and rights of way over and upon each Site for drainage and the installation and maintenance of utilities and services are reserved exclusively to Declarant and/or Association for such purposes as Declarant and/or Association may deem incident and appropriate to its overall development plan. No action can be taken which would retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems.

Section 2. Streets.

Each Owner shall have an easement to use the streets and driveways within Creston. All police, fire, ambulance and other similar services shall have an easement to enter streets and the Common Areas in the performance of their duties.

Creston has a private road system. The Association does not have the right either now or in the future, except by consent of ninety (90) percent of the Site Owners, to dedicate roads to the North Carolina Department of Transportation. The Declarant has not prepared the roads to be turned over to the state.

ARTICLE VIII - COMMON AREA, LIMITED COMMON AREA

Section 1. Common Area.

That area designated as such on recorded plats or any subsequently recorded plats of Creston.

Section 2. Limited Common Areas.

- (a) Those areas designated on any recorded map or plat of Creston as "Residential Driveways" shall be for the limited use and enjoyment of the Sites adjacent to such areas. In certain designated instances other Owners may use these areas as connecting links for foot trails.
- (b) The Association may designate and limit the use, sale, transfer and attachment of portions of the Common Area through deed conveyance or other recordable document. The proper recording of any such limitation on the Common Area shall constitute a binding limitation on the designated Common Area. If any limitation so recorded is for the benefit of any particular Site, then such limitation cannot be subsequently changed or amended without the written consent of the Site Owner.

ARTICLE IX - MAINTENANCE

Section 1. Common Areas.

The Association shall maintain improvements, if any, upon the Common Areas, including, but not limited to planted materials, walks, roads, and parking areas. Painting and other maintenance and repair of improvements and equipment located on the Common Areas shall be done in a timely fashion. The Association shall also maintain all trails, Common Areas if any, located within any Conservation Easement in Creston in the same manner as Creston, subject to the terms and conditions of such Conservation Easement.

Section 2. Damage.

If any road or Common Areas or part thereof is damaged through the negligent or willful acts of any Owner, his family, guest or invitee, the cost of the necessary repair shall be assessed to that Owner as an Individual Site Assessment.

ARTICLE X - INSURANCE, CASUALTY

Section 1. Insurance.

- (a) **Insurance on Common Areas.** The Board shall obtain fire & casualty insurance for all Common Areas and improvements to cover the full replacement costs.
- (b) **Public Liability.** The Board will obtain public liability insurance in such limits as the Board from time to time determines, insuring against liability arising out of or incident to the use of the Common Areas. Such insurance shall be issued on a comprehensive liability basis and shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, Board or other Owners. The Board shall review limits of coverage every two years.

- (c) **Premiums.** The cost of all insurance referred to above, except coverage of Sites, shall be an Association expense and shall be included in the Annual General Assessment.

Section 2. Repair and Reconstruction after Fire or Other Casualty.

If fire or other casualty damages or destroys any of the improvements on the Common Areas, the Board shall arrange for and supervise the prompt repair and restoration of such improvements substantially in accordance with the plans and specifications under which the improvements were originally constructed, or any modification approved by the Association. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessment that may be necessary after exhaustion of insurance and reserves.

ARTICLE XI - GENERAL PROVISIONS

Section 1. Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any provision shall not be deemed a waiver of the right to do so thereafter. If the Association fails or refuses to enforce any of its rights under this Declaration, including without limitation the right to require all Owners to keep their Sites in good order and repair, the Declarant shall have the right but not the obligation to act on behalf of the Association and shall have all rights and remedies permitted the Association, including but not limited to the right to assess any Owner for the Declarant's costs and to secure that charge in the same manner as an Individual Site Assessment. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Association or the Declarant in the enforcement of any of the provisions of this Declaration, regardless of whether such enforcement requires judicial action, shall be assessed as an Individual Site Assessment to the Owner against whom such action was taken.

Section 2. Responsibility for Others.

