



**STATE OF NORTH CAROLINA  
COUNTY OF MADISON**

REFERENCES Deed Book 322, Page 515  
Deed Book 772, Page 690  
Deed Book 772, Page 712

**AMENDED AND RESTATED DECLARATION  
OF RESTRICTIVE COVENANTS FOR MOUNTAIN PARK**

**THIS DOCUMENT REGULATES OR PROHIBITS  
THE DISPLAY OF POLITICAL SIGNS**

WITNESSETH

WHEREAS, Mountain Park Homeowners Association, Inc., a real property development was established as a planned community to be organized, controlled and governed by the Restrictive Covenants for Mountain Park, recorded in Deed Book 322, Page 515, Madison County, North Carolina Registry of Deeds on April 28, 2004 ("Original Covenants").

WHEREAS, in accordance with the Original Covenants, Bylaws and its Articles of Incorporation filed on January 18, 2005, Mountain Park Homeowners Association, Inc., a North Carolina Non-Profit Corporation ("Association"), is the duly organized and authorized Association of lot owners at Mountain Park; and

WHEREAS, Mountain Park Homeowners Association, Inc. desires to amend and restate the Original Covenants, as amended, for the purposes of simplifying and clarifying the documents and executing one cohesive document to govern the community; and

WHEREAS, NCGS 47F-2-117 of the Planned Community Act states that the Original Covenants may be amended by written agreement signed by lot owners of lots to which at sixty-seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, members owning the appropriate percentage of the lots Mountain Park voted or consented in writing to adopt the following Amended and Restated Declaration of Restrictive Covenants for Mountain Park for the purposes stated above;

DEFINITIONS

**ARCHITECTURAL REVIEW COMMITTEE (ARC)** – A group of no less than three (3) Association members, headed by a sitting Board member or their designee, that functions as reviewers of proposed and existing land/Lot use within the Subdivision.

**ASSOCIATION** – Mountain Park Homeowners Association, Inc. and its membership of property/Lot owners within the Mountain Park Subdivision.

**BOARD OF DIRECTORS OR BOARD** – elected or appointed members of the Board of Directors of the Mountain Park Subdivision.

**COMMON ELEMENTS** – land, structures, Roads or facilities existing within the Mountain Park Subdivision that are presently or in the future deeded to the Association for the common or shared use of the members of the Association.

**HOMEOWNER OR OWNER**– the recorded owner(s) of a Lot within the Subdivision.

**DECLARATION** – this document with its appendices and any future amendments.

**IMPROVEMENTS** – construction of new structures or substantial changes (including but not limited to house color, driveway, fencing, outbuildings, and additions) to existing structures or Lots.

**LOT** – a plotted and recorded unit of property/acreage together with its Improvements that sits within the Mountain Park Subdivision.

**ROADS** – Common Elements Roads within the Mountain Park Subdivision which may be paved and unpaved.

**SUBDIVISION** – the Mountain Park Subdivision as originally recorded in the Madison County Registry of Subdivisions Book 322 at Page 515 and developed by Gabriel Creek Development, Inc. between January 2004 and May 2023.

## ARTICLE I ASSOCIATION

1. **MEMBERSHIP.** Membership in the Association is mandatory for every Lot Owner in the Mountain Park Subdivision. Owner(s) by the acceptance of title to a Lot within the Subdivision is automatically a member of the Association and subject to the Declaration, its Bylaws, and Rules and Regulations as amended by Association approval in the future.
2. **MEMBERSHIP EXCEPTION.** Additional undeveloped Lots identified in the Developer Agreement between Mountain Park Homeowners Association and Developer recorded in Deed Book 772, at Page 712 of the Madison County Registry (“Developer Agreement”) shall become part of the Association when sold. Other undeveloped Lots owned by the developer named in the Developer Agreement shall remain separate from the Association but pay road access fees/assessments as detailed in the Developer Agreement.

## ARTICLE II AGREEMENT FOR MAINTENANCE ASSESSMENTS

**1. PURPOSE OF ASSESSMENTS.** The assessments for common expenses as described in Section 47F-3-115 of the Planned Community Act and as otherwise provided for in the Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots in Mountain Park Subdivision as well as the following purposes:

- (a.) the maintenance, repair, and reconstruction of
  - i. Roads including mowing roadsides and snow/ice removal and
  - ii. all Common Elements including the Mountain Park Subdivision entrance, clubhouse, tennis courts, mailbox kiosk, and the cutting of weeds/grass and debris removal.
- (b.) related repair or maintenance costs for materials, equipment, labor, management, and supervision
- (c.) the payment of taxes and public assessments against the Common Elements
- (d.) the employment of attorneys to represent the Association
- (e.) the provision for adequate reserve funds for capital Improvements such as signs, paving, grading, landscaping, renovations and upkeep of Association structures and facilities.

**2. APPORTIONMENT OF COMMON EXPENSES.** Except as set forth in this Article, common expenses shall be assessed against all Lots equally.

