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AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SWISS VILLAGE

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AMENDED AND RESTATED  
DECLARATION OF **CRP 876 741**  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
SWISS VILLAGE.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the 5<sup>TH</sup> day of JULY, 2006 by SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC, a North Carolina non-profit corporation (the "Association").

Statement of Purpose

Swiss Village, Inc. executed and recorded Covenants and Restrictions for the development commonly known as Swiss Village located in Mitchell and McDowell Counties, North Carolina, which Covenants and Restrictions are recorded in Book 127 at page 69 of the Mitchell County Registry and Book 171 at page 163 at the McDowell County Registry, as amended by Amendments to Covenants and Restrictions recorded in Book 221 at page 544 of the McDowell County Registry (the "Original Declaration"). The "Property" (as defined below), which is subject to the Original Declaration, is shown on those plats recorded in Plat Book 1 at page 112 of the Mitchell County Registry, and Plat Book 3 at pages 4, 16, and 20 of the McDowell County Registry. Association is the homeowners association for Swiss Village.

Prior to the execution of this Declaration by the Association, owners of Lots in Swiss Village to whom were allocated at least sixty-seven percent (67.0%) of votes in the Association, and at least sixty-seven percent (67.0%) of the votes entitled to be cast for election to the "Architectural and Services Committee" described in the Original Declaration, amended the Original Declaration to provide that Chapter 47F of the North Carolina General Statutes, the North Carolina Planned Community Act (the "Act"), would apply to Swiss Village, as set forth in the Amendment of Covenants and Restrictions – Swiss Village recorded in Book 398 at page 444 of the McDowell Public Registry and Book 424 at page 295 of the Mitchell Public Registry.

Prior to the execution of this Declaration by the Association, owners of Lots in Swiss Village to whom at least sixty-seven percent (67.0%) of votes in the Association, and at least sixty-seven percent (67.0%) of the votes entitled to be cast for election to the "Architectural and Services Committee" described in the Original Declaration, are allocated affirmatively voted to amend the Original Declaration, as provided in North Carolina General Statutes Section 47F-2-117(a), at a meeting of the Association duly held on July 5, 2006, to amend and restate the Original Declaration in its entirety, with the effect that this Declaration is to completely and entirely amend, restate, replace, supplant, and supersede the Original Declaration in its entirety effective as of the date that this Declaration is recorded in the Registries of McDowell County and Mitchell County, North Carolina.

The Association and Owners desire to insure the attractiveness of Swiss Village, to prevent any future impairment thereof, to prevent nuisances and enhance the value and amenities of all properties within Swiss Village. Furthermore, the Association and Owners desire to

provide for the construction, maintenance and upkeep of any Common Areas and related easements within Swiss Village, all for the common use and benefit of all Owners.

The Association and Owners desire to provide for a system whereby all Owners will pay for the maintenance and upkeep of any Common Areas in accordance with an established budget set by the Board of Directors and approved by the Members of the Association in accordance with the terms hereof and the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (referred to herein as the "Planned Community Act").

To these ends, the Association and Owners desire to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each Owner thereof.

The Association and Owners further desire to delegate and assign to Association the powers of (a) owning, maintaining and administering the Common Areas, except as otherwise provided in this Declaration; (b) administering and enforcing the covenants and restrictions contained herein; and (c) collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and Amenities in Swiss Village, to ensure specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas and Amenities as provided in the Declaration and the Bylaws.

NOW, THEREFORE, the Association and Owners, pursuant to the affirmative vote of owners of Lots in Swiss Village to whom at least sixty-seven percent (67.0%) of votes in the Association, and at least sixty-seven percent (67.0%) of the votes entitled to be cast for election to the "Architectural and Services Committee" described in the Original Declaration, are allocated, at a meeting of the Association duly held on July 5, 2006, by these presents amend and restate the Original Declaration to declare that the Property subject to the Original Declaration and described herein is and shall be subject to the following express conditions, restrictions and limitations, which conditions, restrictions and limitations are intended to be and shall be covenants running with the land and which shall be binding alike upon the heirs, personal representatives, successors and assigns of all Owners of the Property, including all present Owners, and all subsequent purchasers of Lots. The provisions of this Declaration completely and entirely amend, restate, replace, supplant, and supersede the Original Declaration in its entirety.

#### ARTICLE 1 - DEFINITIONS

Section 1.1 Amenities shall mean and refer to the improvements which are constructed on any Common Areas.

Section 1.2 Architectural Review Committee shall mean and refer to the committee appointed by the Board of Directors to advise it in its review and approval of plans and specifications for any improvements to be constructed within the Property.

Section 1.3 Articles of Incorporation shall mean and refer to the Articles of Incorporation for the Association.

Section 1.4 Association shall mean and refer to SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.5 Board of Directors shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.6 Bylaws shall mean and refer to the Amended and Restated Bylaws for the Association substantially in the form attached hereto as Exhibit "B" and incorporated herein by reference, which have been adopted by an affirmative vote of two-thirds of the Owners.

Section 1.7 Common Area or Common Areas shall mean and refer to the Wells, Water System, Trails, Entrance Signs, Gate(s), Roads, all utilities, easements and Amenities located within Swiss Village and its Well site. The Common Areas shall be owned by the Association, except that to the extent any Trails, Wells, portions of the Water System, Entrance Sign, Gates, or other listed facilities are located on Lots and not on Common Area. The easements set forth herein for the construction, operation, and maintenance of the Trails and any other facilities in which the Association is granted an easement hereunder shall belong to the Association, but fee simple title to the real property on which the Trail or such other facilities is located shall remain vested in the Lot Owner.

Section 1.8 Entrance Sign shall mean the monument(s) or sign(s) marking the entrance to Swiss Village and all related facilities, including any irrigation and lighting and other utility facilities.

Section 1.9 Gates shall mean all gates restricting entry into Swiss Village other than gates owned by individual owners restricting access to their Lots.

Section 1.10 Lot or Lots shall mean and refer to the separately numbered or single family Lots depicted on the Maps, which Lots do not include the Common Areas as described in this Declaration.

