

20080530000061600 DECL
Bk: BR1378 Pg: 182
05/30/2008 04:39:29 PM 1/14



	<p style="text-align: center;">DECLARATION OF RESTRICTIVE COVENANTS FOR THE POWDER HORN MOUNTAIN DEVELOPMENT</p> <p>Submitted for recording by: J. Grant Mastin, Operations Manager Return to: 1568 Powder Horn Mountain Rd., Deep Gap, NC 28618</p>
--	---

This AMENDED DECLARATION OF RESTRICTIONS is made this 15th day of December, 2007, by resolution of the requisite percentage of owners of all lots in Powder Horn Mountain Subdivision and Powder Horn Estates Subdivision, Watauga County, North Carolina entitled to vote, as evidenced by the Certified Resolution of Powder Horn Mountain Property Owners' Association, Inc. attached hereto.

WHEREAS the Property known as Powder Horn Mountain Subdivision and Powder Horn Estates Subdivision is subjected to these Covenants, in order to ensure the best use and the most appropriate development and improvement of the Property and lots located therein; to protect the owners thereof against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to encourage and insure the highest and best development of the Property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on the Property; to secure and maintain an aesthetically pleasing quality of development and improvement of the Property, and thereby to enhance the values of the Property.

NOW THEREFORE, Declarant declares that all of the lots and parcels in the Mountain are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all of such lots and parcels; to create a privity of contract and estate between the grantees of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the mountain and their respective owners, present and future.

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS



Article I. DEFINITIONS.

1. "Articles" means the Articles of Incorporation of Powder Horn Mountain Property Owners' Association (POA), Inc.
2. "Board" means the Board of Directors of Powder Horn Mountain POA, Inc.
3. "By-Laws" means the by-laws of Powder Horn Mountain POA, Inc.
4. "Committee" means the Aesthetics and Environmental Control Committee, as defined in the By-laws, Article V, Section 11, and in Article VI of this Declaration or the Board of Directors in the absence of an appointed or functional Aesthetics and Environmental Control Committee.
5. "Common Property" means all of the real property either dedicated to the owners' use and enjoyment by reference on recorded plats or owned by the POA or by the Powder Horn Mountain Property Owners Association, Inc., a North Carolina nonprofit corporation, together with such improvements which may be constructed thereon. "Common property" includes a clubhouse, chapel, swimming pool, tennis court, volleyball court, lakes, roads, and designated campground, picnic areas, buffer zones and green areas; various other buildings and shelters, or other areas needed for the storage of fire-fighting and general maintenance equipment owned, leased, rented, borrowed, or otherwise kept by the POA for the purpose of exercising its duties to maintain and protect property within the Mountain; and all that property described in a deed recorded at Book of Records 145, Page 422, Watauga County Public Registry; "Common Property" may also include any property hereafter acquired and improvements which may be constructed thereon.
6. "Declarant" means Powder Horn Mountain POA, Inc., its successors and assigns.
7. "Declaration" means the "Declaration of Restrictive Covenants" recorded in Book 600, Page 825 in the office of the Register of Deeds in Watauga County, North Carolina, along with such amendments as may from time to time be duly recorded.
8. "Green Area" means real property owned by the Powder Horn Mountain Property Owners Association or Powder Horn Mountain POA, Inc., but removed from the possibility of future development, and may include both platted lots and un-subdivided land.
9. "Guest House" means a single family dwelling built on a parcel on which a primary dwelling has already been built.
10. "Improvements" means all buildings or other structures of any type or kind, fences, barriers, walls, roads, driveways, or parking areas.
11. "Junked Vehicle" means a vehicle which does not lawfully display a current license plate; is partially dismantled or wrecked; or cannot be self-propelled or moved in the manner in which it originally was intended to move.
12. "Lot" means any numbered and unnumbered lot designated on the plats found in record Book 009 Page 178 and Book 018 Page 246 in the office of the Register of Deeds in Watauga County, North Carolina or in other books and pages therein referenced.
13. "Member" means any member of Powder Horn Mountain POA, Inc., as defined in the By-Laws.
14. "Mountain" means all that real property situated in the County of Watauga, State of North Carolina, as described in the Supplemental Declaration (Book 119, Page 396; Book 217, Page 875; Book 226, Page 013) for Powder Horn Mountain and in Plat Book 18, Pages 153-160 for Powder Horn Estates subdivisions of Watauga County, North Carolina.
15. "Multiple-Family Dwelling" means a residential dwelling such as a duplex, apartment house or condominium complex containing two or more individual apartments or living units.
16. "Owner" means any person or legal entity holding fee simple title to any lot or parcel within the Mountain as defined in the By-Laws.
17. "Operating Costs" means expenditures appropriately funded from the Operating Budget.
18. "Operations Manager" means the individual who manages the day-to-day operations of the POA's business office and/or general operations, who is hired by the Board of Directors and he/she reports to the Board of Directors.