**3. COMMON EXPENSES ATTRIBUTABLE TO FEWER THAN ALL LOTS.**

- (a) If a common expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner's Lot.
- (b) The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage. The Board of Directors in its sole discretion may determine that the activities of one (1) or more Lot Owners causes more risk and thus higher insurance premiums for the Association. In such event, the Lot Owners will be responsible for paying any increase in premium caused by their activities.
- (c) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to the Planned Community Act, the Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

**4. LIEN FOR ASSESSMENTS.**

(a) Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Madison County in the manner provided in Section 47F-3-116. The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. §45-21.1, of said lien with a power of sale. As the owner of the indebtedness secured by the lien, the Association, acting through the Board may, in its discretion, substitute a trustee in accordance with N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes. Fees, charges, late charges, fines, collection costs, reasonable attorney's fees, and interest charged pursuant to Sections 47F-3-102(10), (11), and (12), 47F-3-107(d), 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this section.

(b) The lien under this section is prior to all other liens and encumbrances on a Lot except (i) liens and encumbrances (specifically including, but not limited to, a mortgage or deed of trust on the Lot) recorded before the docketing of the claim of lien in the Office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing of the claim of lien in the Office of the Clerk of Superior Court; provided, that if an Owner of a Lot subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(d) This Section does not prohibit separate collection actions to recover sums which are personal obligations of Owners and for which subsection (a) creates a lien or prohibit the Association taking a deed in lieu of foreclosure.

(e) A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(f) Where the holder of a first mortgage or first deed of trust of record, or other purchaser of a Lot, obtains title to the Lot as a result of foreclosure of a first mortgage or first deed of trust, such purchaser, and its heirs, successors and assigns, shall not be liable for the assessments against such Lot which became due prior to acquisition of title to such Lot by such purchaser. Such unpaid assessments shall be deemed to be common expenses collectible from all Lot Owners including such purchaser, and its heirs, successors and assigns.

**5. COMPUTATION OF OPERATING BUDGET AND ANNUAL ASSESSMENT.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the

Association during the coming fiscal year and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within thirty (30) days after adoption of any proposed budget for the planned community, the Board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than ten (10) and not more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget and the assessment established therefrom is ratified unless at the meeting sixty-seven percent (67%) of all the Lot Owners in the Association vote to reject the budget. Notwithstanding the foregoing, however, in the event that the membership rejects the proposed budget or the Board fails for any reason to so determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the current year shall continue for the succeeding year.

- 6. PERSONAL LIABILITY OF LOT OWNERS.** The Owner of a Lot at the time any common expense assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred. In addition to lien rights described above, the Association has the right to bring a separate collection action to enforce the personal liability of Lot Owners to pay assessments.

The grantee(s) of a Lot shall be jointly and severally liable with the grantor Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the tenth (10th) day such installment becomes due.

- 7. NO WAIVER OF LIABILITY FOR COMMON EXPENSES.** No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the assessments are made.

**8. SPECIAL ASSESSMENTS.**

(a) If the annual assessment proves inadequate for any year or in the event of an emergency, the Board may at any time levy a special assessment against all Owners.

(b) The Board of Directors may levy special assessments for capital improvements upon the Common Elements and for such other matters as the Association shall determine; provided, however, prior to becoming effective any such special assessment shall be

approved by the affirmative vote of a majority of all the Lot Owners at a special meeting of the Association duly called for that purpose.

(c) The special assessment payment shall be due within 90 days of the vote of approval.

**9. RESERVE FUND BUDGET AND CONTRIBUTION.** The Board of Directors shall annually prepare a reserve fund budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required reserve fund contribution, if any, in an amount sufficient to meet the projected capital needs of the Association, as shown on the reserve fund budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The reserve fund contribution required may be fixed by the Board and included within the budget and assessment as provided in this Article. A copy of the reserve fund budget shall be distributed to each member in the same manner as the operating budget.

**10. INTEREST, LATE CHARGES AND PAYMENTS.** In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof, past due special assessments, fines, or other past due charges shall bear interest at eighteen percent (18%) per annum.

The Board shall set a late charge to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges.

Any payments received by the Association in the discharge of a Lot Owner's obligation may be applied to the oldest balance due.

**11. SURPLUS FUNDS.** Any surplus funds of the Association remaining after payment of or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.

### ARTICLE III LAND/LOT USE

**1. LAND/LOT USE.** All Lots in the Association shall be private residential Lots and no Lots shall be used for any other purpose except as may otherwise be agreed on in this Declaration.

(a) All Lot Owners have equal access to Common Elements, facilities, and structures for themselves and their invited guests.

(b) Access to Mountain Park Subdivision is on a single road with a coded gate entry.

- 2. COMMERCIAL USE PROHIBITED.** No trade or business may be operated upon any Lot or from any dwelling/structure located on any Lot. Nothing contained herein shall prohibit conducting a trade or business within the residence which does not depend on the use of the common rights of way and roads for customers of that trade or business. It is anticipated and allowed that an Owner may operate a business which does not have regular business hours like a retail store and does not create unreasonable traffic; for example, by illustration and not limitation, an Owner could be an artist and customers may from time to time visit the workshop/studio to view the Owner's work or to receive instruction. The Association reserves the right to approve or disapprove of a particular business, it being the primary purpose of the Association to not encourage unreasonable traffic or permit any unreasonable disruption to the peace and harmony of the other Owners in Mountain Park Subdivision.
- 3. LEASING LOTS.** Lots may be leased or rented for periods of one (1) year or more. The following arrangements are prohibited:
- (a) subleasing of any part of any Lot.
  - (b) more than one (1) single lease per Lot.
  - (c) time sharing.