Section 1.11 House or Houses shall mean and refer to the residential dwelling structures constructed upon the Lots.

Section 1.12 Map or Maps shall mean and refer to: (i) the Maps of Swiss Village Subdivision recorded in Plat Book 1, Page 112 of the Mitchell County Registry and Map Book 3, Pages 2, 16, and 20 in the McDowell County Registry, North Carolina; (ii) any revisions of such Map or Maps recorded in the Mitchell County and McDowell County Public Registry; and (iii) all other recorded plats of the property subject to the Original Declaration..

Section 1.13 Member shall mean and refer to every person or entity who owns land in Swiss Village. In this case Membership is automatic.

Section 1.14 Owner shall mean and refer to the record Owner(s), whether one or more persons or entities, of fee simple title to any Lot within Swiss Village, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.15 Roads shall mean and refer to all streets and roads as shown on the Maps, all to be privately maintained by the Association as addressed in Section 3.5 of this Declaration.

Section 1.16 Swiss Village shall mean and refer to the planned community subject to this Declaration and shown on the Maps.

Section 1.17 Trail or Trails shall mean and refer to those private Trails or paths which have been constructed on the Common Areas or elsewhere by the Association or the original developer of Swiss Village for the common use of the Owners.

Section 1.18 Water System shall mean and refer to the Well and the pipes, pumps, and other apparatus connected thereto for the purpose of furnishing water to the Lots and the Houses thereon, except for such portions thereof as are located entirely on a Lot and serve a single House.

Section 1.19 Well shall mean and refer to those wells which may be constructed in Common Areas by the Association, but not to any private wells constructed by Owners on Lots.

## ARTICLE 2 - PROPERTY RIGHTS

Section 2.1 Ownership of Common Areas. The Common Areas are owned and maintained by the Association, except that to the extent any Trails, Wells, portions of the Water System, Entrance Sign, Gates, or other facilities defined as Common Area above are located on Lots and not on Common Area. With respect to any Trails, Wells, portions of the Water System, Entrance Sign, Gates, or other facilities defined as Common Area above that are located on Lots and not on Common Area, there is hereby established, granted, created, and reserved an easement in favor of the Association and the Owners for the right of use and enjoyment of such facilities for the purpose for which designed. All Common Areas and the Roads shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

Section 2.2 Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

(a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to insure the availability of the right to use the Common Areas to the owners and the safety of all owners on the Common Areas;

(b) the right of the Association to grant utility, drainage and other easements across the Common Areas;

(c) the provisions of Section 3.5 below; and

(d) the provisions of Article 6 of the Declaration.



Section 2.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to certain Common Areas and facilities located thereon to the Members of the Owner's family, guests or invitees, subject to reasonable rules and regulations promulgated by the Association.

Section 2.4 Rights in the Roads. Each Owner and the Association shall have and are hereby granted a perpetual, non-exclusive right to use the Roads for the purpose of providing access to and from each Lot and the Common Areas.

### ARTICLE 3 - THE ASSOCIATION

Section 3.1 Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws.

Section 3.2 Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be one vote per platted Lot, and one vote per House. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall, more than one (1) vote be cast. By way of example, if an Owner owns two Lots, and has constructed one House on them, that Owner is entitled to cast three (3) votes, one for each Lot and one for the House.

Section 3.3 Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and any rules and regulations promulgated by the Association, as well as its own books, records and financial statements which shall be available for inspection by all Owners in good standing, with sufficient notice to the Board of Directors.

Section 3.4 Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established, by the Board of Directors and to perform any of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with Board of Directors approval, with or without cause, upon thirty (30) days prior written notice to the agent, without payment of a termination fee.

Section 3.5 Maintenance of Common Areas, Roads and the Community Water System. Except as otherwise specifically set forth herein, the Association shall operate and maintain the Common Areas. Except as otherwise specifically set forth herein, the cost of maintenance and operation of the Common Areas shall be paid from the Annual Assessment collected by the Association.

(a) The Common Areas, Roads and Water System shall be maintained as more particularly described below.

(b) All Common Areas (and all improvements located thereon) shall be clean and free from debris and maintained in an orderly condition, together with the landscaping

thereon (if any) in accordance with the highest standards for private parks, including any removal, repair, reconstruction and replacement of any landscaping, utilities, or improvements located thereon.

(c) The Roads and Water System shall be maintained by the Association. Such maintenance shall include repair, replacement and reconstruction, when necessary.

(d) The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the operation and maintenance of any improvements within the boundaries thereof. The owners of such Lots shall be responsible for same.

Section 3.6 Emergency Fund. The Association shall establish and maintain an adequate emergency fund (the "Emergency Fund") for the special maintenance, repair, reconstruction and replacement of the Common Areas and any improvements located on such Common Areas which the Association is obligated to maintain in order to fund unanticipated expenses of the Association or to acquire equipment or services deemed necessary or desirable by the Board of Directors. Such Emergency Fund shall be collected and maintained out of the Annual Assessment, as hereinafter defined, and as set forth in Section 4.2.

Section 3.7 Trails. The Association shall have the exclusive right to construct Trails. No motorized traffic shall be permitted on Trails.

Section 3.8 Personal Liability. No Association Member, nor the Board of Directors, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Association Member, whether or not such other Association Member was acting on behalf of the Association or otherwise. The Association, its directors, officers, agents or employees shall not be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all Members of the Board of Directors from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of Directors of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

#### ARTICLE 4 - COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation for Annual, Special, and Special Individual Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the Annual Assessments, Special Assessments, and Special Individual Assessments, as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a

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charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 4.2 Purpose of the Annual Assessment. The assessment to be levied annually by the Association against each Lot and House (the "Annual Assessment") with regards to the development of the Lot, shall be used as follows:

- (a) to repair, maintain, reconstruct, keep clean and free from debris, the Common Areas and any Amenities and improvements located thereon;
- (b) to maintain and repair or cause to be maintained the Water System and Roads to the standards of maintenance as deemed appropriate by the Board of Directors;
- (c) to pay any ad valorem taxes levied against the Common Areas and any other property owned by the Association.
- (d) to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws.
- (e) to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws.

