

2004003150
MCDOWELL CO, NC FEE \$71.00
PRESENTED & RECORDED:
04-30-2004 04:58:27 PM
Patricia A. Reel
REGISTER OF DEEDS
BY: TONIA R HAMPTON
DEPUTY REGISTER OF DEEDS
BK:CRP 779
PG:55-74

3

Prepared By:
Hirschler Fleischer P.C.
P.O. Box 500
Richmond, VA 23218-0500
(804) 771-9500

~~Prepared by/Return to:~~
Steven T. Aceto, P.A.
181 Charlotte Street
Asheville, NC 28801

SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
CATAWBA FALLS PRESERVE COMMUNITY ASSOCIATION

THIS SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is between CATAWBA FALLS LLC, a North Carolina limited liability company ("Declarant"), and CATAWBA FALLS PRESERVE COMMUNITY ASSOCIATION ("Association") and all parties subsequently acquiring any of the properties subject to this Declaration as described below. For valuable consideration, the receipt and legal sufficiency of which is acknowledged by signatures below, it is agreed:

1. Purpose of this Declaration. Declarant is the owner or developer of all lots within a subdivision in McDowell County, North Carolina, known as Catawba Falls Preserve. Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the subdivision, and for the continued maintenance and operation of roads, trails, and any other recreational and/or common areas. Declarant agrees with all parties acquiring any of the property described below that it is subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to its use and occupancy, to be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the Properties and which shall

20

CRP 779 56

inure to the benefit of each Owner. This instrument is a second amendment and restatement in full of the Declaration of Covenants, Conditions, and Restrictions of ~~restatement in full of the Declaration of Covenants, Conditions, and Restrictions of~~ Catawba Falls Community Association recorded November 8, 2002, in the McDowell County Registry, in Deed Book 706 page 681, and amended and restated in Amended and Restated Declaration of Covenants, Conditions and Restrictions of Catawba Falls Preserve Community Association, dated February 11, 2003, and recorded in the McDowell County Registry, in Deed Book 717 page 838. In the case of any conflict between the previously recorded Declaration and this instrument, this instrument shall control. This Declaration shall be effective upon recordation.

2. Properties Subject to this Declaration. The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in McDowell County, North Carolina, and is more particularly described as being all of that property shown on plat maps of the Catawba Falls LLC property recorded in Map Book 9, Pages 37 to 39 inclusive, McDowell County Registry, and as described in any plats subsequently recorded in the McDowell County Registry by Declarant and identified as part of Catawba Falls Preserve subdivision, plus all the utility and access easements as shown on the plat maps or otherwise referenced in this Declaration, less and except that certain parcel of land containing 14.27 acres located along the western boundary of Map Book 9, Pages 37 to 39 and bound on the west by the properties designated on the plat as PIN 0637-00-09-3225 Bonnie Sherrill and PIN 0638-00-02-4392 William O. Perry and Sandra D. Perry. Declarant retains the right to subject to this Declaration, by annexation according to its terms, any additional lands contiguous to the Properties at any time, by recording an instrument to that effect in the McDowell County Register of Deeds, with result that such lands are automatically added to the Properties as if originally included in this Declaration. By the execution and recordation of this Declaration, Declarant subjects the Properties to this Declaration and the jurisdiction of the Association.

3. Definitions.

(a) "Architectural Review Committee" means the Architectural Review Committee of the Association.

(b) "Areas of Common Responsibility" means the Common Areas together with those areas which by supplemental declaration or contract become the responsibility of the Association whether or not owned by the Association.

(c) "Articles" means the Articles of Incorporation of the Association, as recorded in the McDowell County Registry as an attachment to this Declaration, and as lawfully amended.

CRP 779 57

(d) "Association" means the Catawba Falls Preserve Community Association, a North Carolina Non-Profit Corporation, its successors and Association, a North Carolina Non-Profit Corporation, its successors and assigns.