Owners of a Site are obligated to assume the responsibility that any and all dependents, guests, workers, tenants, and contractors working for the Site Owner observe and maintain all the policies, rules, regulations, covenants and restrictions binding the Site Owners themselves.

Section 3. Amendment.

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument approved by the then-Owners holding seventy-five (75%) percent of the voting power in the Association shall have been recorded, agreeing to terminate all of said provisions as of a specific date, which shall be not earlier than the expiration of an extended term of one (1) year from the date of such recording. Unless this Declaration is so terminated, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under North Carolina law to preserve its effect. This Declaration may be amended at any time by an instrument in writing approved by Owners holding two-thirds of the total voting power of the Association, which amendment shall become effective upon recordation in the public records of McDowell County, North Carolina; provided, however:

- (a) As long as Declarant is an Owner of any unsold Site, no amendment shall become effective without the written consent of Declarant, and
- (b) No amendment may modify rights of the Association without its written consent.

Section 4. [Reserved].

Section 5. Assignability of Rights and Liabilities.

Declarant shall have the right to sell, lease, transfer, assign, license and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Declarant in no way shall be liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of same in any manner.

Section 6. Action Without Meeting: Telephone Conferences.

Any action required under this Declaration to be taken by vote or assent of the Members may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the Membership. Any action so approved shall have the same effect as though taken at a meeting of the Members and such approval shall be duly filed in the minutes book of the Association. Members present by telephone conference shall be considered as present at a meeting for the purposes of a quorum and may vote in any matter presented for a vote of the Membership.

Section 7. Limited Liability.

In connection with all reviews, acceptances, inspections, consents or approvals by or from the Declarant or Association made under this Declaration, the Declarant or Association shall not be liable to an Owner or to any other person. This covers any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or other person and arising out of or in any way relating to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, withheld or granted.

Section 8. Liberal Construction.

The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a subdivision of fee simple ownership of Sites and Common Areas governed and controlled by policies, rules, regulations, restrictions, covenants, conditions, reservations and easements administered by the Association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

Section 9. Interpretation.

The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provision, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration shall be given that interpretation or construction that will tend toward the consummation of the general plan of development at Creston.

Section 10. Variances.

The Board of Directors in its discretion may allow reasonable variances and adjustments of these restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a subdivision of Sites owned in fee simple by various persons, with each Owner having an easement upon areas owned by the Association. To be effective, a variance hereunder shall be recorded in the McDowell County Register of Deeds Office; shall be executed on behalf of the

Association; and shall refer specifically to this Declaration.

Section 11. Waiver.

No provision contained in this Declaration, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

Section 12. Captions: Gender and Number.

As used herein, the singular shall include the plural, wherever the context so requires, and necessary grammatical changes required to make the provisions of this Declaration apply either to individuals, corporations or other entities, masculine or feminine, shall in all cases be assumed as though each case fully expressed. The captions associated with the various Articles of this Declaration are for convenience of reference only, and shall not be used as an aid in interpretation or construction of this Declaration. Where there is more than one Owner of a Site, said Owners are jointly and severally liable for the obligations herein imposed.

Section 13. Notices.

Any notice required to be sent to the Owner of any Site under the provisions of this Declaration shall be deemed to have been properly sent when mailed using the US Postal Service, emailed with copies filed with the Board, or hand delivered to the Site and if different, to the last known address of the person who appears as Owner of such Site as that address is stated on the records of the Association at the time of such mailing.

Section 14. Severability.

Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over any of the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and shall remain in full force and effect.

Section 15. Amendments.

This Declaration may be amended only by affirmative vote or written agreement signed by Owners of Sites to which sixty-seven percent (67%) of the votes in the Association are allocated.

Section 16. Water and Sewer Systems.