Section 4.3 Setting of Budget and Allocations; Payment of Annual Assessment. The Annual Assessment for each and every fiscal year shall be in an amount as set by the Board of Directors, and unless otherwise determined by the Board of Directors shall be due and payable in one (1) annual installment, such installment being due and payable no later than the date set forth in the notice sent to the Owners as described below. The Board of Directors shall prepare a budget for each fiscal year of the Association, and an allocation of the budget against the Lots in the manner described below, in sufficient time to allow for the required meeting of the Members to vote on the budget and allocations, as described below. The annual budget shall be divided into four (4) categories: Roads; Water System; Emergency Fund; and Overhead. The Overhead category shall include all anticipated expenses of the Association other than those for the Roads, the Water System, and the Emergency Fund. Annual Assessments shall be made against each Lot using allocations made by the Board of Directors. Such allocations shall take into consideration the relative impacts on the expenses reflected in these budget components of: (i) undeveloped Lots; and (ii) Lots with Houses on them. Hence, there shall be an allocation of a uniform amount against each "undeveloped Lot"; and a separate additional allocation of a uniform amount against each "developed Lot." For purposes of these allocations and determination of these uniform amounts, an "undeveloped Lot" shall mean a Lot upon which no House has been constructed, except that with respect to a House constructed on a tract containing more than one Lot, all but one of such Lots shall also be an "undeveloped Lot"; and a "developed Lot" shall mean a Lot upon which a House has been constructed other than the Lots counted as "undeveloped Lots" in accordance with the preceding phrase. (For example, if an Owner owns four Lots and has constructed a House upon the tract comprised of such four Lots,

one of the Lots is a "developed Lot"; and the other three Lots are "undeveloped Lots." Therefore, the Owner of such four Lots and House would pay the uniform amount allocated for undeveloped Lots multiplied by three; and the uniform amount allocated for developed Lots multiplied by one). The Board of Directors shall determine the budget and fix the amount of the Annual Assessment as to each Lot and House according to the preceding allocations for any fiscal year at least thirty (30) days prior to the beginning of such fiscal year, and the Association shall send written notice of the budget and the amount of the annual assessment, as well as the amount of the payment due and due date, to each Owner at least fifteen (15) days prior to the beginning of such fiscal year. Such notice shall include notice of a meeting of the Members to consider ratification of the budget and the allocations thereof against the Lots and Houses, including a statement that the budget and allocations may be ratified without a quorum. (It is intended the budget and allocations be considered for ratification at the Association's annual meeting.) The Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget and allocations to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The budget and allocations are ratified unless at such meeting Members exercising a majority of the votes in the Association reject the budget and allocations. If the Board of Directors fails to so fix the regular annual assessment, the assessment applicable for the previous assessment year shall remain in effect until the Board of Directors shall fix a new regular annual assessment. The failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of its obligation to pay the Annual Assessment. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Annual Assessment and may increase or decrease the frequency of collection of the Annual Assessment installment in any reasonable manner.

Section 4.4 Special Assessment for Capital Improvements. In addition to the Annual Assessment, the Association may levy, in any assessment year, a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area improvements; or (ii) the reconstruction, repair or replacement of Common Areas, including but not limited to, Roads and Water System. Provided, however, that any such assessment must be approved by a vote of no less than two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.5 Special Individual Assessment. In addition to the Annual Assessment and Special Assessments authorized above, the Board of Directors shall have the power to levy a Special Individual Assessment applicable to any particular Lot Owner ("Special Individual Assessment"): (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of Common Areas, including, but not limited to, the Roads and Water System, including all improvements located thereon, whether occasioned by any act or omission of such Owner(s), Members of such Owner's family, or such Owner's agents, guests, employees or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated by the Association pursuant to those documents, or the Bylaws. Owners will be held responsible for the negligent use of the infrastructure of Swiss

Village such as the Water System and the Roads. An example of misuse would be the failure to turn off the water to the house at the main water supply line valve when away from the house during the winter months when freezing temperatures are possible. The support of all Owners is needed in order to avoid excessive water loss, wear and tear on the pumping equipment, and the waste of electricity. The due date of any Special Individual Assessment levied pursuant to this Section 4.5 shall be fixed in the Board of Directors resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board of Directors shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

#### ARTICLE 5 - GENERAL ASSESSMENT PROVISIONS

Section 5.1 Certificate Regarding Assessments. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments of a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 5.2 Effect of Nonpayment of Assessments; Remedies of the Association. Assessments not paid by their due date as set forth in Section 4.3 hereof, or any other assessment not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum. In addition to such interest charge, the Board of Directors shall have the right to discontinue water service, and the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner, and may exercise any and all remedies provided for in the Planned Community Act. The Association has the right to collect reasonable attorneys' fees related to such action and these shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein.

#### ARTICLE 6 - RESTRICTIONS

Section 6.1 Land Use, Building Type and Residential Restrictions. All Lots in the Subdivision shall be known and described as residential Lots and shall be used only for private residential purposes. No Lot may be used to provide access (ingress/egress) to property outside Swiss Village. No road or path shall be constructed to provide access (ingress/egress) to Swiss Village. The only entrances that will provide access (ingress/egress) to Swiss Village shall be Alpine Drive from 226A and the existing Blue Ridge Parkway Service road from 226A. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding 1½ stories and thirty-five (35) feet as viewed from the Road which the primary entrance door of the house faces shall be erected or permitted to remain upon any Lot as provided in Article 7. The bottom of the primary entrance door of the house will be no more than three (3) feet above grade as viewed from the Road which such primary entrance door faces. The Board of Directors shall have the right (but not the obligation), because of steep topography, unique Lot configuration or similar reasons, to allow dwelling stories and heights greater than described here, and to waive or modify the principal Road entrance height