(e) "Board" means the Board of Directors of the Association.

(f) "Bylaws" means the Bylaws of Catawba Falls Preserve Community Association, as attached to the Articles as an exhibit, and as lawfully amended.

(g) "Common Areas" means those areas designated by Declarant for the common use and enjoyment of the Owners on recorded plat maps of The Catawba Falls Preserve or other instruments executed by Declarant and recorded in the McDowell County Registry, regardless of whether the Association has fee title or an easement over such areas. Common Areas specifically include, but are not limited to, areas designated as "Common Area" or "20' Drive Easement" on the plat maps of The Catawba Falls Preserve recorded by Declarant, private streets and trails, utility, drainage and recreation easements and stream buffers as shown on the recorded plats.

(h) "Common Expense" means:

(i) Expenses of the Common Areas and Areas of Common Responsibility, including administration, maintenance, repair, or replacement of the Common Areas and Areas of Common Responsibility;

(ii) Expenses of administration of the Association itself;

(iii) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(iv) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;

(v) Ad valorem taxes and public assessment charges lawfully levied against Common Areas;

(vi) In addition, any expenses agreed to by majority vote of the Members to be common expenses of the Association.

(i) "Declarant" means Catawba Falls LLC, a North Carolina limited liability company, and its lawful corporate successors or assignees as

Declarant.

CRP 779 58

(j) "Lot" means any numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Areas.

(k) "Member" and "Membership" means and refers to the Members of the Association;

(l) "Owner" means 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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(m) "Properties" means the property and additions described in Section 2 above.

(n) "Stable Facility" means certain real property and the improvements and facilities thereon located in the Properties which are presently owned and operated by persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and shall include, without limitation, the Catawba Falls Stable Club or any other similar facility.

4. Property Rights.

(a) Title to the Common Areas. Upon the recordation by Declarant of a subdivision plat, the Association shall have a non-exclusive easement over all Common Areas and shall have an obligation to maintain the Common Areas and any Areas of Common Responsibility. Declarant covenants for itself, its successors and assigns that it will convey fee simple title to the Common Areas to the Association, and, subject to the terms of this Declaration, free and clear of all encumbrances and liens except utility and storm drainage easements, within a reasonable time after recordation of this Declaration.

(b) Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Areas for access, ingress and egress from and to public streets, walkways and parking areas; and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this Declaration including the following:

(i) the right of the Association, by Board action in

CRP 779 59

accordance with the Articles and Bylaws, to suspend the voting rights of an Owner for any period during which any assessment rights of an Owner for any period during which any assessment against their Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(ii) the right of the Association, by Board action in accordance with the Articles, Bylaws, and applicable law to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Board;

(iii) the right of the Association, by Board action in accordance with the Articles, Bylaws and applicable law, to borrow money and grant security interests for the purpose of improving the Common Areas and facilities;

(iv) the right of the Association, by Board action in accordance with the Articles and Bylaws, to adopt, publish and enforce rules and regulations as provided in this Declaration; and

(v) the right of the Declarant or the Association to create and maintain a Stable Facility on a portion of the Common Area and the right of Declarant to establish and transfer hiking and equestrian easements over the hiking and equestrian trails as provided in Paragraph 26(d) below.

(c) Delegation of Use. Any Owner may delegate, for use in accordance with this Declaration, his right of enjoyment in the Common Areas and facilities to the members of the Owner's family, tenants, or contract purchasers who reside on the property.

(d) Vehicles and Parking. The Association, by Board action in accordance with the Articles and Bylaws may, but shall not be required to, regulate the operation, use, and parking of vehicles, boats, trailers and other such items on the Common Areas.

(e) TV Antennas and Cable Service. The Association may supply cable service or then current technology equivalent, and the cost of this service may be included in annual or special assessments.