19. "Parcel" means any tract of land shown on the Plat as being within the boundaries of Powder Horn Mountain but not indicated as a numbered lot.
20. "Powder Horn Estates" means the area of Powder Horn Mountain designated as Powder Horn Estates on the plat recorded with the Watauga County Register of Deeds, and to which special restrictions or allowances are noted within these covenants.
21. "Plat" means the maps or plats of the Mountain as they are from time to time recorded upon the books of the Register of Deeds of Watauga County, North Carolina.
22. "POA" means Powder Horn Mountain Property Owners Association, Inc., a North Carolina corporation, not for profit.
23. "Primary Dwelling" means the single family dwelling built on a lot prior to construction of a Guest House.
24. "Quiet Business Office" means a business office housed within a primary dwelling which does not generate traffic, odor, noise or light offensive to neighbors.
25. "Single-Family Dwelling" means a residential dwelling containing one and only one living unit.
26. "Stout Trail" means the nature trail located in Powder Horn Estates designated as a nature trail by easements from the respective property owners.
27. "Supplemental Declaration" means the Supplemental Declarations of Declarant recorded in deed book 119, page 550; deed book 217, page 875; and deed book 226, page 013; together with any subsequent and future Supplemental Declarations duly filed with the Register of Deeds of Watauga County, State of North Carolina, to describe real property being annexed to the Mountain. In each event, the Supplemental Declaration shall include a description of the real property in the Mountain Development subject to the provisions of this Declaration, incorporated therein by reference, and shall designate the permitted uses of such property.

Article II. LAND USE.

1. Lots and Parcels. Lots and parcels in the Mountain shall be designated in the Supplemental Declaration as to their permissible uses and shall thereupon become subject to the restrictive or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provisions are contained herein (e.g. commercial, governmental, school), the same may be set forth in such Supplemental Declaration.
2. Single-Family Residential. Only single-family dwellings, guest houses, attached garages and/or carports or a detached garage shall be permitted on any lot designated as single family residential, subject to established setbacks as shown on the Plat and otherwise subject to Committee approval as provided herein.
3. **Multiple-Family Residential.** Only multiple-family dwellings shall be permitted on any lot or parcel designated as multiple-family residential, subject to established setbacks as shown on the Plat and otherwise to Committee approval as provided herein. Such use and the amount of land area allocable to each multiple-family dwelling unit constructed on such lot or parcel shall be in accordance with applicable governmental zoning ordinances or, in the absence thereof, pursuant to standards established by the Committee.

Exceptions. With the exception of lots currently holding duplex structures (Bright Penny Forest 41 and 42, Elk Ridge 18 and 19, Horseshoe Ridge 28 and 29, and Horseshoe Ridge 50 and 51), and with the further exception of such numbered lots as may be dedicated to wells or other structures necessary to the supplying of water service, all platted lots not specifically designated multiple family residential shall be deemed to have been designated single family residential.
4. Guest Houses. In addition to the primary dwelling, each parcel larger than 3 acres may also include a guest house which shall not be subject to a minimum square footage requirement, and may not be constructed until that same parcel's primary dwelling has been completed. Such guest



- house shall not be used as a permanent residence or as a long-term rental unit, but may be used to house temporary guests, as a quiet-business office, or as an extension of the primary dwelling for permanent housing of domestic staff, caretaker staff, or immediate family members of the owner or long-term lessee of the primary dwelling. Guest Houses are subject to established setbacks and are subject to Committee approval as provided herein.
5. Common Property. All lots and parcels in the Mountain designated as common properties are and shall remain the private property of the POA with the exception of the Brightwood trail which is owned by the adjoining property owners and easements have been granted that designate the trail as a common use area.
 - a) Ownership and Access. Common property owned by the POA or by Powder Horn Mountain Property Owners Association, Inc. is subject to such easements and rights of way as were on record at the time of conveyance of said property.
 - b) Use. The use and enjoyment of the common property and improvements thereon shall be subject to the powers of the POA as set forth in its Articles and By-Laws, and to rules and regulations governing the use of such property and improvements as may from time to time be adopted by the POA.
 - c) Maintenance. Maintenance of common property, including repairs and refurbishment of improvement constructed upon it, shall be the obligation of POA. The POA is responsible for maintaining such property in such a way as reasonably to assure the safety of persons using it; for assuring that such property meets reasonable standards of cleanliness and attractiveness; and for keeping such property suitable for its intended use.
 6. Use of Certain Vehicles Prohibited. No motor vehicle may be operated on the Mountain unless such motor vehicle is equipped with a muffler, or other exhaust system of the type installed at the time of manufacture, in good working order and in constant operation to prevent excessive or unusual noise, annoying smoke and smoke screens. The use of a "muffler cut-out" on any motor vehicle is prohibited. The use of off-road motor bikes, swamp buggies, dune buggies, all-terrain vehicles, unregistered or unlicensed motorcycles, , or any motor-powered vehicle emitting offensive or loud noises or offensive odors or fumes is prohibited on the Mountain. The use of mobile homes, motor homes, travel trailers, or of any other similar recreational vehicle is prohibited on the Mountain. The POA Office may grant temporary permission for the use of any such vehicles for ingress or egress. All such vehicles owned by members shall be parked only in designated parking areas within the gates. Guests of Powder Horn POA members may park motor homes, travel trailers, boats or other recreational vehicles at the home for a period of not more than 7 days, provided that parking does not impede traffic flow or create a nuisance to other members.
 7. Firearms, Weapons, Fireworks and Explosive Devices. No pistols, rifles, shotguns, air rifle, pellet gun, compound bows, cross bow, long bow or other firearms or weapons of any kind shall be used or discharged on the Mountain except by express permission of the Board of Directors. No fireworks or explosive device of any kind shall be discharged on the Mountain except by express permission of the Board of Directors and under the supervision of a member of the local Fire Department.