restriction. No mobile home or multi-family home may be erected or permitted. All improvements must be approved by the Board of Directors. A private garage or carriage House which may contain living quarters and outbuildings incidental to the residential use of the Lot may be permitted upon the condition that they are not rented, leased nor otherwise used for remuneration, subject to the other provisions contained herein. No property may be offered for rent to the general public. However, an Owner may allow family or friends to use their House even when reimbursement occurs. This use is differentiated from commercial rental to the general public, which is not allowed. Commercial rental to the general public includes, but is not limited to, the placement of a property with a real estate agent, or the advertising of a rental in a newspaper, on the internet, or through any other media. No wind generation of electricity, oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall wind generators, wind mills, oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 6.2 Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Houses or other improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. The exterior of all Houses and other structures must be completed within one (1) year from the date of commencement of construction, unless a longer time is approved by the Board of Directors. Any damage to any Roads or any part of any Common Area or any utility system caused by an Owner or any builder shall be repaired by such responsible party. If such responsible party fails to repair such damage, the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its out of pocket expenses in making such repairs. The Owner of each Lot and any builders shall at all times keep contiguous areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements on the Lots, Roads, private driveways and any Common Areas. The Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. All Owners and their building contractors and sub-contractors shall, consistent with standard construction practices: (i) keep all portions of the Lots, Roads, private driveways and the Common Areas free of unsightly construction debris; and (ii) shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of improvements on a Lot or Common Areas, or take other measures consistent with standard construction practices necessary to keep the Lots, Roads, and all Common Areas free of such garbage, trash, or other debris. No building materials, equipment, dumpsters or portable toilets may be placed within the road rights of ways. The burning of debris, trash and materials during construction is prohibited. Each Owner and any Owner's contractors or sub-contractors shall be responsible for erosion control protection during any earth-disturbing operation or activity.

Section 6.3 Dwelling Size. The square footage requirements hereinafter set forth are enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports, and unheated storage areas, decks, or patios.

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(a) Any dwelling erected upon any Lot shall contain not less than 1,000 square feet of heated space (exclusive of any garage and carriage house). Any dwelling proposed to be constructed greater than 3,300 square feet of enclosed heated area shall be subject to size limitations which may be imposed by the Board of Directors and preliminary approval must be obtained prior to preparation of any final design drawings. The calculations of enclosed heating area shall include exterior wall dimensions.

(b) No House shall exceed 1½ stories and thirty-five (35) feet as viewed from the Road which the primary entrance door faces; the bottom of such primary entrance door shall be not be more than three (3) feet above grade as viewed from the Road that such primary door entrance faces; provided, however, the Board of Directors shall have the right (but not the obligation), because of steep topography, unique Lot configuration or similar reasons, to allow dwelling stories and heights greater than described here, and to waive or modify the primary entrance door height restriction.

Section 6.4 Building Construction and Quality. All buildings and outbuildings erected upon any Lot shall be constructed of material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. The exterior surface of any building shall not be imitation brick or stoneroll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the House located on said Lot. All buildings shall have roofs (with the exception of dormers, porches, bay windows and other minor architectural details) of not less than 7 in 12 pitch and not less than 12 inch overhang.. The Board of Directors shall have the right (but not the obligation) to allow a variance to the roof pitch requirement.

Section 6.5 Temporary Structures; Structure Materials. No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building, or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed or erected on any Lot or attached to any residence.

Section 6.6 Minimum Frontage for House Construction; Building Setback Lines. No House may be constructed in Swiss Village on a tract of land having less than one hundred (100) lineal feet of frontage on the Road which the primary entrance door faces. This one hundred (100) foot requirement may not be waived by the Board of Directors. No Lot or combination of Lots may be used more than once for the purpose of determining the calculation for this one hundred (100) foot requirement. Due to this requirement, some Lots as shown on the Maps cannot have a House built upon them, and a House will have to be constructed on one or more contiguous Lots. No building on any Lot (including any stoops, porches, or decks) shall be erected on or permitted to remain within ten (10) feet of any side or rear Lot line, or ten (10) feet from the easement line paralleling the front boundary line as shown on the recorded plat, or ten (10) feet from any utility easement. Every effort must be made by owners to obtain setback lines greater than these ten (10) feet in order to ensure the greatest privacy for each neighbor. Setbacks are subject to Lot topography and ground composition. Any subsequent changes to site location after initial Board of Directors approval (as set forth in Article 7, Section 7.1), must be

reviewed and approved in writing by the Board of Directors prior to commencement of construction.

In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements. No structures or improvements may be constructed or placed within the right-of-way of any Roads.

The Association shall have the authority but not the obligation, in its sole discretion, to assess fines or penalties against an Owner who fails to abide by the terms of this Section 6.6, to the maximum extent and in accordance with the provisions of the North Carolina Planned Community Act. The penalties and fines authorized by this Section 6.6, as well as the expenses to be reimbursed the Association shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling the Association to the assessment collection remedies specified in Article 6 of this Declaration.

Section 6.7 Minor Setback Violations. In the event of the unintentional violation of any of the building setback covenants set forth above, the Board of Directors has the right, but is not obligated, to waive in writing such violation of the setback covenants, provided that such change is not in violation of any zoning or subdivision ordinance, or other applicable law or regulation.

Section 6.8 Fences and Walls. Fences and walls must be approved by the Board of Directors.

Section 6.9 Utility and Drainage Easements. All Property shall be subject to all easements and rights-of-ways for utilities and drainage shown on the plats including but not limited to those certain easements shown and designated on the plats as:

- (a) Utility Easement
- (b) Public Storm Drainage or Pipe (CDP) Easement

Section 6.10 Water System. All Houses must be connected to the Water System as their source of potable water, and no wells may be dug by individual Owners for the furnishing of potable water to their Houses. Each Owner constructing a new House must pay a community water system Tap On (connection) fee for capital improvement recovery of an amount as determined by the Board of Directors. Such payment must be made as a condition to the approval of plans and specifications for improvements as provided in Article 7 below.

Section 6.11 Outdoor Lighting. Any outdoor flood light or similar light shall be directed or shielded so as to minimize glare and not be a nuisance to other Houses. The use of outdoor lighting shall be minimized so as to avoid light pollution.

Section 6.12 Signs. No signs of any kind shall be displayed to the public view on any Lot, except signs showing the county numbering system for Emergency 911 purposes, the name of the residence and/or occupants. "For Sale" signs are permitted but must be approved by the



Board of Directors for size and information presented. Directional, "Open House," and signs at the Swiss Village entrances are not permitted.