(f) Stable Facility on Common Areas. Declarant reserves the right, for itself and the Association, or either of them, to use or to lease or convey a portion of the Common Area to an entity for the purpose of constructing, operating, maintaining and reconstructing the Stable Facility.

CRP 779 60

The Declarant may create a separate entity to own, lease or operate the Stable Facility, provided that the use of the Stable Facility shall be limited to Stable Facility, provided that the use of the Stable Facility shall be limited to Owners, the Declarant, and the Declarant's designees and the Owners' and Declarant's respective guests. The Owners, by virtue of owning a Lot, shall have no automatic right to own the Stable Facility or own a membership interest in the Stable Facility. The Stable Facility shall adopt rules by which Owners are entitled to participate in the Stable Facility.

5. Membership and Voting Rights.

(a) 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.

(b) The Association shall have two classes of voting membership:

(i) Class A. Class A Members shall be all Owners with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is prohibited.

(ii) Class B. Declarant shall be a Class B Member and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest to occur of the following events:

(1) when the total votes outstanding in the Class A membership equal four (4) times the total vote outstanding in the Class B membership; or

(2) on December 31, 2012; or

(3) upon the surrender of all Class B membership to the Association.

6. Creation of the Lien and Personal Obligation of Assessments. Each Owner by acceptance of a deed for a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as provided in this Declaration. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the

CRP 779 61

property against which each assessment is made. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owners of the property effective from the time the assessment falls due. The personal obligation for assessments which are delinquent at the time a Lot is transferred shall not pass to successors in title unless expressly assumed by them. All assessments relating to Common Areas shall be shared equally by the Owners of each Lot if owned as tenants in common, otherwise jointly and severally.

7. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Areas and Areas of Common Responsibility, including the maintenance, repair and reconstruction of private streets, trails, walks and parking areas, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance. Assessments shall also be used to improve the use and enjoyment of the Common Areas and Areas of Common Responsibility, including but not limited to the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Areas and Areas of Common Responsibility, the cost of compliance with governmental regulations applicable to the use and maintenance of the Common Areas and Areas of Common Responsibility, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, signs, paving, grading, landscaping and any other major expense for which the Association is responsible, and such other needs as may arise.

8. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Areas of Common Responsibility. The reserve fund is to be established out of regular assessments for Common Expense.

9. Maximum Annual Assessment.

(a) The maximum annual assessment may be increased by the Board effective January 1 of each year, without a vote of the Membership, by up to ten percent (10%) of the previous year's assessment.

(b) The maximum annual assessment may be increased above the amount permitted in Section 9(a) above by a vote of sixty-seven percent (67%) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

CRP 779 62

(c) These limitations shall not apply to any change in the amount or basis of the assessments undertaken incident to a merger or consolidation in basis of the assessments undertaken incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) The Board of Directors may at any time reduce or fix the annual assessment at an amount not in excess of the maximum.

10. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas or Areas of Common Responsibility, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

11. Notice and Quorum for Membership Approval of Assessments. Written notice of any meeting called for the purpose of taking any action regarding annual or special assessments for which Membership approval is required shall be sent to all Members in accordance with the Bylaws not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of 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 fifty percent (50%) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

12. Uniform Rate of Assessment. Both annual and special assessments shall, except as may otherwise be specifically provided in this Declaration, be fixed at a uniform rate for all Lots and shall be collected on a regular basis as determined by the Board, but not less than annually. Provided, however, that the regular assessment for Lots owned by Declarant which are not occupied as a residence may be any lesser amount as fixed by the Board.

13. Date of Commencement of Annual Assessments; Due Dates. The annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot by Declarant. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. The due dates shall be established by the Board, and may be required to be paid ratably on a monthly basis if the Board so determines. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the

CRP 779 63

assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment as stated.
conclusive evidence of payment as stated.