- (a) Declarant reserves the right, but not the obligation, to construct a community water system to serve all or a portion of the Owners of Sites within Creston. Furthermore, Declarant reserves the right to transfer said water system to any designated party, including the Association, and in the event that a transfer to the Association occurs, the Association shall henceforth be responsible for the monitoring, maintenance, repair and improvement of said system.
- (b) In the event a community well(s) is drilled to service a group of cabins, there will be a connection fee in addition to the Site purchase price in the amount of \$3,500.00. Such water service will be extended to the property line of the affected Cabin Sites in a practical location and it will be the Cabin Site Owners' responsibility to connect the water line from that point to such Owner's cabin. The electric bill for this well(s) will be paid pro rata by the number of cabins serviced by such well, unless otherwise agreed to in writing by all such Owners. All Cabin Sites are subject to an easement

- across them for installation of a central water line to serve certain Cabin Sites.
- (c) It may be necessary or desirable to install a common drain field for two or more cabins. In this event each cabin will still have its own standard approved septic tank for their individual use. In the event of a common drain field for two or more cabins, each Cabin Site Owner agrees to execute such easements as may be necessary to document the shared arrangement as agreed upon by all affected Cabin Site Owners.

Section 17. Leasing or Renting.

- (a) An Owner of a Cottage Site, Traditional Site or Homestead Site may lease or rent the residence owned by such Owner, provided, however, that the tenant or lessee shall be bound by all covenants and restrictions contained herein. At no time may such a Site Owner lease or rent a portion of the residence unless the entire residence is leased or rented. The said rental period shall be for no less than seven (7) days. However, none of the above rental lease or rental restrictions shall apply if the tenant is an Owner of another Site in Creston.
- (b) If an Owner of a Cabin Site rents or leases a cabin, there shall be a minimum three (3) night rental of any Cabin Site if to a member of the general public. If such rental is to another Owner there are no time restrictions on the length of required rental. The maximum number of guests per cabin is four (4). Tenants of any Cabin Site shall not have the right to use the Creston Community Center or gazebo unless accompanied by the Owner of the Cabin Site they have rented. Tenants of Cabin Sites shall have the right to use the Creston trail system.

CRESTON PROPERTY OWNERS'
ASSOCIATION, INC.

By: Claudia Brasch
Claudia Brasch, President

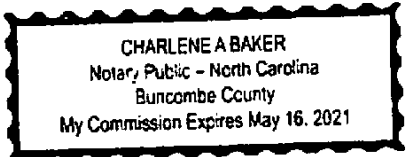
CRESTON DEVELOPMENT, LLC

By: John T. Nelson
John T. Nelson, Manager

STATE OF NORTH CAROLINA
COUNTY OF Buncombe :

I, Charlene A. Baker, a Notary Public of the County and State aforesaid, certify that Claudia Brasch personally appeared before me this day and acknowledged that she is President of CRESTON PROPERTY OWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation, and that the foregoing instrument was signed in its name by herself as its President.

Witness my hand and official stamp and seal, this 5 day of Feb, 2019.



[SEAL]

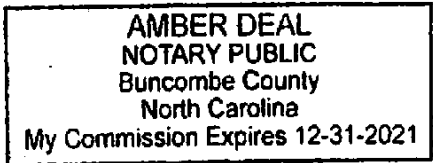
Charlene A Baker
Notary Public

My Commission Expires: 5-16-2021

STATE OF NORTH CAROLINA
COUNTY OF Buncombe :

I, Amber Deal, a Notary Public of the County and State aforesaid, certify that John T. Nelson personally appeared before me this day and acknowledged that he is Manager of CRESTON DEVELOPMENT, LLC, a North Carolina limited liability company, and that the foregoing instrument was signed in its name by himself as its Manager.

Witness my hand and official stamp and seal, this 26th day of February, 2019.