Section 6.13 Property Maintenance. Each Owner shall keep his Lot (including vacant Lots) in a clean and orderly condition and shall keep the improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto by fire or other casualty. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash companies.

Section 6.14 Off-Road Parking. Each Lot Owner shall provide a driveway which provides space for parking at least two automobiles off the Roads prior to the occupancy of any House constructed on the Lot. No truck or commercial vehicle in excess of one ton load capacity or any vehicle under repair, or wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, road, private drive, or any other Common Area. No boat, boat trailer or RV may be parked, left or stored on any Lot or park area or other Common Area. No trailer, motor home, recreational vehicle, camper or boat shall be used as a residence, either permanently or temporarily. All allowed vehicles must have a current license plate affixed. All other automobiles must have a current license plate affixed and must be parked on a driveway or in a garage. Variances in the requirements set forth in this Section 6.14 may be granted by the Board of Directors. Reasonable variances in this Section 6.14 during house construction may be permitted with prior Board of Directors approval.

Section 6.15 Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot or in any House or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing, animal or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or in any residential dwelling or outbuilding with the exception of dogs, cats, or other household pets that may be kept and maintained.

In order to preserve the aesthetic qualities of the Common Areas, to maintain sanitary conditions throughout Swiss Village, and to maintain a proper respect for other property owners and users of the Common Areas, each person that keeps a pet within Swiss Village shall abide by the following restrictions, conditions, and affirmative obligations and any other supplemental or additional rules and regulations promulgated by the Association:

- (a) No pets may be kept, bred, or maintained for any commercial purpose.
- (b) The Owner of a pet must not allow the pet to roam unattended in Swiss Village and it is the responsibility of each pet Owner to either leash or otherwise physically restrain their pets or retain other suitable control while the pets are out of doors. The use of buried electric pet fences is encouraged. Pet droppings must be cleaned up by the Owner.

(c) The Owner shall muzzle any pet which constantly barks or makes noises which might be reasonably expected to disturb other Owners or exhibits threatening behavior. Any pet that makes an unreasonable amount of noise or becomes a nuisance may be ordered removed by the Association.

(d) The Owner of the pet shall not leave the pet unattended for any period longer than normal care and maintenance would permit and the area in which the pet is kept must be maintained at all times in a sanitary condition free of excessive odor.

(e) Pets shall be allowed on the Common Areas or on property not owned by the property Owner only in accordance with the rules and regulations of the Association.

(f) The Owner of a pet which causes destruction of property or is a nuisance will be required to keep such pet confined by structure or leash at all times.

(g) All pets shall be registered, licensed, and vaccinated as required by law.

Upon written request of any property Owner, the Association may conclusively determine, in its sole and absolute discretion, not only for purposes of this Section 6.15, a particular pet is a nuisance, and the Association shall have the right to require the Owner of the particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Association shall have the further right to fine any property Owner for the violation of these pet restrictions by such property Owner, his family, guests or invitees. Any property Owner shall be liable to the Association for the cost or repair of any damage to the Common Areas caused by the pet of such property Owner, his family, guests or invitees or of any occupant of such property Owner's home. Any such fine or cost of repairs shall be considered a Special Individual Assessment pursuant to the provisions of Section 4.5

Section 6.16 Outdoor Pools. Outdoor pools (swimming pools, therapy pools, spas, , whirlpools, etc.) are not allowed unless an exception is approved by the Board of Directors.

Section 6.17 Tennis Courts. Tennis courts are not permitted.

Section 6.18 Recreational Equipment.

(a) No recreational equipment (including, but not limited to, basketball backboards and hoops, trampolines, swing sets, tree houses, children's climbing or play apparatus and other equipment associated with either adult or juvenile leisure or recreation) shall be attached to the exterior of any House or otherwise placed or kept on any Lot without the prior approval (including approval as to location) of the Board of Directors.

(b) Movable equipment of any type (such as lawn mowers and garden tools) and children's play toys shall not remain repeatedly overnight within any front yard of any Lot, or within the side yards of any Lot which are visible from an adjoining Lot, in such number or for such a long period of time as to create a continuing, unsightly condition.

Section 6.19 Hunting.. No hunting will be allowed on the Property. Firearms may not be discharged on the Property except for personal protection..

Section 6.20 Non-waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 6.21 Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner.

Section 6.22 Occupants Bound. All provisions of this Declaration, Bylaws, and of any rules and regulations, use restrictions or architectural guidelines promulgated pursuant hereto or thereto which govern the conduct of owners and which provide for sanctions against owners shall also apply to all Occupants even though Occupants are not specifically mentioned.

#### ARTICLE 7 - ARCHITECTURAL APPROVAL

Section 7.1 General. Notwithstanding anything contained in this Declaration to the contrary, no improvements including without limitation, site preparation on any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, or erection of any fences, or construction of driveways shall be commenced, erected or maintained on any portion of Swiss Village subject to the provisions of Section 7.6 hereof until: (a) the Board of Directors has approved the plans and specifications therefore and the location of such Improvements and has given its written approval for commencement of construction, all in accordance with the terms and requirements of this Declaration and those made by the Board of Directors for the specific property; and (b) the fees, such as the water system Tap On fee, set forth in or contemplated in this Article 7 have been paid. Any subsequent changes to plans, specifications or site location must be reviewed and approved in writing by the Board of Directors prior to commencement of construction.

Section 7.2 Composition of an Architectural Review Committee. The Board of Directors may authorize for guidance an Architectural Review Committee. The members of the Architectural Review Committee shall be appointed by the Board of Directors. At least one of the members of the Architectural Review Committee must be a member of the current Board of Directors, and all must be Members of the Association. Members of the Architectural Review Committee may be removed at any time by the Board of Directors. Notwithstanding anything contained herein to the contrary, the Architectural Review Committee shall have the right, power and authority to employ and/or use the services of any architects, engineers or other professionals as it deems necessary or advisable. The size of the Architectural Review Committee will be determined by the Board of Directors.