14. Effect of Nonpayment of Assessments; Remedies of the Association.
Any assessments which are not paid when due shall be delinquent. The Board shall have the right to accelerate the balance of any unpaid assessment if any installment shall become more than thirty (30) days delinquent. The assessment shall bear interest from the due date at the rate established by the Board, or if not set by the Board, at the highest rate allowed by law, together with such late fees as may be set by the Board. The Association may file a lien of record against any lot where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the office of the Clerk of Superior Court of McDowell County pursuant to Article 3 of Chapter 47F of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by the non-use of the Common Area or abandonment of his dwelling unit or site.

The Association may bring an action at law against the Owner personally obligated to pay any assessments and interest. Costs and reasonable attorney's fees for the prosecution of any such action shall be added to the amount of such assessment. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

The Association's lien may be foreclosed in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. All fees, charges, late charges, fines, and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The registered agent of the Association shall be the trustee for all purposes of the foreclosure proceeding and the Association shall have the power to appoint a substitute trustee if for any reason the Association desires to replace the trustee, and the said substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the land subject to the lien at public auction for cash, in compliance with all the laws governing such sale and conveyance in Chapter 45. The trustee may retain an attorney to represent him in such proceedings. The proceeds of the sale shall, after the trustee retains his commission and any additional attorney's fees incurred by the trustee, be distributed in accordance with Chapter 45.

CRP 779 64

15. Subordination of the Lien to Mortgages. The lien of the assessments shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure shall extinguish the lien of assessments as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Lot from liability for any assessments becoming due subsequent to the sale.

16. Exempt Property. Any portion of the Properties dedicated to, and accepted by, a governmental authority, and any portion of the Properties owned by a charitable or nonprofit organization exempt from taxation under the laws of the State of North Carolina, shall be exempt from assessment to the extent the McDowell County tax authorities recognize a charitable or governmental use exemption from ad valorem taxes. However, no land or improvements devoted to dwelling use shall be exempt from assessments, except as provided in Section 12.

17. Working Capital Fund. At the time of closing of the first sale of each Lot, the sum of One Hundred Dollars (\$100.00) shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of the fund is to ensure that the Association will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

18. Construction Damage Deposit. Prior to beginning construction on any Lot, any Owner other than Declarant shall pay to the Association the sum of Five Hundred Dollars (\$500.00) as a non-refundable damage deposit to be applied for road maintenance, without limitation of any recourse the Association may have for damages to Common Areas due to negligence of the Owner or agents of the Owner during construction.

19. Annexation of Additional Properties. Declarant reserves the right to annex additional property to this Declaration in accordance with this Section. All annexations of additional tracts to the Properties must be contiguous to the property described in this Declaration, or to property previously annexed. Annexation shall be accomplished by recording in the McDowell County Registry a Declaration of Annexation, executed on behalf of Declarant or the Association and by the record owner of the property to be annexed, describing the lands annexed and incorporating the provisions of this Declaration by reference. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation. In the case of an annexation by Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation. Promptly after the annexation, Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Common Areas within the lands annexed free and clear of all encumbrances and liens except those easements permitted by this Declaration in paragraph 26.

CRP 779 65

20. Insurance. Insurance coverage on the Property shall be governed by the following provisions:
the following provisions:

(a) Ownership of Policies. All insurance policies upon the Common Areas shall be purchased by the Board on behalf of the Association as trustee for the benefit of all the Association, the Owners and other benefited parties.

(b) Property Coverage. To the extent reasonably available, all buildings and improvements and all personal property included in the Common Areas and Areas of Common Responsibility shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Board with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard coverage endorsement, and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings and other improvements to land, if any.

(c) Liability Coverage. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single owner as well as any third party. There shall also be obtained such other insurance coverage as the Board shall determine from time to time to be desirable and necessary.

(d) Stable Facility. Nothing contained in this Declaration shall obligate the Association to provide property or liability insurance for the Stable Facility if the Stable Facility is not owned by the Association.

(e) Deductibles. All policies obtained on behalf of the Association may contain a reasonable deductible.