Article III. RESIDENTIAL RESTRICTIONS.

The following shall be applicable to all lots and parcels within the Mountain designated as residential in character, whether single-family or multiple-family; and each owner, as to his, her, or their lot or parcel, covenants to observe and perform the same.

1. Minimum Square Footage. All single family dwellings shall have a minimum heated living area within the perimeter of the foundation walls as follows:
Powder Horn Mountain Subdivision – fourteen hundred (1,400) square feet for a single story



dwelling or eight hundred eighty (880) square feet on the main floor and fourteen hundred (1,400) square feet total for a two story dwelling.

Powder Horn Estates Subdivision – sixteen hundred (1,600) square feet for a single story dwelling or one thousand (1,000) square feet on the main floor and sixteen hundred (1,600) square feet total for a two story dwelling.

Guest Houses – there is no minimum size for guest houses.

2. Accessory Outbuildings. No accessory outbuilding, detached storage shed, barn, detached garage or other outbuilding structure shall be placed, erected, or installed on any lot without the prior written approval of the AECC. In addition, no open-air carport shall be permitted unless it is attached to the dwelling and approved in advance by the AECC. Prefabricated carports of any material and prefabricated metal outbuildings of any type are not permitted. The AECC is hereby authorized to establish architectural, aesthetic and landscaping requirements for all garages, carports and outbuildings. In addition the AECC is authorized to establish location, set-back and screening requirements for all outbuildings of any type. Children's gym sets and play houses are not considered to be accessory outbuildings, but must be approved by the AECC and must meet aesthetic requirements established by the AECC.
3. Quiet Business Office. The operation of business within a primary dwelling or guest house is permitted provided the business does not generate traffic, odor, noise or light offensive to neighbors or create traffic flow which would reasonably be deemed to compromise security, or employ use of equipment or commercial activities audible or visible from any location outside that parcel.
4. Construction Completion. Construction of any improvements, once commenced, shall be pursued diligently to completion. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days, or which have been partially or totally destroyed without rebuilding being commenced within a similar period, shall be deemed nuisances. The Committee may correct any such nuisance or repair or complete the same at the cost of the owner. Any such costs shall be added to and become a part of the annual assessment to which such property is subject until paid in full.
5. Maintenance of lots and Structures. All lots and parcels, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary, or a hazard to public health. If not so maintained, the POA shall have the right, through its agents and employees, to do so, the cost of which shall be added to and become a part of the annual assessment to which such property is subject. Neither the POA nor any of its agents, employees, or contractors, shall be liable for any damage, which may result from any maintenance work performed hereunder.
6. Disposal of Sanitary Waste. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwashers, washing machines, toilets, or sewage disposal systems shall be connected to a septic tank or other sewage system constructed by the owner and approved by the appropriate governmental authority.
7. Nuisances. No noxious or offensive activities or nuisances shall be permitted on any property.
8. Signs. One sign per property and of approved design and size may be displayed on any property advertising it, together with any improvements located thereon, for sale or lease. All other signs, billboards, or advertising structures of any kind are prohibited except upon application to and written permission from the Committee.
9. Animals. No animals shall be kept or maintained on any property except the usual household pets; and, in such cases, such household pets shall be kept confined to the property or be on a leash and under control at all times. Any animals kept on a property shall also be maintained in such a manner that they do not present a nuisance to owners of neighboring parcels. Breeding and boarding kennels and animal feedlots are not permitted. Horses may be kept on lots of 6 acres or more in Powder Horn Estates with appropriate fencing and barns that meet setback restrictions and other restrictive covenant guidelines.



