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STATE OF NORTH CAROLINA
COUNTY OF SWAIN

**DECLARATION OF PLANNED COMMUNITY, COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR
THE SETTLEMENT AT THOMAS DIVIDE**

THIS DECLARATION OF PLANNED COMMUNITY (hereinafter "Declaration")
is made this 25 day of February, 2008 by THE BRYSON CITY HORSE
PROPERTY, LLC; A North Carolina Limited Liability Company DBA "THE
SETTLEMENT AT THOMAS DIVIDE", otherwise known as "The Settlement" (hereinafter
referred to as "Declarant").

WITNESSETH

WHEREAS, Delcarant is the owner of certain property in Swain County, North
Carolina, which is more particularly described in a deed recorded in Book 328, Page 367,
Swain County, North Carolina Register of Deeds; and

WHEREAS, Declarant desires to create thereon a residential planned community
known as THE SETTLEMENT AT THOMAS DIVIDE; and

WHEREAS, Declarant desires to prevent nuisances, to preserve, protect and enhance
the values and amenities of all properties within THE SETTLEMENT AT THOMAS
DIVIDE and to provide for the maintenance and upkeep of all common areas and roadways;
and

MSL

WHEREAS, Declarant desires to create and establish a Planned Community in accordance with the North Carolina Planned Community Act in order that the community known as THE SETTLEMENT AT THOMAS DIVIDE can be administered, maintained, and protected through the enforcement of restrictions, and values and regulations of a homeowners association;

NOW, THEREFORE, Declarant, by this Declaration of Planned Community (hereinafter "Declaration") does declare that all of the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, assessments and liens set forth in this Declaration which shall be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and in accordance with the North Carolina Planned Community Act:

Article 1. Creation and Establishment of a Planned Community Act

The real property and improvements which compromise THE SETTLEMENT AT THOMAS DIVIDE, a Planned Community, are hereby submitted to the provisions of the North Carolina Planned Community Act (*N.C. Gen. Stat. § 47F-1-101 et seq.*) referred to hereafter and in the Bylaws as the "Planned Community Act").

Article 2. Description of Planned Community

Section 2.1 Name. The name of the Planned Community is THE SETTLEMENT AT THOMAS DIVIDE (sometimes referred to herein as "THE SETTLEMENT" or "Planned Community").

Section 2.2 Location. THE SETTLEMENT AT THOMAS DIVIDE is located in Swain County, North Carolina. The Planned Community or Property is that real property submitted to and controlled by the Planned Community Act, and which real property is described in Book 328, Page 367, Swain County Register of Deeds and by this reference incorporated herein.

Article 3. Definitions. In accordance with Section 47F-1-103 of the North Carolina General Statutes and unless specifically provided otherwise or the context otherwise requires, the following terms as used in the declaration and bylaws for THE SETTLEMENT AT THOMAS DIVIDE shall mean the following:

Section 3.1 Allocated Interests means the common expense liabilities and votes in the Association allocated to each Lot.

Section 3.2 Association or Homeowners Association or Property Owners Association means the association organized as allowed under North Carolina law, including N.C.G.S. §47F-3-101.

Section 3.3 Assessments means any and all sums of money levied or charged by the Association against any Lot and its Owner as common expenses or other charges to include but not be limited to common expense liabilities, special assessments, specific assessments, fines, late charges, interest and attorneys' fees as set forth in the Declaration and Bylaws.

Section 3.4 Board or Board of Directors means the Board of Directors of any Association formed as defined above, the governing body on behalf of and for the Association designated the Executive Board in N. C. Gen. Stat. § 47F-1-103(13); **Director or Directors** means a member or members of the Board.

Section 3.5 Bylaws means the bylaws of any Association formed as set out above.

Section 3.6 Common Areas means any real estate within THE SETTLEMENT AT THOMAS DIVIDE owned or leased by the Association, other than a lot used for residential purposes and may include the following: A community center, playground, walking/riding trails surrounding the pastures, and an equine facility, which will be limited to those keeping a horse on the property.