(f) Waiver of Subrogation. If reasonably available, all policies obtained on behalf of the Association shall contain a waiver of subrogation as to any claims against the Board, the Association's officers, employees and manager, the Owners and their guests.

(g) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and assessed to the Owners as Common Expense.

(h) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their

CRP 779 66

mortgagees as their interests may appear, and shall provide that all proceeds shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated in this Declaration or in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas and Areas of Common Responsibility shall be held for the Association.

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(i) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Association and Owners in the following manner:

(i) Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made for such payment.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

(j) Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds, or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

(k) Directors and Officers Insurance. The Board is authorized, but not required to purchase directors and officer's liability insurance coverage and to assess the premiums to the Owners as a Common Expense, without waiving any immunities to which the Board or officers may be entitled as a matter of law.

21. Use Restrictions.

(a) Rules and Regulations. The Board shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Areas. Such rules and regulations may provide for the imposition of reasonable fines or penalties for the violation of such rules and regulations, or for the violation of

CRP 779 67

any of the covenants and conditions contained in this Declaration, in addition to any other lawful remedies.

to any other lawful remedies.

(b) Use of Properties. Except as provided below, no portion of the Properties (except for temporary offices of Declarant, any model used by Declarant or Lot 108 as shown on the plat maps) shall be used except for residential purposes and for related incidental or accessory uses. Lot 108 may be used for multiple occupancy as a bed and breakfast with up to eight detached guest cottages, for vacation rental occupancy and for Declarant's use for prospective purchasers of Lots. Equestrian facilities and related uses by an Owner, tenant, or their respective families or guests are specifically deemed incidental or accessory to residential use of the Properties. The Stable Facility shall be permitted notwithstanding the restrictions set forth above or any other provision of this Declaration. Rentals to which the North Carolina Vacation Rental Act are subject are also deemed incidental or accessory to residential use of the Properties, limited to vacation rental occupancy. No logging or mining is allowed within the Properties. No uses are allowed in violation of any federal, state or local laws or ordinances pertaining to protection of the environment.

(c) Nuisances prohibited. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. No excessive noise or discharge of firearms shall be allowed within the Properties.

(d) Animals. No hunting or trapping is allowed within the Properties except lawful measures to control wildlife that constitute a nuisance or hazard, as determined by the Board. Fishing is allowed, subject to applicable laws and to rules and regulations established by the Board. Animals, poultry of any kind, and livestock shall not be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The foregoing restriction shall not apply to horses stabled at the Stable Facility. Animals that unreasonably disturb other Owners or residents, or which the Board determines poses a nuisance or hazard, shall be removed by their owners or otherwise be subject to removal by the Association. Dogs shall be leashed, or restrained on their owner's Lot at all times. The Board may establish rules and regulations regarding the keeping of animals and may limit the number and type of animals permitted.

22. Architectural Control. No building, fence, wall, driveway, impoundment of creeks or streams, or other improvement or structure, shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration to existing structures or improvements be made, until reasonably detailed plans and specifications accurately showing the nature,

CRP 779 68

kind, shape, height, color, materials, and location of the same on the Lot, and including a landscape plan showing trees over ten inches (10") in diameter at five (5) feet above ground level which are likely to be disturbed by construction, shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Review Committee. The Architectural Review Committee shall be composed of three (3) members appointed by the Board, who shall serve at the pleasure of the Board. An initial site plan and house plan submission will require a review fee of \$350.00 made payable to the Catawba Falls Preserve Community Association. As to any matter requiring review or approval of the Architectural Review Committee, in the event the Board, or its designated Architectural Review Committee, fails to approve or disapprove such design and location within thirty (30) days after the required plans and specifications have been submitted to it, approval by the Architectural Review Committee will not be required, and the provisions of this Declaration requiring Architectural Review Committee approval will be deemed to have been fully complied with; provided, however, that such approval shall not apply to any aspect of the plans and specifications that conflict with the express provisions of this Declaration. The Architectural Review Committee may adopt and modify from time to time Design Guidelines supplementing this Declaration. The Design Guidelines shall be enforceable as rules and regulations of the Association.