10. Garbage and Refuse Disposal. No owner shall burn trash, garbage, or other similar household refuse; nor shall any owner accumulate on his or her lot junked vehicles, or litter, refuse or garbage, except in receptacles provided for such purposes or approved by the Committee. All trash shall be bagged, tied and placed in appropriate receptacles.
11. Concealment of Fuel Storage Tanks and Trash Receptacles. Fuel storage tanks on any lot shall be either buried below the surface of the ground or screened to the satisfaction of the Committee. Every receptacle for ashes, trash, rubbish, or garbage shall be installed underground or be so placed and kept as not to be visible from any street within the Mountain except at the times when refuse collections are made.
12. Restriction on Construction of Model Homes. Model or exhibit homes shall be built only with the prior written permission of the Board.
13. Restrictions on Temporary Structures. No travel trailer, tent, boat, tree house or other similar outbuilding or structure shall be placed or erected on any residential property for use as living space, nor shall any overnight camping be permitted on any property except for designated camping areas.
14. Removal of Trees. No live tree over six inches in diameter, measured at a point two feet above the ground, may be removed from any lot without the prior approval of the Committee except for those located in a ten (10) foot zone around the perimeter of residential and garage structures to prevent damage to the structure and/or for fire prevention purposes. No trees shall be "topped" without the prior approval of the Committee. Subject to a written plan prepared on behalf of the owner by a registered forester and approved by the committee, owners are permitted and encouraged to employ sound and accepted forestry management practices to protect and defend the forest from threats of fire, high wind and disease, and to promote the forest's recovery to a natural state from the results of clearing, road and right-of-way pruning, fire damage, wind damage or other detrimental events. Such forest management practices may include but shall not be limited to selective thinning to promote healthy growth, pruning of diseased limbs, and topping to reduce wind load factors as appropriate to reduce risk of uprooting and damage to neighboring trees and structures after heavy rains. Owners are also permitted to take reasonable steps to reduce risk of fire and wind damage to structures located on their properties,
15. Limited Access. There shall be no access to any lot on the perimeter of the Mountain except from designated streets or roads within the Mountain.
16. Improvements. No building, fence, or other structure shall be erected, placed, or altered on any lot in the residential area until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives, and parking areas) and construction schedule shall have been approved in writing by the Committee as herein provided. Refusal of approval of plans, location, or specifications may be based on regulations for land use contained in these Restrictive Covenants; on suitability in the Powder Horn Mountain or Powder Horn Estates Developments; of the use and size of a proposed structure; on strictly aesthetic considerations; or on any other grounds which in the discretion of the Committee shall seem sufficient. If the Committee denies approval of a proposal for a structure it shall make suggestions, where appropriate, for modifications of plans, location, or specifications, which would lead, to subsequent approval. One (1) copy of all plans and related data shall be furnished to the Committee for its records. Alterations in approved plans must be submitted to the Committee for its approval. Any major exterior repairs or alterations in the exterior appearance or color of any building or structure shall require the Committee's approval.
17. Ditches, Swales and Culverts. Each owner shall be responsible for keeping drainage ditches and swales located on his or her lot free and unobstructed and in good repair and shall provide for the installation and maintenance of such culverts upon his or her lot as may be reasonably required for proper drainage.
18. Re-subdivision or Rejoining of Lots. No lot or parcel shall be re-subdivided without prior written approval of the Board. No resulting lot in Powder Horn Estates may be less than three (3) acres.



The owner of two or more contiguous lots may apply to the Board for permission to legally rejoin such lots to be treated as a single lot. Upon the written consent of the Board thereto, such rejoined lots may then be used as a single lot for the purposes of this Declaration as described in Article II, paragraph 2.

19. Ponds. Drawings and plans for ponds must be submitted to the committee for approval. All Watauga County and North Carolina state guidelines and approvals must be met prior to approval by the committee. However, having met the county and state guidelines does not guarantee approval by the committee.
20. Drilling and Mining. No drilling, refining, quarrying, or mining operation of any kind shall be permitted on any lot.
21. Laundry Drying Facilities. No laundry-drying equipment shall be used where visible from an adjacent street unless first approved in writing by the Committee.
22. Solar Panels. Installation of Solar Panels must be approved by the Committee and must comply with aesthetic guidelines established by the Committee.
23. Television or Radio Antennae and Towers. The erecting of television or radio antennae or towers of whatever sort shall be subject to approval by the Committee. Satellite TV dish antennae shall be limited to an eighteen (18) inch dish diameter. A satellite HDTV and Broadband dish antennae shall be limited to a forty (40) inch dish diameter.
24. Minimum Setback Provisions. Without the written consent of the Committee, no building shall be placed upon any lot unless the structure is set back at least twenty-five (25) feet from the front lot line, ten (10) feet from the rear lot line, and ten (10) feet from each side lot line. Barns, stables, corrals, ponds or other improvements which could create noise, odor, or risk to adjacent property must be fifty (50) feet from adjacent property. The Committee's approval of exceptions to these provisions is subject to approval by the Board, and the Watauga County Department of Planning and Inspections; approval of exceptions by said Watauga County Department does not guarantee approval by the Committee.
25. Outdoor Lighting. All outdoor lighting shall be such that it does not create light trespass onto neighboring properties and shall provide a means of either manual or automatic shut off when not needed. All outdoor lighting must comply with the lighting guidelines as stated in the building regulations referenced in Article VI Paragraph 3, created by the AECC.
26. Off-Street Parking. Off-street parking for a minimum of 2 vehicles shall be provided at each residence.
27. Prohibition of Time Share Ownership & Conversion. Time share ownership is prohibited. This prohibition includes both the conversion of existing homes to a time share form of ownership and the creation of a time share form of ownership on any home constructed in the future. This provision does not prohibit the concurrent ownership of lots or homes by two or more persons or legal entities. The term "time share" as defined by North Carolina General Statute 5 93A-4 1(9) is adopted for purposes of this prohibition.