Section 3.7 Common expenses means expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. These may include, but are not specifically limited to the following:
Expenses of administration of a nonprofit corporation known as THE SETTLEMENT AT THOMAS DIVIDE Property Owners' Association, Inc. or some similar name;
Expenses for the improvement, maintenance, and repair of common areas and easements appurtenant thereto;
Expenses for maintenance, upkeep, repair and improvements to the subdivision roadways, roadway and utility easements areas, and walking or horse riding trails shown on plats for the benefit of all members of the Association;
Expenses related to required insurance premiums for common areas and roadways Expenses related to Equine Facility, riding ring, a barn with several stalls, storage barn for hay and equine related equipment, fencing of approximately 20 acres of pasture, if any;
Expenses defined, referred to, or declared to be common expenses by the Documents or by the Planned Community Act;
Expenses agreed upon as common expenses by the Association;
Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Areas or any other real or personal property acquired or held by the Association; and Expenses levied against or which may be allocated to any particular Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.

Section 3.8 **Common expense liability** means the liability for common expenses allocated to each lot as permitted by the NC Planned Community Act, this Declaration, Bylaws, or otherwise allowed by law.

Section 3.9 **Declarant and Developer** shall mean THE BRYSON CITY HORSE PROPERTY, LLC, a North Carolina Limited Liability Company, its successors, and assigns and it is the entity that is the developer of the community known as THE SETTLEMENT AT THOMAS DIVIDE, offers for sale said lots not previously disposed of and/or reserves or succeeds to any special declarant rights.

Section 3.10 **Declaration** means this Declaration of Planned Community for THE SETTLEMENT AT THOMAS DIVIDE and any other instruments, however, denominated, that create a planned community and any amendments to said instruments.

Section 3.11 **Documents** mean the Declaration of Planned Community and/or Deeds recorded and filed for real property making up the Planned Community, the Articles of Incorporation of an Association, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Document.

Section 3.12 **Limited Common Areas** means a portion of the Common Areas allocated by the declaration for the exclusive use of one or more but fewer than all of the Lots, including, but not limited to those areas so designated, if any, on any Plats filed or which may be filed in connection with this Planned Community.

Section 3.13 **Lot** means the physical portion of THE SETTLEMENT AT THOMAS DIVIDE designated for separate ownership or occupancy by a lot owner.

Section 3.14 **Lot Owner** means a declarant or other person who owns a Lot, but does not include a person having an interest in a lot solely as security for an obligation. The Declarant shall not be considered a Lot Owner with regards to any duty to pay assessments.

Section 3.15 **Mortgage** shall refer to any mortgage, deed of trust, deed to secure debt or other transfer, or conveyance for the purpose of securing the performance of an obligation.

Section 3.16 **Notice and Opportunity to be Heard** means the right of a Lot Owner to receive notice of an action proposed to be taken by or on behalf of the Association and the right for an opportunity to be heard thereon. The procedures for such notice and opportunity to be heard are set forth in of the Bylaws of the Association.

Section 3.17 **Officer** shall mean those individuals who are elected by the Board to serve as officers of the Association to include President, Vice President, Secretary, Treasurer and such other offices as the Board may determine are necessary in the efficient and effective administration of the Association.

Section 3.18 **Person** means a natural person, corporation, business, trust, estate trust, partnership, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity.

Section 3.19 **Planned Community** means real estate with respect to which any person, by virtue of that person's ownership of a lot, is expressly obligated by a declaration to pay real property taxes, insurance premiums, or other expenses to maintain, improve, or benefit other lots or other real estate described in the Declaration.

Section 3.20 **Real Estate** means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interest which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

Section 3.21 **Reasonable attorneys' fees** means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

Section 3.22 **Resident** means and includes owners, their immediate family members, tenants, and lessees.

Article 4. Special Declarant Rights

Section 4.1 **Declarant Control Period.** The Special Declarant Rights and powers set forth in this Article 4 shall be exercised by the Declarant during the Declarant Control Period which shall terminate no later than the earlier of the following dates:

- (a) the sale and closing of seventy-five percent (75%) of lots available in THE SETTLEMENT AT THOMAS DIVIDE and any annexed real estate added to THE SETTLEMENT AT THOMAS DIVIDE subsequent to the recording of this Declaration; or
- (b) Declarant may terminate the Declarant Control Period any time prior to the time stated above in its sole and absolute discretion.

Section 4.2 **Declarant Developer Rights.** Declarant has the right to construct or to have drawn up to approximately sixty (60) lots on the Property described in Book 328, Page 367, Swain County Public Registry, which may be configured and located in Declarant's sole and absolute discretion and also the right to construct or have drawn additional lots in the event Declarant adds other real estate to THE SETTLEMENT AT THOMAS DIVIDE and the provisions herein.