[SEAL]

Amber Deal
Notary Public

My Commission Expires: 12-31-2021

EXHIBIT "A"

BEING a tract of land containing 716.46 acres, more or less, as shown on the unrecorded plat of survey prepared by Professional Surveying Services, 218 N. Main Street, Rutherfordton, NC 28139, dated March 14, 1992, and identified as Map #17573B. Said parcel is bounded on the North by lands now or formerly owned by Dan W. Adams, Jr., et als (see Deed book 371, Page 348), on the Northeast by John W. Harlee, Jr. (see Deed Book 182, Page 462), on the East by Von Lee Burgin (Deed Book 228, Page 407), Raymond Allison (see Deed Book 224, Page 534), on the Southeast by Max Garrison (see Deed Book 206, Page 560), on the South by Grace P. Burgin (see Deed Book 297, Page 784), and Roy H. Moore (see Deed Book 191, Page 91), and on the West by Warren Hardy (see Deed Book 165, Page 291) and Phillip Pitts (see Deed Book 154, Page 433). The following metes and bounds description is taken from said unrecorded plat:

BEGINNING at an existing iron pin located at the end of a pointed line located in the line of lands now or formerly owned by Dan W. Adams, Jr., et als. (See Deed Book 371, Page 348), said existing iron pin being further located South $65^{\circ} 21' 56''$ West 4630.82 feet from an existing rock corner on North side of Edmonson Mountain; and running thence from said beginning point with the old marked line, crossing the point of ridge above Sank Gap, and with the line of lands now or formerly owned by John W. Harlee, Jr. (see Deed Book 182, Page 462), South $31^{\circ} 58' 22''$ East 3251.71 feet to an NIP at existing rock pile corner on the North side of ridge; thence leaving the line of Harlee, and running with the line of lands now or formerly owned by Von Lee Burgin (see Deed Book 228, Page 407), and the line of lands now or formerly owned by Raymond Allison (see Deed Book 224, Page 534), South $59^{\circ} 04' 59''$ West 1954.07 feet to an NIP at marked poplar on ridge; thence still continuing with the line of Allison, South $66^{\circ} 27' 17''$ East 687.36 feet to an established iron pin near the top of the ridge covered with ivy; thence leaving the line of Allison, and running with the line of lands now or formerly owned by Max Garrison (see Deed Book 206, Page 560) and with the old marked line, North $85^{\circ} 25' 25''$ West 1203.21 feet to an existing rock corner and established iron pin in old road bed; thence still continuing with the line of Garrison, and the old marked line, South $04^{\circ} 57' 34''$ West 2897.66 feet to an NIP in center of the old road bed at the existing corner witnesses; thence with the centerline of the 25-foot wide right-of-way (see Deed Book 206, Page 560), the following courses and distances:

North $55^{\circ} 02' 12''$ West 156.51 feet, North $46^{\circ} 04' 55''$ West 73.06 feet,
North $65^{\circ} 37' 31''$ West 98.78 feet, South $69^{\circ} 09' 28''$ West 52.97 feet,
South $21^{\circ} 28' 14''$ West 52.86 feet, South $1^{\circ} 50' 59''$ West 159.76 feet,
South $21^{\circ} 15' 38''$ East 74.46 feet, South $50^{\circ} 57' 49''$ East 65.14 feet,
South $27^{\circ} 17' 29''$ East 131.48 feet, South $69^{\circ} 01' 16''$ East 202.29 feet,
South $48^{\circ} 03' 51''$ East 49.16 feet, South $24^{\circ} 27' 51''$ East 139.69 feet,
South $05^{\circ} 07' 31''$ West 39.98 feet, South $42^{\circ} 19' 58''$ West 87.12 feet,
South $62^{\circ} 58' 10''$ West 89.51 feet, South $76^{\circ} 23' 36''$ West 50.25 feet,
North $70^{\circ} 13' 23''$ West 52.50 feet, North $53^{\circ} 44' 16''$ West 103.18 feet,
North $41^{\circ} 42' 21''$ West 96.95 feet, North $80^{\circ} 15' 36''$ West 44.39 feet,
South $63^{\circ} 37' 57''$ West 55.26 feet, South $24^{\circ} 07' 40''$ West 45.25 feet,
South $22^{\circ} 29' 33''$ East 202.12 feet, South $36^{\circ} 34' 38''$ East 101.08 feet,
South $43^{\circ} 10' 26''$ East 193.04 feet to an existing railroad spike set in the centerline of State Road 1100, known as Big Hill Road, and the terminus of the 25-foot right-of-way, said railroad spike is located South $71^{\circ} 17' 30''$ East 53.02 feet from the North end of C.S. culvert and South $76^{\circ} 05' 57''$ East 81.86 feet from the concrete right-of-way monument on the North side of the road; thence with the centerline of State Road 1100, (Big Hill Road), the following courses and distances:
South $83^{\circ} 00' 13''$ West 189.06 feet, North $79^{\circ} 51' 23''$ West 93.64 feet,
North $52^{\circ} 59' 06''$ West 76.51 feet, North $41^{\circ} 37' 10''$ West 237.13 feet,
North $52^{\circ} 37' 32''$ West 39.81 feet, North $59^{\circ} 08' 29''$ West 27.04 feet,