Owners shall be responsible for the conduct and compliance of their respective tenants with respect to the Declaration. Tenant breaches of the terms of this Declaration are the responsibility of the Owner.

- 4. SUBDIVISION, COMBINATION AND BOUNDARY RELOCATION.** No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot.

No lots can be subdivided with the following one (1) exception. If two (2) lot owners have a lot located between their lots, after receiving prior written approval from the Board, the lot can be evenly split and sold to the two (2) adjoining owners. The new half (½) lot must be combined with each owner's original lot. The purpose of this exception is to allow the creation of additional privacy for both lot owners.

No combination, or boundary relocation shall be made without the prior written approval of the Board. The restrictions herein apply to each Lot which may be so created.

Following the combination of two (2) or more Lots into one (1) larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. The resulting larger Lot shall be treated as one (1) Lot and shall only be charged one (1) assessment and have one (1) vote. The Owner cannot combine their Lot with the

Association without executing and recording a Lot combination document with the Madison County Registry of Deeds.

Once combined, the resulting larger Lot may not be subdivided.

**5. NUISANCES.** All activities on Mountain Park Association properties, both common and private, shall be conducted in a neighborly fashion so as not to be annoying or offensive. Therefore, no noxious or offensive activities shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(a) All buildings, fences, and grounds shall always be maintained in a neat and orderly manner. The Association reserves the right to take action against any Lot Owner in violation.

(b) Dumping or storage of disabled vehicles, rubbish, trash, garbage of any kind is not allowed, including but not limited to junked vehicles, wrecked vehicles, unlicensed motor vehicles, non-operative vehicles, refuse piles, trash, scrap metals, old household appliances and equipment. All waste and refuse shall be kept in clean, sanitary containers until properly disposed.

(c) Materials giving off offensive odors, industrial or toxic waste, contaminated oil, chemicals or poisonous substances shall not be kept on any portion of any Lot. None of these substances or materials shall be stored, buried, or used as landfill on any Lot or roadway.

(d) Noisy, dangerous, or offensive activities shall not be permitted on any Association property. This prohibition includes, as examples, discharge of firearms or fireworks, hunting of animals by any means with a weapon of any type, arrows or other missiles shot or discharged, and no activity which will disturb the peace, quiet, comfort or serenity of the other Owners,

(e) Hobbies or other activities that may result in unsightly or unkempt conditions are to be conducted within closed structures.

(f) Grass and weeds are to be kept down on all Lots, including vacant Lots, to prevent unsightly, unsanitary and unsafe conditions. An exception to this is designated pastureland which is harvested annually. Owners are not expected to maintain naturally wooded areas, plants and underbrush that are not a nuisance to the neighborhood.

(g) Fires are allowed only when weather and fire danger limits permit it. Fires must be always attended and completely extinguished with water and dirt before leaving them unattended. It is required that any fire, beyond the scope of a backyard firepit, obtain a



burning permit from the North Carolina Forest Service online with additional notification to the Mars Hill Fire Department. The Association reserves the right to impose any other conditions it considers reasonable to control fires, pollution, and the safety of owners.

(h) External security lights such as floodlights or streetlights shall not be installed post construction of any dwelling without the approval of the Mountain Park Homeowners Association Architectural Review Committee. Any external lighting shall not adversely affect, be obstructive or offensive to adjacent Lots or Mountain Park Subdivision at large. Shielded and downward directed lighting is recommended/preferred.

(i) Quiet time will be observed as stipulated in rules of the Board.

6. **ANIMALS AND LIVESTOCK.** Dogs, cats, or other household pets in reasonable numbers and fully under the control of the Owners are allowed on the Owner's property. Animals must be leashed when on Common Elements and are not allowed to roam into neighboring or Common Elements. Lot Owners are responsible for cleaning up pet waste from Common Elements. Dogs and cats are not to be bred or maintained for commercial purposes or in a manner which becomes a nuisance or annoyance to other Owners. All animals must be fenced or constrained and maintained in a healthful condition. No dangerous, vicious, exotic, naturally wild game, or aggressive animals trained for security, fighting or gaming shall ever be maintained or permitted within Mountain Park Subdivision. No cattle, horse, llama, alpaca, goats, poultry, fowl, swine, or gaming animals shall be raised, bred, or kept on any Lot. Any exception to this animal/livestock restriction must be by prior written approval of the Board.
7. **MINERAL/OIL/GAS EXPLORATION.** Mineral exploration, mining or drilling for oil or gas will not be allowed on any Lot.