Article IV. POWDER HORN MOUNTAIN POA, INC.

1. General. The POA is a North Carolina Corporation not for profit organized to further and promote the common interests of property owners in Powder Horn Mountain. The POA shall have such powers in the furtherance of its purposes as are set forth in its Articles of Incorporation, signed the 12th day of March 1987, and as subsequently amended, and its By-Laws, as from time to time amended.
2. Membership. Membership in the POA is limited to owners of lots in the Mountain as defined in the POA's Articles and By-Laws, and is automatic with and appurtenant to such ownership. Persons not owning lots in the Mountain are ineligible for membership.



3. Rights, Privileges, and Obligations. The rights, privileges and obligations of membership in the POA are set forth in its Articles and By-Laws. Certain rights of membership, including voting rights, are restricted to members in good standing as defined in the By-Laws, Article III, and Section 2. An owner may temporarily or indefinitely assign his or her rights, privileges, and obligations in part or whole to another individual for the purpose of acting in the owner's stead or on their behalf by completing a notarized legal power of attorney for such purpose, a copy of which must be provided to the POA office for filing in the official POA records.

Article V. ASSESSMENTS.

General. Pursuant to the powers granted to it in its Articles of Incorporation, its By-Laws, and this Declaration, the POA is hereby expressly authorized and empowered to levy annual assessments and special assessments, all of which shall be uniform by class of property as defined in the By-Laws, against all lots in the Mountain for the purpose of maintaining, repairing, improving, replacing, and where applicable, operating, the common properties; protecting the common properties from erosion; collecting and disposing of garbage, rubbish, and the like; employing maintenance, reception, security, clerical, and other necessary personnel, including professional consultants; circulating notices, reports, and other relevant information to owners; paying taxes, insurance premiums, governmental charges of all kinds and descriptions, and all operating expenses and other indebtedness; and, in addition, doing any other things necessary or desirable in the opinion of the POA to keep the property in neat and good order, to protect property values, and to provide for the health, welfare, and safety of owners, residents, guests and employees of the Mountain.

1. Lot Categories. There shall be no discrimination based on geographic location for the purposes of increased or reduced assessments. For purposes of assessment, the Board may establish the following categories of lots:
 - a. One lot, (including rejoined lots), improved by a single dwelling.
 - b. Two adjacent lots, as platted, improved by a single dwelling, which physically occupies both lots. "Physically occupies" is construed to mean that the second lot is necessary for construction of the dwelling or attachments, septic leach field, or that driveway access is topographically obtainable only through the lot adjacent to the dwelling. This category definition no longer exists, however, is retained for historical purposes.
 - c. A single unimproved platted lot. Article III, Paragraph 18, further provides a procedure for re-subdivision or rejoining of lots.
2. Annual Assessments. At each annual meeting, the Board shall present for consideration by the Members a budget for operation of the Mountain, including the proposed amount of assessment for the then beginning fiscal year, a copy of such budget having been submitted to members with the call for the meeting at least ten (10) days prior to the meeting. Members shall fix by resolution the amount of annual assessment to be levied against each lot on the Mountain, excluding lots designated as common properties, which amount shall be a debt of the Owner, of such lot at the time such assessment is made effective. Upon recommendation of the Board, the resolution may also establish a payment schedule with dates of delinquency and with interest charges for late payment.
3. Special Assessments. Special assessments, i.e., other than the annual assessments specified in Section 2 of this Article V, shall be made by the Members upon recommendation of the Board upon determination that unexpected or extraordinary circumstances or other special needs, including, but not limited to, damages from an Act of God, danger from a health hazard, or other conditions related to the health, safety or welfare of Owners as a whole, have arisen and that a special assessment is necessary to protect and/or promote the health, safety, welfare, or property values of Owners as a whole. No special assessment shall be made except at an annual meeting,



- the agenda of which indicates a vote on a special assessment, or at a special meeting for which written notice is given to all Members at least thirty (30) days in advance.
4. Notice. The Treasurer or his or her approved designee shall mail to each Member at such Member's address of record a written notice of each annual assessment or installment thereof and the time and manner for payment thereof at least two (2) weeks prior to the time such assessment or installment shall become due and payable.
 5. Suspension. The POA shall not be required to transfer membership on its books or to allow the exercise of any rights or privileges of membership unless or until all assessments and charges to which the same are subject have been paid.
 6. Enforcement. The assessment levied against each lot, as provided above, may be enforced by civil suit by the POA as an action on account or as an action to perfect a claim of lien.
 7. Proof of payment. Upon request, the Treasurer shall furnish a statement certifying that all assessments then due have been paid or indicating the amount then due.
 8. Impact Fees. Impact fees will be charged for new construction of homes, detached garages or accessory storage buildings at a rate to be established by vote of the membership. Fees will be due after approval of plans by the Committee. Money collected by impact fees will be allocated to the Major Repair Reserve Fund, may not offset any planned funding from assessments, and may not be used for operating costs.