23. Dwelling Specifications.

(a) Dimensions and Setbacks. No dwelling shall be constructed or permitted to remain on any Lot having an area of the main structure, heated and finished, exclusive of open porches and decks, of less than eighteen hundred (1800) square feet. The 20 foot easement areas (10 feet from either side of the interior Lot lines and 20 feet inward from the exterior Lot lines) noted on the subdivision plat maps recorded by Declarant shall constitute minimum setbacks applicable to structures. Either the Declarant or the Board shall have the right, but not the obligation, to waive any yard or setback requirement, by written instrument to that effect recorded in the McDowell County Registry of Deeds.

(b) Garages and Parking. Each Lot shall contain sufficient off-street parking space for at least two (2) full-sized automobiles. No detached garage shall at any time be used for human habitation, either temporarily or permanently. No tractors, boats, trucks (other than one pick-up truck rated three-quarter ton or less), trailers, commercial vans, recreational vehicles, campers or other equipment or vehicles, except for operative licensed automobiles, shall be regularly parked or stored in any area on a Lot except inside an enclosed building, or behind screening approved by the Architectural Review Committee. No vehicles or trailers shall be parked on

CRP 779 69

any street abutting any of the Lots. Garage doors may, but are not required to, face the street.

to, face the street.

(c) Temporary and Accessory Structures. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling not to exceed thirty-five (35) feet in height at the highest point of the eaves above ground level on the uphill side, having a private garage for not more than four (4) cars, but not less than two (2) cars, and (with the approval of the Architectural Review Committee) an accessory building or structure for storage or other appropriate use. Under no circumstances shall metal storage buildings be permitted. All accessory buildings must conform to the same architectural style as the residence located on the same Lot.

(d) Fences and Signs. Chain link fencing shall not be visible from the street. No signs other than temporary construction signs shall be erected or allowed to remain on any Lot, except with approval of the Architectural Review Committee.

(e) Other Outdoor Structures. All outdoor equipment and accessories on a Lot, such as outside clothes lines, flags and flagpoles, tree houses, playhouses, motorcycles, supplies, garbage and refuse containers, transformers, generators, air conditioning and other mechanical equipment, including solar and other alternative energy devices shall be concealed behind approved screening, integrated into the building design so as to be inconspicuous, or otherwise approved by the Architectural Review Committee as compatible and harmonious with the surroundings. Primary fuel storage tanks must be placed underground.

(f) Appearance and Construction. All fireplace chimneys shall be masonry construction or frame with masonry veneer. Communication towers are expressly prohibited. Stick-built homes are expressly required; that is, no prefabricated or manufactured homes are permitted on any Lot other than modular structures which do not arrive at the site attached to traveling frames or wheels.

(g) Erosion Control and Landscaping. All driveways and site drainage must be constructed to minimize erosion and to prevent siltation, washing, or damage to Common Areas, streams, and neighboring Lots. Within a reasonable time after commencement of construction, the Owner shall install a culvert not less than twelve-inches (12") in diameter running the full width of each driveway along the ditch line where the driveway intersects the street, with two stone "wing" walls at each end of each culvert.

CRP 779 70

All Lots on which dwelling units are approved and built shall be landscaped in accordance with a landscape plan submitted as part of the plans and specifications to the Architectural Review Committee and as required by various state and federal laws. Landscaping must be finished upon completion of the dwelling unit for occupancy.