#### ARTICLE IV CONSTRUCTION AND IMPROVEMENTS

1. **BUILDING/STRUCTURE.** All Lots shall be exclusively for one (1) single-family dwelling and two (2) of the following optional structures: guest houses or detached garage/workshop for a maximum of three (3) structures per Lot. Other stipulations apply:
- (a) Dwellings shall have a minimum of one thousand eight hundred (1800) square feet of heated area with a minimum of one thousand two hundred (1200) square feet of heated area on the main living level.
- (b) Dwellings shall not exceed three (3) levels including basement and excluding attic regardless of whether these spaces are finished as living area.
- (c) Detached private garages may not house more than four (4) vehicles including boats, recreational vehicles, motor homes.

- (d) Other size limits:
  - i. Garage, workshop, or studio no greater than one thousand (1000) square feet
  - ii. Guest house greater than eight hundred (800) but less than one thousand four hundred (1400) square feet of heated living space.
  - iii. Vertical height not greater than thirty-two (32) vertical feet measured at the uppermost point of the structure to the natural foundation and shall not protrude above the crest of the ridge. With the prior written approval of the Board, peripherals to a parent structure of a slender nature such as chimneys, antennas, or poles may be exempted.

**2. APPROVAL OF PLANS.** Improvements to any Lot shall require the prior written approval of the Board as follows:

(a) Written improvement plans shall be submitted, and approval gained prior to commencement of work on the project. Plans may be submitted by delivering, mailing, or emailing them to Mountain Park Homeowners Association Attn: Architectural Review Committee, 502 Mountain Park Drive, Mars Hill, NC 28754 or to its current address should it change. It is the responsibility of the applicant to obtain accurate postal or email addresses at the time of their submission.

(b) The submitted plans must include architectural plans (or another acceptable format as decided by the Board and the ARC). The plans must include locations and elevations of the Improvements within the Lot. The plans must give the composition and color of all exterior surfaces.

(c) Plans must demonstrate the Improvements will be in harmony with the general surroundings or adjacent structures.

(d) Plans should ensure that Improvements will be located where best to ensure maximum privacy, consider topography and take into consideration the location of natural, aesthetic and environmental elements.

(e) Restrictions to be incorporated into the plans when submitted or revised:

- i. Foundations. All buildings must have full foundations with no concrete block exposed to view. All exposed foundations shall be veneered with brick or stone, or other natural material approved in writing by the Board. No concrete block shall remain exposed.

- ii. Metal Roofs. Baked, coated metal roofs shall be permitted.

- iii. Exterior Colors. All exterior colors are restricted to earth tones. Any accessory buildings must have exterior earth tone colors that are complimentary to the primary residence.
  - iv. Exterior Materials. All exteriors shall consist of natural materials such as wood, logs, stone, or approved manmade materials. Exteriors shall not be asbestos shingles siding, imitation brick, stone roll siding, concrete block or vinyl.
  - v. Exterior Lighting. Type and location of exterior lighting shall be included in submitted plans and subject to written Board approval.
  - vi. House Numbers. In accordance with Madison County 911 Emergency Response requirements, house numbers must be visible on the front of the dwelling or visible from the Common Elements or Road.
  - vii. Mailboxes. Mail delivery to the Association members shall be at a central mail kiosk located near the clubhouse. Delivery services may make deliveries to mail kiosk or homes.
  - viii. Modular Homes. Modular homes, in part or in whole, may be permitted with the Board's prior written approval. Additional requirements may apply to open panel or precut off site constructed homes at the Board's sole discretion. Such additional requirements may be, but are not limited to, minimums of two thousand three hundred (2300) square feet of heated space or roof pitch of a five (5) inch rise for every twelve (12) inches it goes back horizontally, five over twelve (5/12). The Board may also require a detailed delivery schedule of prefabricated units for its prior written approval. A review of the previous projects/experience of the contractors supplying, installing, and customizing the modular units may also be required. The Board may also require an inspection of a comparable building using the same type of prefabricated materials during the approval process.
- (f) Architectural Review Committee (ARC) Rights and Structure
- i. The ARC shall be composed of three (3) to five (5) Lot Owners to be appointed by the Board of Directors. One (1) member of the ARC shall be a sitting Board member or their designee.
  - ii. All decisions of the ARC shall be subject to final review and approval by the Board.
  - iii. Review and approval by ARC/ Board does not in any way suggest any responsibility nor liability for defects in Owners submitted plans or subsequent construction. The ARC/ Board review is to ensure plans meet the provisions of this Declaration and the conditions stipulated herein.