North 64° 29' 54" West 28.79 feet, North 69° 56' 20" West 26.49 feet, North 73° 59' 55" West 27.72 feet, North 76° 35' 56" West 36.80 feet, North 78° 32' 25" West 64.29 feet, North 79° 02' 15" West 22.60 feet, North 79° 20' 01" West 47.14 feet to a point in State road 1100, known as Big Hill Road, said point being located South 78° 30' 06" East 703.97 feet from an NIP in the centerline of the bridge crossing over Crooked Creek; thence leaving Big Hill Road, and with the line of lands now or formerly owned by James Allred (see Deed Book 100, Page 529), North 05° 50' 24" East 42.67 feet to an existing rock corner; thence North 04° 28' 01" East 716.74 feet to an existing rock corner on ridge, a common corner with the lands now or formerly owned by Grace P. Burgin (Deed Book 297, Page 784) and James Allred (Deed Book 100, Page 529); thence leaving the line of Allred, and running with the line of Burgin, North 04° 23' 39" East 876.97 feet to an NIP at existing rock corner; thence North 04° 54' 26" East 90.14 feet to an NIP at existing rock corner; thence still continuing with the line of Burgin, North 84° 37' 26" West 3248.65 feet to an NIP set at existing rock corner, South side of logging road at oak witness; a common corner with Moore; thence leaving the line of Burgin, and running with the line of lands now or formerly owned by Roy H. Moore (Deed Book 191, Page 91), South 89° 35' 46" West 632.08 feet to an existing iron pin at the fence on the East side of the ridge; thence continuing with the line of Moore, North 14° 38' 27" East 310.38 feet to an established iron pin, and North 75° 49' 03" West 14.73 feet to a point in the center of a private road; thence with the center of the private road (see easement granted in Deed Book 191, Page 91), the following courses and distances:

North 75° 49' 03" West 32.42 feet, South 21° 09' 05" West 94.02 feet, South 47° 10' 34" West 33.17 feet, North 81° 25' 46" West 35.89 feet, North 54° 27' 56" West 41.91 feet, North 58° 34' 28" West 62.32 feet, North 66° 37' 00" West 50.54 feet, South 61° 08' 51" West 57.61 feet, South 50° 09' 41" West 72.94 feet, South 71° 50' 09" West 53.89 feet, North 82° 43' 41" West 75.00 feet, North 46° 22' 03" West 63.46 feet, North 40° 16' 46" West 54.21 feet, North 84° 56' 40" West 74.20 feet, South 55° 45' West 68.81 feet, South 02° 10' 53" West 77.49 feet, South 33° 26' 05" East 85.97 feet, South 48° 37' 25" East 109.64 feet, South 17° 39' 55" East 47.79 feet, South 13° 49' 37" East 95.77 feet, South 07° 19' 51" West 103.58 feet, South 24° 41' 48" West 34.60 feet, South 51° 51' 14" West 133.34 feet, South 41° 04' 50" West 51.70 feet, South 23° 41' 36" West 118.94 feet, South 31° 46' 44" West 164.80 feet, South 80° 01' 12" West 82.98 feet, North 67° 21' 02" West 118.21 feet, South 72° 30' 08" West 85.95 feet, North 85° 20' 41" West 38.96 feet, North 73° 03' 48" West 49.94 feet, North 61° 17' 33" West 46.40 feet, North 53° 35' 20" West 48.48 feet, North 72° 49' 56" West 39.26 feet, North 87° 22' 22" West 92.12 feet, North 77° 17' 52" West 38.90 feet, North 69° 09' 40" West 190.59 feet to the point of intersection with the centerline of State Road 1100, known as Big Hill Road; thence with the center of State Road 1100, Big Hill Road, the following courses and distances:

South 50° 03' 50" West 34.44 feet, North 84° 05' 54" West 28.79 feet, South 76° 38' 47" West 34.44 feet, South 73° 09' 33" West 28.97 feet, North 88° 47' 47" West 32.60 feet, North 73° 35' 52" West 34.02 feet, North 48° 40' 38" West 33.13 feet, North 47° 11' 56" West 44.26 feet, North 57° 36' 43" West 34.12 feet, North 71° 25' 13" West 39.33 feet, South 74° 54' 44" West 28.54 feet, South 61° 42' 36" West 39.41 feet, South 68° 46' 32" West 41.47 feet, South 81° 35' 37" West 55.16 feet, South 85° 32' 30" West 63.87 feet, South 88° 47' 57" West 92.84 feet, South 85° 30' 09" West 49.50 feet, South 74° 20' 27" West 35.20 feet, South 63° 51' 18" West 37.73 feet, and South 51° 07' 59" West 86.07 feet to an established iron pin

at the base of a large oak on the South edge of Big Hill Road; thence leaving the road, North 06° 35' 07" East 430.69 feet to an NIP on old ridge road; thence with the centerline of Ridge Road (an old logging road), the following courses and distances:

North 72° 03' 28" East 202.00 feet, North 68° 14' 50" East 97.51 feet,
North 10° 41' 25" East 99.70 feet, North 53° 18' 50" East 46.38 feet,
North 73° 04' 47" East 129.75 feet, North 48° 03' 52" East 117.52 feet,
North 57° 15' 05" East 59.91 feet, North 86° 07' 38" East 170.58 feet,
North 34° 39' 17" East 135.91 feet, North 56° 35' 31" East 79.84 feet,
North 54° 52' 65" East 122.57 feet, North 68° 07' 39" East 61.14 feet,
North 56° 34' 53" East 59.45 feet, North 48° 12' 37" East 133.79 feet,
North 64° 20' 18" East 111.77 feet, South 82° 42' 28" East 117.53 feet,
North 76° 23' 40" East 190.86 feet, North 57° 09' 30" East 65.27 feet,
North 59° 07' 22" East 164.51 feet, North 71° 32' 48" East 95.43 feet to an established iron pin 6-
feet off the center of the road bed; thence leaving the old logging road and running with the line of
lands now or formerly owned by Warren Hardy (See Deed Book 165, Page 291 and Map Book 2,
Page 61), North 05° 27' 47" East 2959.48 feet to an existing axle in large oak stump, and Southwest
83 feet from the intersection of branches; thence leaving the line of Hardy, and running with the line
of Phillip Pitts (See Deed Book 154, Page 433), North 03° 55' 03" East 1009.76 feet to an NIP at an
existing chestnut stake, old corner at an existing blackgum witness; thence leaving the line of Pitts,
and running with the line of lands now or formerly owned by Dan W. Adams, Jr., et al. (Deed Book
371, Page 348), South 77° 28' 04" East 2596.99 feet to an NIP on sharp ridge; thence North 65° 21'
56" East 2558.45 feet to the point and place of BEGINNING;

SUBJECT TO the easement of Roy H. Moore which is recorded in Deed Book 191, Page 91 to use
the roadway from Big Hill Road to his property as said roadway is now laid out and in use;