Article VI. THE AESTHETICS AND ENVIRONMENTAL CONTROL COMMITTEE.

1. Committee Membership. The Committee shall be appointed by the Board and composed of members to be determined by the Board. Its members must be Members in good standing of Powder Horn Mountain POA, Inc. The Operations Manager, if any, shall be a standing member of the Committee and the keeper of all official records for the Committee. Members of the Committee shall be subject to removal with or without cause or prior notice by the Board, and any vacancies from time to time existing shall be filled by action of the Board.
2. General Powers. All improvements constructed or placed on any lot must first have the written approval of the Committee. Such approval shall be granted only after written application has been made to the Committee in the manner and forms, which it shall prescribe. Approval may be withheld if, in the opinion of the Committee, the proposed structure or improvement detracts from the immediate surrounding environment in the manners listed in Article II and Article III of this Declaration. The Committee shall further govern and control all matters relating to aesthetic and environmental issues and to the safety, security and well being of all property owners, as such governance and control may be assigned to it by this Declaration or by the Board.
3. Rules and Regulations. The Committee, in consultation with and with the approval of the Board, shall from time to time adopt written rules and regulations of general application governing its procedures. Such rules and regulations shall include, but are not limited to, provisions for the form and content of applications; requirements for submission of plans and specifications; provisions for notice of approval and disapproval, including a reasonable time period for approval by default (failure to disapprove). The Committee shall compile, or cause to be compiled, guidelines regarding the building of any structure found in this Declaration and other regulations (such as any regarding minimum size of houses, nature of their construction, or aesthetic guidelines) which govern its decisions, and shall make such guidelines available to property owners contemplating building new structures or modifying existing ones.
4. Variances. Subject to applicable Watauga County zoning restrictions, the Committee may recommend to the board for approval reasonable variances from or adjustments to the provisions in this Declaration where literal application thereof results in unnecessary hardship and if the granting thereof will not be materially detrimental or injurious to owners of other lots or to the values of other property on the Mountain. The principal example of "hardship" arises from the



- topography of an owner's lot, necessitating adjustment of setback lines (subject to approval by the Watauga County Department of Planning and Inspections).
5. **Certification of Compliance.** At any time prior to completion of construction of any improvements, the Committee may require a certification, upon such form as it shall furnish, from the contractor, owner, or a licensed surveyor, that such improvement does not violate any set-back rule, ordinance, or statute, nor encroach upon any easement or right-of-way of record, except in the case of variances granted by the Committee and, if applicable, by the Watauga County Department of Planning and Inspections. In the event the Committee has recommended any variance, the Board shall approve and provide to the Owner written confirmation of the action granting the variance; the Board shall maintain in the offices of the POA a record of all such variances granted.
 6. **Administrative Fees.** As a means of defraying its expenses, the Board may institute and require a filing fee to accompany the submission of plans and specifications. No additional fees shall be required for re-submissions.
 7. **Liability.** Notwithstanding the approval by the Committee of plans and specifications or its inspection of the work in progress or upon completion, neither it, the POA, nor any person acting on behalf of either shall be responsible in any way for any defects in plans, specifications, or other materials submitted to the Committee, nor for any defects in any work done pursuant thereto. Each person submitting plans or specifications shall be solely responsible for the sufficiency thereof and the adequacy of improvements constructed pursuant thereto. Each person submitting plans or specifications shall be responsible for obtaining approvals from the Watauga County Department of Planning and Inspections for all new construction and major structural modifications.
 8. **Approvals.** In connection with its approval or disapproval of a proposed improvement, the Committee shall evaluate each application for the total effect. This evaluation relates to matters of judgment and taste, which cannot be reduced to a simple list of measurable criteria. It is therefore possible that a proposed improvement might meet the individual criteria delineated in the aforementioned digest of regulations regarding the building or modification of any structure or other property feature covered by these guidelines and still not receive approval, if in the sole judgment of the Committee, its overall aesthetic impact is unacceptable. The approval for one proposed improvement shall not be construed as creating any obligation on the part of the Committee to approve applications involving similar designs for proposed improvements pertaining to different lots.
 9. **Transfer of ownership.** Prior to a change of ownership of PHM property, an inspection must be completed by the AECC to assure compliance of all restrictive covenants. A disclosure will be made to members and to prospective buyers and must be corrected prior to completion of the change in ownership.
 10. **Appeals.** Any applicant shall have the right to appeal a decision of the Committee to the Board within thirty (30) days after the Committee has notified the applicant of its decision.
 11. **Fines for Non-Compliance.** The Board may fine the owner an appropriate monetary amount for any unresolved non-compliance involving aesthetic, construction, environmental, public health, safety and security issues as defined in the POA By-Laws Article IX Section 3. The fine shall become part of the annual assessment for the property until paid in full. Add removal of trees.