- iv. The Board may adopt written rules for form and content of applications (plans to be submitted), approval/disapproval procedure, and notifications to applicant and establish and publish a list of improvements which do not require ARC/ Board approval,
- (g) Architectural Review Committee reviews documentation and makes recommendations to the Board, and the Board shall:
- i. have the right to disapprove of the proposed Improvements and agree to work with the Owner to resolve discrepancies between the submitted plans and the conditions of this Declaration. Discrepancies include but are not limited to incomplete plans or plans that are found to be contrary to the best interests, welfare, or rights of all.
  - ii. must respond to submitted plans within thirty (30) days following submission, or approval is assumed.
  - iii. have the right to inspect or review all construction for compliance with the approved plans. Should the Owner deviate from the submitted plans, the Board can revoke its approval and require the Owner to resubmit compliant plans.
  - iv. may require a certification from Owner (or owner's licensed contractor or surveyor) that Improvement does not violate any setbacks, ordinance/statutes, easements, or rights of way.
  - v. may grant reasonable variances to the provisions in this Declaration (Construction and Improvement Section only) where compliance may result in unnecessary hardship for the Lot Owners and where noncompliance is not materially detrimental to other Lot Owners.
- 3. CONSTRUCTION AND TIMING.** All construction must meet the following timelines while complying with applicable North Carolina and Madison County building, zoning, and health codes. Dwellings and other construction must be made of quality grade materials and all work performed in a workmanlike manner. Extensions to the following timelines must receive prior written approval from the Board.
- (a) Initial building construction shall be completed replete with substantial landscaping and construction debris removal within eighteen (18) months of commencement, e.g., when the building permit is issued. Construction of any Improvements upon any Lot, once commenced, must proceed at a reasonable rate of progress. Subsequent Improvements construction shall have a corresponding completion date within twelve (12) months after commencement.

(b) Improvements not completed or upon which construction has substantially ceased for one hundred eighty (180) days or which have been totally or partially destroyed and not rebuilt in eighteen (18) months shall be deemed a nuisance. After providing notice and opportunity to be heard, the Association may remove any such nuisance or complete the same at the expense of the Lot Owner.

(c) Partially or totally destroyed dwellings must be reconstructed in accordance with the original plans and specifications or any modifications thereto which must be approved in writing by the Board. Debris from the destroyed dwelling must be removed as soon as practical but not later than twelve (12) months after the destruction. After providing notice and opportunity to be heard, the Association may remove any such nuisance or complete the same at the expense of the Lot Owner.

(d) Lot Owners are responsible for their construction site being maintained in an orderly manner with trash and debris controlled at their and nearby Lots. Lot Owners shall ensure that all Association roadways are kept free of dirt, mud or gravel. All drainage ditches and culverts are to be kept clear and open. The use of silt fences is required when runoff can enter neighboring or Common Elements. Rented dumpsters are required. Lot Owners are responsible for the compliance of their contractors, subcontractors, family members or other invitees; the Association reserves the right to impose fines and other sanctions against the Owner for their violations.

4. **TEMPORARY STRUCTURES.** No temporary structure such as mobile homes, trailers, tents, shacks or any other similar outbuilding or shelter shall be placed or maintained on any Lot. No garage, barn, studio, workshop, or building other than a constructed dwelling shall be used as a residence at any time either temporarily or permanently. Travel trailers, campers, boats, and recreational vehicles (RV's) shall not be used as a residence at any time. Besides the primary resident and guest house, no other structure is to be used as living space either permanently or temporarily.
5. **SETBACK LINES.** Setback requirements for all buildings/structures shall be at least thirty (30) linear feet from Lots lines and thirty (30) linear feet from the margins of road right of way. The ARC reserves the right to waive setback requirements if reasonable or to avoid hardship to the Owner in the ARC's judgment.
6. **LAND CLEARING.** Clear cutting timber is not permitted on any Lot. Land clearing is only for the limited purpose of creating necessary building sites and driveway for permitted structures and be no more than twenty five percent (25%) of the lot without written Board approval. Such cleared land, not used for the dwelling and its immediate surroundings shall be sown in grass.
7. **PROTECTED RIDGES:** A protected ridge is defined as a mountain ridge whose elevation is at least three thousand (3000) feet and whose elevation is five hundred (500) or more feet

above the elevation of an adjacent valley floor. When a Lot is located on a protected ridge, no one shall disturb or clear more than twenty five percent (25%) of the Lot and all structures shall be set back fifty (50) feet from the crest of the ridge line.

8. **CONCEALMENT OF OUTDOOR OBJECTS.** Outdoor objects such as wells, fuel tanks consistent with appropriate safety precautions and governmental regulations, electric or gas motors/generators, air conditioning equipment, tools, and other unsightly objects are allowed but are required to be either buried underground or concealed by structure or landscaping, or otherwise kept from view of roadways and other properties.
9. **SEWAGE DISPOSAL.** Each Lot must install and maintain a sewage disposal system to which every structure with plumbing and each plumbing fixture must be connected. Sewage disposal systems must always be maintained in a sanitary manner. In no event shall sewage disposal systems be located or maintained to interfere with existing water system on any adjoining Lot or property. The rules and regulations of the Madison County Health Department and any other governmental agency with jurisdiction of the sewage disposal system installed upon each Lot shall always be complied with.
10. **UNDERGROUND UTILITIES.** All utilities, cables, lines, wires or conduits shall be underground. Lot Owners may access existing electrical boxes but are responsible for getting the utility from the road right of way to their Lot.
11. **DRIVEWAYS AND PARKING AREAS.** All roadways must be covered with concrete (preferred), asphalt, or gravel to prevent erosion or adversely affect common Roads and rights of way. Culverts of at least eighteen inches (18") diameter must be installed at the intersection of all driveways and common Roads to not obstruct the drainage of the roadway. For the Lots with gravel driveways, Owners are responsible in keeping their gravel off of Common Elements.
12. **WALLS, FENCES, CONCEALMENT STRUCTURES, AND HEDGES.** Walls, fences, concealment structures, and hedges on any part of a Lot must be designed as an integral part of the residence, be no higher than six (6) feet, be attractive, and made of durable materials. Barbed wire, field fencing, chicken wire, chain links, and other similar fences are prohibited. Prior written Board approval is required for the addition, installation, or replacement of any wall, fence, or concealment structure, or hedge.
13. **OUTSIDE RADIO ANTENNA, TELEVISION ANTENNAS, SATELLITE DISHES AND SOLAR PANELS.** Board approval is required for the addition or installation of communication and solar power equipment. Equipment must be, where possible, concealed from the view of other Lots. Size and location of communication equipment shall be reviewed by the ARC/ Board for consistency with industry standards for such equipment.