AND BEING a portion of the property described and conveyed by deed dated July 2, 2002 from
Gilkey Lumber Company, Inc. to Catawba Mountain, LLC, which appears of record in Deed Book
690, Page 162, McDowell County Deed Registry, AND FURTHER BEING described and
conveyed by deed dated February 25, 2003 from Catawba Mountain, LLC to Creston Development,
LLC, which appears of record in Deed Book 719, Page 764 McDowell County Deed Registry; and

BEING a portion of that property described in a deed dated May 28, 2001 from Daniel W. Adams,
IV, and wife, Jean Adams and Sheila R. Adams to June Carol Adams, and recorded in Book 649,
Page 502, McDowell County Deed Registry, ALSO BEING the same property as conveyed by deed
dated August 27, 2003 from June Carol Adams to Creston Development, LLC, which appears of
record in Book 747, Page 844, McDowell County Deed Registry; and

BEING a portion of that property described in a deed from Daniel W. Adams, IV, and wife, Jean
Adams to Creston Reserve, LLC, recorded in Book 744, Page 241 McDowell County Deed
Registry, ALSO BEING the same property as conveyed by deed dated July 18, 2005 from Creston
Reserve, LLC to Creston Development, LLC, which appears of record in Book 832, Page 614,
McDowell County Deed Registry; and

BEING a parcel of land containing 44.77 acres and identified as Tract I, Tract II and Tract III as
shown on a plat recorded in Map Book 19, Page 93, McDowell County Registry, ALSO BEING the
same property as conveyed by deed dated December 22, 2010 from Nada C. Carroll and husband,
Charles H. Carroll to Creston Development, LLC, which appears of record in Book 1036, Page 135,
McDowell County Deed Registry; provided that a 10 acre portion of such property was sold back to
Nada C. Carroll and husband, Charles H. Carroll by Creston Development, LLC in a deed dated
December 29, 2010, which appears of record in Book 1036, Page 150, McDowell County Deed

Registry. These 10 acres were subjected to the Creston Covenants, Conditions and Restrictions by the Twelfth Amendment duly filed in Book 1036 Page 142, McDowell County Deed Registry. The Association and the Declarant, agree until such time as the Carrolls, or their successors, decide to construct any improvements on the 10 acre tract, the property will be treated by the Association as open space, and therefore no Assessments of any type or character will be due from the Carrolls or their successors in title as long as the property is treated as open space. Should the Carrolls or their successors in title decide to construct any improvements on the property at any time, it will be considered a Cottage Site for purposes of Assessments, and will be subject to the restrictions, including obligations to pay any Assessments due after the beginning of construction of improvements on the 10 acre Site, and including any and all restrictions regarding approval of proposed improvements that are imposed upon Owners of Sites in Creston; and

THE CABINS AT CRESTON are a portion of the property described and conveyed by deed dated July 2, 2002 from Gilkey Lumber Company, Inc. to Catawba Mountain, LLC, which appears of record in Deed Book 690, Page 162, McDowell County Deed Registry, AND FURTHER BEING A PORTION OF THAT PROPERTY described and conveyed by the following deeds: a deed dated February 25, 2003 from Catawba Mountain, LLC to Creston Development, LLC, which appears of record in Deed Book 719, Page 764, McDowell County Deed Registry; a deed dated January 21, 2004 from Daniel W. Adams, IV and wife, Jean Adams to Creston Development, LLC, which appears of record in Book 767, Page 200, McDowell County Deed Registry and corrects the legal description originally contained in the deed dated August 6, 2003 from Daniel W. Adams, IV and wife, Jean Adams to Creston Development, LLC in Deed Book 744, Page 243, McDowell County Deed Registry; a deed dated January 23, 2004 from Creston Reserve, LLC to Creston Development, LLC, which appears of record in Deed Book 767, Page 205, McDowell County Deed Registry. ALL AS SHOWN in that certain unrecorded plat prepared by R.L. Greene Surveying, Professional Land Surveyors, dated May 27, 2003, bearing the Notation 2-059CC, reference to said plat being made for further description.