Section 7.3 Definition of Improvements. The term "improvement" or "improvements" shall mean and include any and all man-made changes or additions to a Lot. The definition of improvements includes both original improvements and all later changes to

improvements. The definition of improvements, however, does not include the replacement or repair of improvements previously approved provided such replacement or repair does not change exterior colors, materials, designs or appearances from that which were previously approved. House and roof colors must be compatible with the surrounding houses and the environment, and must be approved by the Board of Directors.

Section 7.4 Enforcement.

(a) It is the intent of the Board of Directors that the architectural provisions of this Declaration are to establish quality standards for construction in Swiss Village to help preserve value of properties. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of standards could result in harm and damage to other Owners of property in Swiss Village. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article 7 by a proceeding at law.

(b) As to nonconforming or unapproved improvements, the Association may require any Owner to restore such Owner's improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvements) if such improvements were commenced or constructed in violation of this Article. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the amount of the cost thereof as a Special Individual Assessment against the Lot upon which such improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, to remove any unapproved improvement or otherwise to remedy a violation of these guidelines, the Association shall be entitled to recover court costs, attorneys' fees and expenses incurred by the Association, in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot upon which such Improvement was commenced or constructed.

Section 7.5 Failure of the Board of Directors to Act. If the Board of Directors fails to approve or disapprove any plans and specifications and any other submittal which conform (and which relate to improvements which will conform) with the requirements hereof, or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof and provided such submittal is a full and complete submittal, of all items that were to have been submitted to the Board of Directors it shall be conclusively presumed that the Board of Directors has approved such conforming plans and specifications and any other submittal.

However, if during the above described thirty (30) business day period the Board of Directors requests additional plans and specifications or any other submittal, the submitting party will be granted ten (10) business days in addition to the initial thirty (30) business days to submit such plans and specifications or any other submittal as requested by the Board of Directors. If after the then forty (40) business day period the Board of Directors fails to approve or disapprove such plans and specifications or any other submittal it shall be conclusively presumed that the Board of Directors has approved such conforming plans and specifications or any other submittal.

If plans and specifications or other submittals are not sufficiently complete, or otherwise inadequate, the Board of Directors may approve or disapprove part, conditionally or unconditionally, and reject the balance. The Board of Directors is authorized to request submission of proposed construction materials, including samples of exterior colors.

Notification of approval or disapproval of plans and specifications must be in writing from the Board of Directors and must be signed by at least 4 of the 5 Directors.

Section 7.6 Variances. Upon submission of a written request for same, the Board of Directors may, from time to time, in its sole discretion, permit Owners to construct, erect or install improvements which are at variance with restrictions, requirements or provisions of this Declaration from which a variance is permitted, pursuant to the terms hereof. In any case, however, such variances shall be in basic conformity with and shall blend effectively with the general architectural style and design of the community and shall not materially change the scheme of restrictions herein set forth. Written requests for variances shall be deemed to be approved in the event the Board of Directors has not expressly and in writing approved such request within thirty (30) business days of the receipt by the Board of Directors of such request. No member of the Board of Directors shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Board of Directors to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other Owner. Nothing herein or the issuance of a variance, shall constitute a waiver of any governmental requirements with respect to a variance requested by an Owner.

Section 7.7 Limitation of Liability. No member of the Board of Directors shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article 7. Neither the Board of Directors, nor the members thereof, nor the Association, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of any plans and specifications. The approval of plans and specifications by the Board of Directors shall not be deemed or construed as a representation or warranty of the directors, member, employee, agent or affiliate of any of them, (i) that improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of improvements constructed in accordance with such plans and specifications; and any responsibility or liability therefor is hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that he will not bring any action or suit against the Board of Directors, the Association, the Architectural Review Committee (if applicable), or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quitclaims all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the

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provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

## ARTICLE 8 - INSURANCE

Section 8.1 Board of Directors. The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

(a) Fire and Casualty. All improvements and all fixtures included in any Common Areas, including but not limited to, entrance and Road signs, Water System facilities, park areas (if constructed), and all personal property and supplies belonging to the Association, shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and perils covered by a standard "all risk" insurance policy. All such policies shall provide that adjustment of loss shall be approved by the Board of Directors and the insurance company. In addition to the provisions and endorsements set forth in Sections 8.3 and 8.4, the fire and casualty insurance described herein shall contain the following provisions:

(i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the owners and their employees, agents and invitees; and

(ii) a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

The property and public liability insurance policy shall not contain (and the insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, or the owners; (2) loss payments are contingent upon action by the carriers, directors, policy holders or owners; and (3) there are limiting clauses (other than insurance conditions) which could prevent owners or the Association from collecting the proceeds.

(b) Public Liability. The Board of Directors shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Areas, and customary for the activities and obligations of property owners' associations for subdivisions similar to Swiss Village, covering each member of the Board of Directors, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and out of the activities of the

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Association; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to the Association's property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, Swiss Village or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the owners as a group to a single Owner. The Board of Directors shall review such limits annually.

(c) Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board of Directors in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Other. Such other insurance coverage, including flood insurance and worker's compensation, as the Board of Directors shall determine from time to time desirable.

Section 8.2 Premium Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Articles 4 and 5 hereof.

Section 8.3 Special Endorsements. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

(a) recognition of any insurance trust agreement entered into by the Association;

(b) coverage that may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days prior written notice to the named insured, and any insurance trustee and;

(c) coverage that cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association or any Owner.

Section 8.4 General Guidelines. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of North Carolina and holding a rating of A-10 or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of, and provide that all proceeds thereof shall be payable to the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance.

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Section 8.5 Owner's Personal Property. The Association or its Board of Directors shall not be liable in any manner for the safekeeping or conditions of any personal property belonging to or used by any Owner, or his family, guests or invitees, located on or used at the Common Areas. Further the Association shall not be responsible or liable for any damage or loss to, or of, any personal property of any Owner, his family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all such personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability insurance or other insurance for damage to or loss of such property.