**Communication Equipment.** The location of the Communication Equipment to be approved by the Board must be included in the plans for improvements submitted to the ARC. The Board shall not cause Communication Equipment to be located in such a way as to negate or diminish their intended functionality. Satellite dishes, no more than twenty four inches (24”) in diameter, shall be allowed. Satellite dishes less than 24 inches in diameter directly attached to houses are excluded from requiring ARC approval.

**Solar Panels.** The following guidelines apply to solar panel installation in the Subdivision.

**(a.) Approval of Installation.**

- i. Detailed plans for installation and placement shall be included with the application for approval of solar panels. Illustrated information on the proposed system which includes materials to be used, drawings showing the location and number of collectors, the attachment to the roof structure, the location of exterior system components, and color of the roof material and proposed color of the solar panel equipment shall also be included. Additionally, the plans shall show visibility of the system from the Common Elements.
- ii. Required permits from Madison County are solely the responsibility of the Owner and shall be obtained before installation begins. The Owner must use an installer which is a licensed solar equipment contractor. The Association and its Board have no expertise regarding solar panels and the Association’s approval for installation of solar panels is not a representation that the system chosen by an Owner is safe to use or is compatible with the Owner’s roof. The Owner assumes and bears all risks regarding installation and use of solar panels.

**14. SIGNS.** No signs shall be placed or constructed on any Lot with the temporary exception of one (1) twenty-four inches by thirty inches (24” x 30”) conservatively designed ‘For Sale’ sign placed on the Lot that is actively being marketed for sale. Owners are allowed to erect one (1) political sign with the maximum dimensions of twenty four inches (24”) by twenty four inches (24”) on their Lot. The political sign may only be erected forty-five (45) days before an election day and must be removed seven (7) days after an election day.

**15. NATURAL WATERWAYS.** The flow and natural course of any surface water or creek shall not be altered, interfered with, or obstructed. No dams shall be constructed without prior written Board approval. The Board may approve dams such as decorative ponds if the water course alteration does not interfere with the water use downstream or present a danger to others. Lot Owners are responsible for installing and maintaining culverts where needed for proper rainwater runoff (including beneath driveways) on their Lot and for keeping the drainage ditches on their corresponding Lots functionally clear and in good repair. The Association shall be responsible for culverts which cross the common roadways.

**16. EXCAVATION/EROSION CONTROL.** Excavation shall ensure proper drainage, prevent

erosion, and never cause adverse environmental detriment or damage to the property, contiguous Lots or properties in general. In order to implement effective and adequate erosion control and protect the purity and beauty of the streams and the property, the Association's representatives and/or contractors shall have the right to enter upon any Lot for the purpose of inspecting for erosion control, performing any grading work and/or constructing and maintaining erosion prevention devices. Such entries shall, however, be made only after construction of improvements have commenced on such Lot or the soil thereof has been graded. Prior to exercising its right to enter upon a Lot for the purpose of performing any grading work or construction or maintaining erosion prevention devices, the Association shall give the Owner notice indicating what type of corrective action must be taken by the Owner. If said Owner fails to take corrective action within one (1) month, the Association may then exercise its right to enter upon the Lot in order to take the necessary corrective action. The Association has the authority to seek reimbursement in the same manner as collecting assessments. The Owner shall reimburse the Association for the cost of said corrective action. The provisions of this paragraph shall not be construed as an obligation on the part of the Association to perform grading work or to construct or maintain erosion prevention devices on an Owner's Lot. No earth shall be removed from a Lot except for construction of a permitted structure and driveway to access same, and in these instances, excavation shall not commence until a reasonable time prior to commencement of construction.

- 17. STORAGE SHEDS:** One (1) storage shed not to exceed 60 square feet may be placed/constructed on a Lot, provided that any such shed must conform with the architectural requirements (earthen tones and compatible with the house upon the Lot and conform with the surrounding environment) set forth in Article IV, Paragraph 2(c)-(e) (except as to size). Any nonconformity as well as location of the shed must receive ARC prior written approval.

## ARTICLE V ROADS AND EASEMENTS

- 1. ROADS AND ROAD MAINTENANCE.** All Roads are Common Elements and shall be maintained by the Association with priority given to paved Roads. All Roads shall be maintained to have adequate ditching and drainage. Road pavements shall be maintained to keep them in stable condition, free from ruts and potholes sufficient to allow comfortable motor vehicle passage. The developer who owns portions of the Mountain Park Subdivision shall be permitted to pave or maintain Roads joining the Lots the developer owns.