Article VII. EASEMENTS.

1. **Reservations.** The following easements as shown on the Plat, and the right of ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to Powder Horn Mountain POA, Inc.; to Blue Ridge Electric Membership Corporation, Carolina Water Service,



Southern Bell Telephone Co., or successors or assigns of these utility suppliers; and to other licensees.

- a. Utilities. A five-foot (5) wide strip running along the inside of all lot lines except those coincident with street right-of-way lines for the installation, maintenance and operation of utilities, and the accessory right to locate guy wires, braces, or anchors or to cut, trim, or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance, and operation.
 - b. Shoreline Maintenance and Recreational Access. A twenty-foot (20) wide strip running along the inside of all lot lines coincident with the shoreline of any lake or watercourse in the Mountain for the purpose of shoreline maintenance and recreational access is reserved by the POA. No dock shall be constructed upon any lake by any owner, but only by Powder Horn Mountain POA, Inc.
2. Use or Maintenance of Easements by Owners. The areas of any lot affected by the easements reserved herein shall be maintained continuously by the owner of such lot, but no structures, plantings, or other material shall be placed or permitted to remain and no activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owner except those for which a public authority or a utility company is responsible.
 3. Liability for Use of Easements. No owner shall have any claim or cause of action against Powder Horn Mountain POA, Inc. or its licensees, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the Plat except in case of willful or wanton negligence.

Article VIII. ANNEXATION.

1. Property to be Annexed. The POA may, by majority vote of the Board, from time to time, annex to the Mountain any other real property contiguous or adjacent to or in the immediate vicinity of the residential development, upon request by the owner or owners of such property. Annexation of other developments or involving multiple owners must be approved by the membership.
2. Manner of Annexation. The POA shall effect such annexation by recording with the Register of Deeds of Watauga County a Plat of the real property to be annexed and recording with the same office a Supplemental Declaration which shall:
 - a. Describe the real property being annexed and designate the permissible uses thereof.
 - b. Set forth any new or modified restrictions or covenants which may be applicable to such annexed property; and
 - c. Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, or improved subject to the provisions of this Declaration or any approved and applicable modification thereof.
2. Upon the recording of such Plat and Supplemental Declaration, the annexed area shall become a part of the Mountain and shall be subject to the provisions hereof, as supplemented, as fully as if such area were part of the Mountain on the date of recording of this Declaration.

Article IX. REMEDIES.

1. Enforcement. The POA may proceed at law or in equity to prevent the occurrence, continuation, or violation of any provision of this Declaration, and the court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.
2. Suspension of Privileges. The Board may suspend all voting rights and all rights to use the POA's common property of any owner for any period during which any POA assessment against such owner remains past due, or during the period of any continuing violation of the provisions of this Declaration by such owner after the existence thereof shall have been declared by the Board. The



Board, however, may not suspend for any reason an owner's right of access to his or her property. Any such suspension shall take effect only after due notice to the owner or owners to whom it pertains.

3. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this Declaration shall be held to be a waiver by that party of any right available to him or her upon the recurrence or continuance of said violation or the occurrence of a different violation.

Article X. GRANTEE'S ACCEPTANCE.

Each grantee or purchaser of any lot on the Mountain shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and immunities of the POA. By such acceptance such grantee or purchaser shall for himself, his heirs, personal representatives, successors, and assigns, covenant, consent and agree to and with the POA, and to and with the grantees and subsequent owners of each of the other lots in the Mountain to keep, observe, comply with, and perform all of the provisions of this Declaration.

Article XI. SUSPENSION OF RESTRICTIONS.

The provisions on improvements, use, and occupancy set forth herein shall be suspended as to any lot or other area while and so long as the same is owned by or leased to the State of North Carolina or the County of Watauga, or any governmental agency, public or private utility, and used for public, governmental, or utility purposes, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such lot for said purposes. All such provisions not so preventing shall continue to apply on cessation of such use, any such suspended provisions shall become applicable again in their entirety. While so owning or leasing and so using, said State, County, agency, public or private utility shall have no rights as a member of the POA, nor shall it be liable for any POA assessments. The Powder Horn Chapel, also known as Campbell Memorial Chapel, shall have no rights or privileges of membership, nor shall it be liable for any POA assessments.

Article XII. SEVERABILITY.

Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a court of competent jurisdiction to be invalid or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

Article XIII. CAPTIONS.

Article, section, and paragraph captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.



Article XIV. TERM.