## ARTICLE 9 - CONDEMNATION

Section 9.1 Partial Taking Without Direct Effect on Owner-owned Lots. If part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for and on account of the taking of the Common Areas, shall be paid to the Board of Directors in trust for all Owners. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the condemnation of the Common Areas. Such proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board of Directors, in its sole discretion. Nothing herein is to prevent owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board of Directors in its sole discretion.

Section 9.2 Partial or Total Taking Directly Affecting Owner-owned Lots. If part or all of any property in Swiss Village shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots, or improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots.

## ARTICLE 10 - GENERAL PROVISIONS.

Section 10.1 Enforcement. The Association through its Board of Directors, and all the Owners hereby covenant and agree that they shall exercise their power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that they shall enforce any restriction, condition, covenant or reservation contained in this Declaration deemed



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to have been violated, using all remedies available to them at law or in equity. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas at any time in order to repair and maintain such Common Areas where needed.

Section 10.2 Severability. Invalidation of anyone 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.

Section 10.3 Amendment. This Declaration may be amended at any time and from time to time by affirmative vote or written agreement signed by owners holding a sixty-seven percent (67.0%) of votes appurtenant to the Lots and Houses which are then subject to this Declaration. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record.

Section 10.4 Term. This Declaration, as it may be amended from time to time in accordance with the terms hereof, shall remain in force in perpetuity, unless and until terminated by the affirmative vote of eighty percent (80%) of the total votes of the Association.

Section 10.5 Counterparts. This Declaration may be signed in multiple counterparts and have multiple signature pages attached.

CRP 876 762

IN WITNESS WHEREOF the Association, pursuant to the provisions of North Carolina General Statutes Section 47F-2-117 has executed this Declaration effective as of the day and year first above written.

SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.

By: William R. Maize

President

Mitchell County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

William R. Maize \_\_\_\_\_  
Name of principal(s)

Date: 07-07-06 \_\_\_\_\_

Kathy Young \_\_\_\_\_  
Official Signature of Notary Public

KATHY YOUNG \_\_\_\_\_, Notary Public  
Notary printed or typed name

My commission expires: 11-21-2009 \_\_\_\_\_



EXHIBIT "B" TO CRP 876 763

AMENDED AND RESTATED  
DECLARATION FOR SWISS VILLAGE

AMENDED AND RESTATED BYLAWS

SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE 1

NAME AND LOCATION

Section 1.1 Name. The name of the corporation is SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association." The seal of the corporation shall consist of two concentric circles between which is the name of the corporation and in the center of which is inscribed "North Carolina, Seal."

Section 1.2 Location. The office of the Association shall be located at P.O. Box 233, Little Switzerland, McDowell County, North Carolina.

Section 1.3 Purpose. The purposes for which the Association is organized are:

a. To further social activities of Owners of Lots in Swiss Village, located in McDowell County and Mitchell County, and in connection therewith to provide services to such property owners, manage and maintain the Roads and Water System, manage and maintain the Common Areas and administer and enforce all covenants and restrictions dealing with the Property located in Swiss Village and any other purposes allowed by law.

b. To acquire, own, hold, maintain, improve, sell, mortgage and otherwise deal with real and personal property owned by the Association within the Swiss Village subdivision.

c. To engage in activity and business which can be appropriately and legally carried on for the recreation, education and civic activities for the general benefit of the property owners.

d. To own and maintain areas as wildlife preserves.

ARTICLE 2

DEFINITIONS

All terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) have the meanings set forth in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Swiss Village, and duly recorded in the McDowell County and Mitchell County Public Registry, North Carolina, as the same may be amended from time to time.

## ARTICLE 3

CRP 876 764

## MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. The annual meeting of the Members of the Association shall be held on July 5 (regardless of the day of the week) at the time set by the Board of Directors. This is for the purpose of electing Directors of the Association and for the transaction of such other business as may be properly brought before the meeting. Roberts Rules of Order shall apply at all meetings. A notice of the meeting, including location, time, agenda, and names of nominees shall be mailed or delivered to all Members not less than fifteen (15) days in advance of the meeting.

Section 3.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Lots and Houses. A notice of the meeting shall be mailed or otherwise delivered in a manner allowed by applicable law not less than fifteen (15) days in advance of the meeting.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of; the Board of Directors, by mailing a copy of such notice, not less than fifteen (15) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote thereat, addressed to each applicable Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots and Houses. There shall be one vote per platted Lot, and one vote per House. When more than one person owns an interest (other than a leasehold or security interest) in any Lot or House, all such persons shall be Members and the voting rights appurtenant to said Lot and House shall be exercised as they, among themselves, determine, but in no event shall, more than one (1) vote be cast.

Section 3.5 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one third (1/3) of the votes appurtenant to the Lots and Houses shall constitute a quorum for any action- except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.6 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 3.7 Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration, or these Bylaws, any act or decision approved by a vote of no less

than a majority of all votes present at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members.

Section 3.8 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.9 Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

#### ARTICLE 4

##### BOARD OF DIRECTORS

Section 4.1 Number. The business and affairs of the Association shall be managed by a Board of five (5) directors, who must be Members of the Association.

Section 4.2 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee composed of the Board of Directors. Nominations may also be made from the floor at the annual meeting. The committee shall nominate candidates to fill the next occurring vacancies on the Board of Directors. Their nominations must be delivered to the Secretary in time for the annual meeting notice.

Section 4.3 Election. Except as provided in Section 4.5, Directors shall be elected at the annual meeting of the Members by written ballot or a show of hands. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.4 Term of Office. Each director shall hold office for the term of three (3) years, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. Nothing herein contained shall be construed to prevent the election of a director to succeed himself.

Section 4.5 Removal. Any director may be removed from the Board by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining Members of the Board and shall serve until the next annual meeting. The Members may elect a director at any time to fill any vacancy not filled by the directors.

Section 4.6 Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE 5

CRP 876 766

## MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board of Directors sees fit, approximately quarterly but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. At least one of the meetings shall be for the purpose of creating the budget and sending to the Members the annual assessment for the coming fiscal year.

Section 5.2 Special Meetings. Special Meetings of the Board of Directors shall be held when called by the President of the Board of Directors, or by any two directors, after not less than three (3) days notice to each director.