(a) Maintenance of Roads shall include repaving, clearing ice/snow, debris, or removing trees in the right of way that pose a danger to the roadway or obstruction of sight lines. The cost of the tree removal shall be the responsibility of the Owner of the Lot from which the tree fell.

(b) If the Association deems that a tree is in danger of falling across a road, Common Elements, or a neighboring Lot, and is placing the community members at risk, the Lot Owner will be asked to remove the tree in a timely fashion. If the Lot Owner does not



comply with this request, the Association will have the tree removed at the expense of the Lot Owner.

(c) Should any governmental agency eventually take over maintenance of some of the Subdivision's Roads, the Association shall continue to maintain remaining Roads.

(d) Each Lot under new construction or renovations or Improvements shall pay a road impact fee to the Association in the amount established each year in the annual budget. The road impact fee is due within thirty (30) days of building permit issuance. Should it be determined that the new construction damaged the Roads in excess of the established amount, the Board may assess the Owner an additional reasonable impact fee.

(e) All Lot Owners may also be assessed an equal share of an infrequent special assessment for road maintenance as approved by the Board.

(f) The Board shall periodically have Roads assessed and make priority maintenance and repair decisions.

**2. EASEMENTS.** For the purpose of installation and maintenance of utilities and drainage facilities easements are reserved by the Association as follows:

(a) Five (5) feet in width along the side Lot lines of each Lot and ten (10) feet in width along rear Lot lines. Rear and side Lot lines are those not adjacent to a Road.

(b) Easements on all Roads and rights of way equivalent to fifteen (15) feet from the center of the Road.

(c) The Association may grant access to these easements to utility companies and government entities.

(d) The Association, its agents, and public utility companies are not responsible for any damage to Owner's property situated in the easement areas.

(e) Except for those Improvements by public utility companies, easement areas of each Lot shall be maintained by the Lot Owner. No structure, planting or other object shall be placed in the easement area to interfere with easement access.

(f) The right to extend any easement over and across any Lot does not exist.

**ARTICLE VI**  
**VEHICLES**

**1. TRAVEL TRAILERS, CAMPERS, BOATS AND RECREATIONAL VEHICLES, AND ALL VEHICLES WITH COMMERCIAL SIGNAGE:**

- (a) must be kept enclosed in garages or, with written approval of the Board, otherwise concealed from view,
- (b) are not permitted to be kept, parked or remain on any Lot outside the dwelling or garage,
- (c) may not be parked on any Roads beyond a reasonably short time for travel preparations,
- (d) may be parked in the Clubhouse parking Lot for up to ten (10) days after receiving prior written approval of the Board.

**2. MOTOR VEHICLES.** All motorized vehicles must meet the following conditions:

- (a) Be operated on common and private Association property at reasonable and safe speeds.
- (b) Be maintained in proper operating condition and shall not be nuisance by noise, exhaust emission or otherwise.
- (c) All operating vehicles must be registered and licensed by a state's Department of Motor Vehicles.
- (d) No unlicensed, uninspected, or non-operable vehicles shall be allowed to remain on any Lot outside the dwelling or garage except for emergency repairs.
- (e) Cannot be parked on any Road on a regular basis unless an exception is given by the Board.
- (f) Trucks larger than one (1) ton, construction equipment and farm equipment not in use, and attached trailers are prohibited unless required during construction and improvements and/or moving of Owner's personal property.
- (g) Trailers for transporting animals are not permitted.
- (h) Four-wheel all-terrain vehicles are permitted on Association Roads with these terms:
  - i. Speed less than twenty miles per hour (20 mph)

- ii. No use earlier than 8:00 a.m. nor later than 10:00 p.m.
- iii. Right of way yielded to vehicles, pedestrians, and animals.
- iv. Association may restrict individual or group usage if it becomes a nuisance or causes damage to Association or private property.

**ARTICLE VII**  
**ENFORCEMENT POWERS**

- 1 **RULES MAKING AUTHORITY.** Mountain Park Subdivision shall be used only for those uses and purposes set out in the Declaration and Bylaws. The Board of Directors shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common elements, so long as copies of all such Rules and Regulations are furnished to all Owners; provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of a majority of the total Association vote at an annual or special meeting. No rule or regulation shall be in conflict with either the Declaration or the Bylaws.
- 2 **FINING POWERS.** Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed one hundred dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, Bylaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article II hereof, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend an Owner's or occupant's right to use the common elements; and to suspend an Owner's right to vote. In the event that any occupant of a Lot violates the Planned Community Act, Declaration, Bylaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Lot Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective. Charges for late payments of assessments under Article II of the Declaration are not to be regarded as fines that warrant a hearing under this section.
- 3 **ABATEMENT AND ENJOINMENT OF VIOLATIONS.** In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates the Declaration, Bylaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement

and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Additionally, the Association through the Board shall have the power to enjoin or to remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, Bylaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

### **ARTICLE VIII** **ENFORCEMENT PROCEDURES**

In accordance with Section 47F-3-107.1 of the Planned Community Act, the Board of Directors shall not impose a fine or charge for damages against a Lot Owner or suspend a Lot Owner's planned community privileges or services unless and until the following procedure is followed:

1. **NOTICE.** If it appears that a Lot Owner is in violation of the Declaration, Bylaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the Lot Owner is not in violation of the Declaration, Bylaws, or Rules and Regulations; (iii) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (iv) that the Lot Owner has the right to be represented by an attorney at the hearing.
  