(h) Stream Buffer. To physically protect any riparian course or waterway from encroachment and disturbance, an aquatic buffer of thirty (30) feet on either side from the center point of the watercourse, springhead or riparian way shall be maintained by the Owner. In addition, no person shall be granted an approval for site development and land disturbing activity that would require the uncovering of 10,000 or more square feet without the approval of an Erosion and Sediment Control Plan (ESC) by the United States Army Corp of Engineers and the North Carolina Division of Land Resources. Best Management Practices (BMPs) shall be utilized in accordance with the National Pollutant Discharge Elimination System (NPDES) for all activities that could impact on or to the aquatic buffer areas. BMPs include but are not limited to preserving natural vegetation, brush barriers, and construction site storm water runoff control. The BMPs shall meet the criteria set forth in the most recent versions of NPDES, and shall be adequate to prevent transportation of sediment from the site.

The Owner or his/her agent shall make regular inspections of all environmental control measures in accordance with any mandated inspection schedule or at regular intervals. The purpose of such inspections will be to determine the effectiveness of the environmental controls, and the need, if any, for additional control measures. All inspections are to be documented in written form and submitted to the Architectural Review Committee or the ESC control agency.

24. Time for Completion of Construction. Total construction time, from the date of final approval of plans by the Board or Architectural Review Committee or issuance of a building permit (whichever occurs last) to the completion of the dwelling unit for occupancy, shall not exceed one (1) year unless otherwise approved by the Board or Architectural Review Committee.

25. Subdividing Lots. No portion of any Lot shall be subdivided other than by Declarant. Declarant shall have the right to adjust the boundaries of any Lot, with the effect of automatically relocating lot line easements and setbacks, if any.

26. Easements.

(a) Utility and Drainage Easements. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage

CRP 779 71

facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by Declarant prior to conveyance as a Lot. utilities as shall be established by Declarant prior to conveyance as a Lot. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is reserved to Declarant and its agents and employees an easement and right of ingress, egress and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties.

(b) Public Service Easements Upon Common Areas. A public-service easement is established over the Common Areas and facilities, including designated hiking or equestrian trails, for the benefit of the Declarant and applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities, and other utilities.

(c) Equestrian Use. No motor vehicles, other than motor vehicles used in connection with maintenance or public service, are allowed on any portion of the Common Areas shown on any plat map recorded by Declarant and designated as a hiking or equestrian trail on the plat or in a separate instrument executed by Declarant and recorded in the McDowell County Registry. All cyclists are required to dismount when approached by or approaching horses on Common Areas designated as equestrian trails. Horses shall have the right of way at all times on all streets and trails throughout the Properties.

(d) Easement for Equestrian Trails. Declarant reserves to itself a non-exclusive transferable easement for hiking and equestrian uses, including, without limitation, the installation, use, maintenance and repair of trails and fences and related improvements, over and across all of the hiking or equestrian trails shown on any plat map now or hereafter recorded by Declarant and designated as a hiking or equestrian trail on the plat or in a separate instrument executed by Declarant and recorded in the McDowell County Registry. Declarant may assign such easements as an appurtenance to the Stable Facility and to the National Park Service, other agency or political subdivision of the United States, the State of North Carolina, McDowell County, or any political subdivision or agency of any of the foregoing. The creation of a hiking or equestrian trail easement on any portion of the Properties shall require the written consent of the Owner thereof, if other than the Declarant.

CRP 779 72

(e) Recreation Easement. Declarant reserves to itself and the Association an easement for pedestrian access and recreational purposes over those areas designated as "40' Trout Buffer and Easement for Catawba Falls Preserve Community Association" and "40' Trout Buffer and Recreation Easement" (collectively, the "River Recreation Area") on the plat maps of The Catawba Falls Preserve recorded by Declarant for the benefit of Owners and their guests for fishing, hiking, horseback riding and other recreational uses. Owners shall not be permitted to travel by motor vehicle over the River Recreation Area.

(f) Trout Stream Buffers. No building may be erected and no construction activity within the River Recreation Area shall be permitted, unless specifically permitted by applicable law and the Board.