1. Term. The provisions of the Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the Mountain until December 15th, 2017, after which time and the same may be extended by a majority vote of the Board for successive periods of ten (10) years each.
2. Amendment. This Declaration may be amended by the affirmative vote of a majority of all lots entitled to vote and voting, with each lot on which assessments levied have been paid representing one vote. Amendment is effected by recording an amendment to the Declaration duly executed by (a) the requisite number of such owners required to enact such amendment or (b) by the POA, in which latter case such amendment shall have attached to it a copy of the resolution of the POA attesting to the affirmative action of the requisite number of such owners to enact such amendment, certified by the Secretary of the POA.
3. Revision. This revision supersedes all other revisions.

Powder Horn Mountain Property Owners' Association, Inc., the named Declarant in the foregoing Declaration of Restrictive Covenants, does hereby execute this instrument to confirm its approval by the Association through the affirmative vote of the requisite majority of property owners entitled to vote at the December 15, 2007 special called meeting of the organization, as certified by the attached resolution of the organization executed by its then recording Secretary.

Powder Horn Mountain Property Owners Association, Inc. as successor by merger with Powder Horn Club, Inc.

By:

D. Pittman (SEAL)
Donald R. Pittman, President

Date: May 17, 2008

Attested By:

Nancy H. Johnson (SEAL)
Nancy H. Johnson, Secretary

Date: May 17, 2008

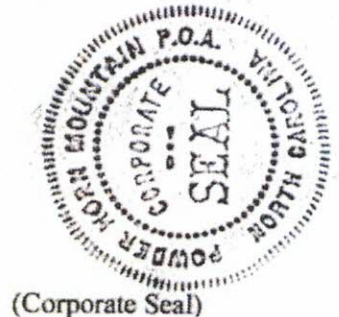
Resolution of Powder Horn Mountain Property Owners' Association, Inc.

Nancy H. Johnson, Secretary of the Powder Horn Mountain Property Owners' Association, Inc. and serving in that capacity at the time, hereby certifies that the foregoing Declaration of Restrictive Covenants was duly accepted by a vote of the requisite majority of property owners entitled to vote at the December 15th, 2007 special called meeting of the organization.

By:

Nancy Johnson (SEAL)
Nancy H. Johnson, Secretary

Date: May 17, 2008





STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

I, Pamela M. Mastin, a Notary Public of the County and State aforesaid, do hereby certify that Nancy H. Johnson personally came before me this day and acknowledged that she is the Executive Secretary of POWDER HORN MOUNTAIN PROPERTY OWNERS' ASSOCIATION, INC., a North Carolina Non-Profit Corporation, and that by authority duly given to her as an act of said corporation, the foregoing instrument, DECLARATION OF RESTRICTIVE COVENANTS FOR THE POWDER HORN MOUNTAIN DEVELOPMENT, was signed in its name by Donald R. Pittman as its President, attested by Nancy H. Johnson as its Secretary, and sealed with the corporate seal.

Witness my hand and official stamp or seal the 17th day of MAY, 2008.

Pamela M. Mastin
Notary Public

My Commission Expires: 9-14-08



(Notary Seal)



**RENEWAL OF DECLARATION OF RESTRICTIVE COVENANTS FOR
POWDER HORN MOUNTAIN DEVELOPMENT**

This RENEWAL OF DECLARATION OF RESTRICTIONS is made this 19th day of January, 2019, by resolution of the Board of Directors (the "Board") of Powder Horn Mountain Property Owners' Association, Inc. (the "POA");

BACKGROUND STATEMENT:

- A. The most recent amendment and restatement of the Declaration of Restrictive Covenants for the Powder Horn Mountain Development (the "Amended Declaration") was recorded on May 30, 2008 in Book of Records 1378 at Page 182 of the Watauga County Registry.
- B. Article XIV, Paragraph (1) of the Amended Declaration defined the term of the Amended Declaration as continuing "until December 15th, 2017, after which time ... the same may be extended by a majority vote of the Board for successive periods of ten (10) years each."
- C. The Board, by at least a majority vote of the entire Board of Directors, has approved the renewal of the Amended Declaration for an initial renewal term of ten (10) years commencing effective December 15th, 2017 and for subsequent automatic renewal for an unlimited series of successive consecutive ten-year terms.

NOW, THEREFORE, the Amended Declaration is hereby renewed for both an initial term of ten (10) years commencing effective December 15, 2017 and also for an unlimited series of successive consecutive ten-year terms.

✓
Prepared by and Return To: TURNER LAW OFFICE, PA, 136 N. Water St., Boone, NC 28607

This Renewal of Declaration of Restrictive Covenants for Powder Horn Mountain Development is hereby certified as a duly-approved action of the POA Board of Directors at its January 19, 2019 meeting by the undersigned officer.

Powder Horn Mountain Property Owners' Association, Inc.

By: Mark Laughlin
Mark Laughlin, President

STATE of NORTH CAROLINA

COUNTY OF WATAUGA

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document for the purpose stated therein and in the capacity indicated: MARK LAUGHLIN, as PRESIDENT of POWDER HORN MOUNTAIN PROPERTY OWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation.

Date: 1-19-2019

Carol N. Temple

Print Name: Carol N. Temple

(Official Seal)

My Commission expires: 10-29-2019