2. **HEARING.** The hearing shall be held before the Board of Directors and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five (5) days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The Board shall render its Final Decision to the Lot Owner regarding imposition of the fine or suspension of planned community privileges or services. Charges for late payments under Article II of the Declaration are not to be regarded as fines that warrant a hearing under this section.

### **ARTICLE IX** **INSURANCE**

1. **COVERAGE.** To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage, as a common expense in accordance with Section 47F-3-113 of

the Planned Community Act and as set forth in this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described herein will not be maintained, the Board shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Lot Owners at their respective last known addresses.

2. **PROPERTY AND CASUALTY INSURANCE.** The Association shall procure and maintain property and casualty insurance on the Common Elements insuring against all risks of direct physical loss, including fire and extended coverage periods, for and in an amount equal to one hundred percent (100%) of the replacement costs of all structures on the Common Elements.
3. **LIABILITY INSURANCE.** The Association shall maintain liability insurance in reasonable amounts covering all occurrences, commonly insured against for death, bodily injury, and property damage rising out of or in connection with the use, ownership, or maintenance of the Common Elements and covering the Association, the Board of Directors, Officers, and all agents and employees of the Association and all Lot Owners and persons entitled to occupy any Lot or other portion of the Planned Community.
4. **OTHER INSURANCE.** The Board of Directors shall obtain as a common expense:
  - (a) Worker's Compensation Insurance if and to the extent necessary to meet the requirements of North Carolina law;
  - (b) Officers and Directors Liability Insurance in such amount as the Board may determine. Such insurance shall contain a cross liability endorsement;
  - (c) Such other insurance as the Board of Directors may determine to be necessary.

**ARTICLE X**  
**MISCELLANEOUS**

1. **COMMON ELEMENTS UTILIZATION.** Common Elements, including but not limited to vacant common Lots, mailboxes, tennis court, and clubhouse (including the parking lot) are for Association community members and their guests. Members are responsible for their guests utilizing the clubhouse, tennis court, or Association Lots when utilizing Common Elements.
2. **RIGHTS OF ASSIGNMENT.** The Board has the right to assign duties and responsibilities to Association members or third parties.
3. **WAIVER OF VIOLATION.** The Board may waive any violation of this Declaration in writing and recorded in the minutes of the Board meeting at which the waiver was decided.

4. **AMENDMENT.** The Declaration may be amended only by affirmative vote of or written agreement signed by Lot Owners of Lots to which at least sixty seven percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in Section 47F-2-117 of the Planned Community Act. No amendment shall become effective until recorded in the office of the Register of Deeds of Madison County, North Carolina.
5. **LEGAL ACTIONS OF/BY/FOR THE ASSOCIATION.** Any party undertaking legal action coming from this Declaration, such as an issue with common use of Association property, shall not expect Association funds to be used unless the Association itself enters legal action at the approval of the Board.
6. **NOTICES.** Any notice required to be sent to any Lot Owner under the provisions of this Declaration shall be deemed properly sent when mailed, postage paid to the last known address of the Lot Owner. Electronic mail technology is not an acceptable alternative unless the Association has received a Lot Owner's preference to receive electronic mail.
7. **SEVERABILITY.** Invalidation of any part of this Declaration by judgment or court order shall not affect any of the other provisions which shall remain in effect.

NOW, THEREFORE, the Original Covenants, as amended, are now amended by striking the documents in their entireties except for the purpose of preserving legal descriptions and by simultaneously substituting therefor the following Amended and Restated Declaration of Restrictive Covenants for Mountain Park which shall govern all of Mountain Park:

This the 17<sup>th</sup> day of November, 2023.

MOUNTAIN PARK HOMEOWNERS ASSOCIATION, INC.

By: [Signature]  
President

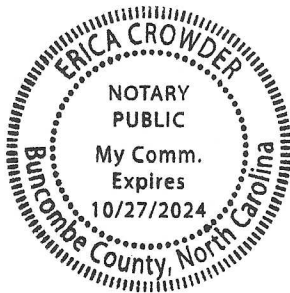
[Signature]  
Attest: Secretary

STATE OF NORTH CAROLINA  
COUNTY OF Madison

I, Erica Crowder (print name), a Notary Public of Buncombe County, North Carolina, certify that Dale Johns Bush personally came before me this day and acknowledged that he (or she) is Secretary of Mountain Park Homeowners Association, Inc., a nonprofit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Wesley Scot Beene its President and attested by himself (herself) as its Secretary.

Witness my hand and official stamp or seal, this the 17<sup>th</sup> day of November 2023

[Signature]  
NOTARY PUBLIC



My Commission Expires: 10/27/2024