27. General Provisions.

(a) Enforcement. The Association, the Declarant, 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 subsequently imposed by the provisions of this Declaration, and to recover reasonable attorney fees and costs of the proceeding from any violator. Failure by the Association or by any Owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so in the future.

(b) Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

(c) 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 twenty (20) years, unless and to the extent amended in accordance with its terms. This Declaration may be amended upon approval of sixty-seven percent (67%) of each class of Members, except that the Declarant may amend this Declaration at any time for the purpose of annexing additional land to the Declaration or to make technical amendments required by any government agency, mortgagee, or insurer which do not materially or adversely affect the rights of Owners. Any amendment to this Declaration shall be delivered to the Board, after which the Board shall, within thirty (30) days of receiving the amendment, do the following:

(i) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this

CRP 779 73

purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)
required to cause any title to any Lot to be examined.)

(ii) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed.

(d) Management and Contract Rights of Association. Declarant may enter into a contract with a manager for the purposes of providing some or all elements of the operation, care, supervision and maintenance of the Common Areas and Areas of Common Responsibility, and management of the Association. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant on behalf of the Association while Declarant is in voting control of the Association shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by Declarant to the Association.

(e) Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (1) inspect the books and records of the Association during normal business hours, (2) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (3) receive written notice of all meetings of the Association and its right to designate a representative to attend all such meetings, (4) receive written notice of any condemnation or casualty loss that affects either a material portion of the Properties or the Lot securing its mortgage, (5) receive written notice of any thirty day (30) delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (6) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (7) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (8) be furnished with a copy of the master insurance policy.

28. Electrical Service. Declarant reserves the right to subject the Properties to a contract with Duke Power Company or other public utility for the installation of underground electric cables and/or the installation of street lighting, front entrance lighting and gate electrical service, or lighting and electrical service to amenities or Common Areas, any of which may require an initial payment and/or a continuing monthly payment to Duke Power Company or other contracting utility by the Association or by the Owner of each Lot within the Properties.

CRP 779 74

CRP 117 12

ASSOCIATION:

CATAWBA FALLS PRESERVE
COMMUNITY ASSOCIATION

By: [Signature] (Date) 4/21/04
THOMAS W. GOSS, President

DECLARANT:

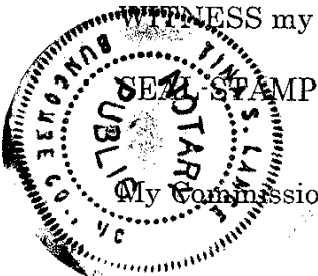
CATAWBA FALLS LLC

By: [Signature] (Date) 4/21/04
THOMAS W. GOSS, Managing Agent

STATE OF NC
COUNTY OF Buncombe

I, Tina S. Lance, Notary Public for said County and State, certify that THOMAS W. GOSS personally came before me, this day and acknowledged that he as President of Catawba Falls Preserve Community Association, a North Carolina corporation, and as Managing Agent of Catawba Falls LLC, a North Carolina limited liability company being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial seal, this the 21 day of April, 2004.



Tina S. Lance
Notary Public

My Commission Expires June 20, 2004

#500998 v10 016780.01124

Patricia A. Reel
Register of Deeds

McDowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752

Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail register@mcdowell.main.nc.us



Filed For Registration: 04/30/2004 04:58:27 PM

Book: CRP 779 Page: 55-74

Document No.: 2004003150

DECLARATION 20 PGS 71.00

Recorder: TONIA R HAMPTON

State of North Carolina, County of McDowell

The foregoing certificates of TINA S LANCE Notary(ies) Public is(are) certified to be correct this 30TH of APRIL 2004.

PATRICIA A. REEL, REGISTER OF DEEDS

Tonia R Hampton

By: _____
DEPUTY REGISTER OF DEEDS

DO NOT REMOVE!

This certification sheet is a vital part of your recorded document. Please retain with original document and submit when re-recording.