Section 5.3 Quorum. The President and at least two Members present at a duly held meeting shall constitute a quorum for the discussion of business. Any action requiring a vote shall require the vote of at least 4 of the 5 Directors. Members not present may vote by proxy or via telecom.

Section 5.4 President. The President of the Board of Directors shall be elected by the directors and shall preside over all Board of Directors actions.

Section 5.5 Liability of the Board of Directors. The Members of the Board of Directors shall not be liable to the owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are Owner(s).

## ARTICLE 6

## POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas, Roads, Water System, and Amenities;

## CRP 876 767

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration.

(c) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and prescribe their duties;

(e) employ attorneys to represent the Association when deemed necessary;

(f) grant easements for the installation and maintenance of sewer or water lines and other utilities or drainage facilities upon, over, under and across the Common Areas without the assent of the Membership when such easements are requisite for the convenient use and enjoyment of Swiss Village.

(g) appoint and remove at pleasure all agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient;

(h) do anything necessary, including but not limited to, establishing any rules or regulations which the Association deems necessary to carry out the purposes of the Association as set forth herein or as permitted by law;

(i) enforce the provisions of the Declaration and the Bylaws, including the imposition of fines, penalties, and late charges to the full extent authorized under the North Carolina Planned Community Act;

(j) levy assessments as more particularly set forth in the Declaration.

Section 6.2 Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration:

(1) fix the amount of the Annual Assessment, Special Assessment, and Special Individual Assessment;

(2) send written notice of each assessment to every Owner subject thereto before its due date; and

(3) enforce actions spelled out in the Declaration with regard to assessments not paid within thirty (30) days after the due date as established by the Board of Directors when assessments are sent out, including any action at law against the Owner personally obligated to pay the same;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability insurance covering the Association and the directors thereof and adequate hazard insurance on the property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Areas to be maintained, and if damaged, to replace or repair such Common Areas (and any improvements located thereon) as they see fit.

## ARTICLE 7

### OFFICERS OF THE BOARD OF DIRECTORS AND THEIR DUTIES

Section 7.1 Officers. The officers of the Board of Directors shall be a President, a 1st Vice-President, a 2nd Vice President, a Secretary, a Treasurer, and such other officers as the Board of Directors may elect from time to time by resolution; who shall at all times be Members of the Board of Directors. This constitutes the entire Board of Directors.

Section 7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3 Term. Each officer of the Board of Directors shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.4 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board of Directors may determine.

Section 7.5 Vacancies. A vacancy on the Board of Directors will be filled by appointment by the Board of Directors. The Board Member appointed to such vacancy shall serve until the next annual meeting, at which time a vote will be held to fill the position for a regular three (3) year term.

Section 7.6 Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 7.7 Duties. The duties of the officers are as follows:



CRP 876 769

President

(a) The President shall be the principal executive officer of the Association, and subject to the control of the Board of Directors, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, deeds and other written instruments.

1st Vice-President

(b) The 1st Vice-President, or in his absence the 2nd Vice-President, shall act in the place and stead of the President in the event of his absence, inability or refusal to act. The 1st Vice-President and the 2nd Vice-President shall share the responsibility of managing the Water System, the Roads, and the Common Areas and any other duties as determined by the Board of Directors.

2nd Vice President

(c) The 2nd Vice-President shall share the responsibility of managing the Water System, Roads, and Common Areas and any other duties as determined by the Board of Directors.

Secretary

(d) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board of Directors and of the Members, shall keep appropriate current records showing the Members of the Association together with their addresses.

Treasurer

(e) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors. The Treasurer or the Treasurer's designee shall co-sign all checks of the Association along with one (1) other officer of the Association, shall keep proper books of account, and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members. The Treasurer shall be bonded.

## ARTICLE 8

## COMMITTEES

The Board of Directors shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE 9

CRP 876 770

## BOOKS AND RECORDS

The books, records and papers of the Association shall be subject to inspection by any Member in good standing, with sufficient notice to the Board of Directors.

## ARTICLE 10

## ASSESSMENTS

Each Member is obligated to pay to the Association the Annual Assessment, Special Assessment and Special Individual Assessment, as defined in the Declaration. Any assessments which are not paid when due shall be delinquent. If an assessment is not paid by its due date, as set forth in the Declaration, the assessment shall bear interest from such due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Member personally obligated to pay the same. The interest charges, costs of collection and reasonable attorneys' fees related to any such action shall be added to the amount of such assessment. No Member may waive or otherwise escape liability for the assessments.

## ARTICLE 11

## CORPORATE SEAL

The seal of the corporation shall consist of two (2) concentric circles between which is the name of the corporation and in the center of which is inscribed "North Carolina, Seal."

## ARTICLE 12

## AMENDMENTS

These Bylaws may be amended at any time and from time to time by the affirmative vote or written agreement of Owners holding sixty-seven percent (67.0%) of votes appurtenant to the Lots and Houses which are then subject to these Bylaws. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Amended Bylaws must reference the date(s) and wording of previous amendments for the affected Bylaw.

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE 13

## MISCELLANEOUS

The fiscal year of the Association shall begin the first (1st) day of July and end on the thirtieth (30th) day of June.

## ARTICLE 14 CRP 876 771

INDEMNIFICATION OF DIRECTORS  
AND OFFICERS

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not-for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by law, agreement, vote of Members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article 14, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable State or Federal law.

Patricia A. Reel  
Register of Deeds

# Mcdowell County Register of Deeds

21 South Main Street, Suite A • Marion, NORTH CAROLINA 28752  
Telephone 828-652-4727 • Fax 828-652-1537 • E-Mail preelmcdowell@titlesearcher.com



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Filed For Registration: 07/10/2006 11:16:21 AM

Book: CRP 876 Page: 737-771

Document No.: 2006005119

AMENDMENT 35 PGS 116.00

Recorder: CAROLYN I REEL

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State of North Carolina, County of McDowell

Filed for registration and Duly Recorded this 10TH day of JULY 2006.

PATRICIA A. REEL, REGISTER OF DEEDS

By: Carolyn I. Reel  
DEPUTY REGISTER OF DEEDS

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