Declarant shall also have the right to construct subdivision roadways, streets, driveways, common areas, and any and all infrastructure and all utilities related to lots, but it is expressly not obligated to do so.

Declarant shall have the exclusive right to convey a conservation easement or otherwise dedicate any portion of the property referenced hereinabove as a green space, farm land or pasture land, but it is expressly not obligated to do so.

Declarant may at any time in which it owns any property in THE SETTLEMENT AT THOMAS DIVIDE designate a specific area in the subdivision to construct a lodge, or additional equine facilities, or any other similar product as Declarant sees fit. These uses will not be in specific single family lot sections of the subdivision. Declarant is not expressly obligated to designate such an area(s) or make use of the property in such a way. In the event such an area is designated, then in that event it will be governed by its own covenants and restrictions not inconsistent with this Declaration.

Section 4.3 Model / Sales Office. Declarant shall have the right during the Declarant Control Period to use the community center, or any lot for a model and/or sales and management office. Declarant shall also have the right to erect and maintain signs for advertising and marketing of the lots at any location or lot within the boundaries of THE SETTLEMENT AT THOMAS DIVIDE, except for lots previously sold.

Section 4.4 Easements Reserved by Declarant. Declarant reserves easements for the construction, installation of and maintenance of roadways, driveways, walkways, walking trails, horse riding trails, water lines, telephone and electric power lines, cable television lines, sanitary sewer, septic and storm drainage facilities and lines, pumping and lift stations, drainage ditches, for water from springs located on any lots, and for other utility installations over the lots and any Common Areas as are designated on plats, within the deeds to such property, or within the roadway easements and setback areas as set out Section 7.5 hereinbelow. Any and all easements designated and shown for roadways shall also include the rights and reservations for all utility easements referenced herein or otherwise needed.

Each owner, by his acceptance of a deed to a Lot, and the Association by its acceptance of a deed to any Common Areas, acknowledge such reservations and the rights of Declarant to transfer such easements to another lot owner, the Association or to such utility companies as Declarant may choose in its sole and absolute discretion.

The easements reserved by the Declarant include the right to cut any trees reasonably necessary for view purposes, bushes or shrubbery, make any grading of the soil or take any similar action reasonably necessary to provide economical road and utility installation and to maintain the overall appearance of the Development.

Certain easements reserved by the Declarant and the Association may be shown on maps or plats of any lot(s). Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of

sewer disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.

In addition, the Declarant and the Association shall have the continuing right and easement to maintain all sewer/septic lines and systems and water lines or systems, if any, located on the lots, including the right to go onto the property of a lot owner and disturb the soil, plantings, vegetation, structures, and fences in order to maintain those lines or systems located on the lots.

Section 4.5 Declarant's Rights to Protect Land. The Declarant shall have the right to protect the Common Areas from erosion by planting trees, plants and shrubs where and to the extent necessary or by such mechanical means as bulk heading, or other means deemed expedient or necessary by Declarant. The right is likewise reserved to the Declarant to take necessary steps to provide and insure adequate drainage ways in the Common Areas.

This provision in no way obligates the Declarant to protect the Common Areas as set out herein.

Section 4.6 Declarant's Right of Entry on Common Areas. The Declarant reserves unto itself, its successors and assigns the right to go on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers/septic systems and line, water lines and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer/septic, water, cable television or other public conveniences or utilities in any Common Areas. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain standards of health, safety and appearance. The Declarant further reserves the right to locate wells, pumping stations and tanks within any Common Areas. Such rights may be exercised by any licensee or agent of the Declarant.

In no event do these reservations obligate or require Declarant to provide or maintain any such utility or service to any lot under any circumstance whatsoever, unless Declarant otherwise agrees to such obligation in writing.

Section 4.7 Declarant's Exemption from Payment of Assessments. Declarant shall be exempt from the payment of any Assessments and shall have no obligation to pay Assessments on any lot or for any parcel of land owned by the Declarant during the Declarant Control Period. Declarant may, but is under no obligation to subsidize the management and operation of the Association. After Control Period, Declarant will pay for lots that are shown as recorded only.

Section 4.8 Declarant's Right to Appoint and Remove Board of Directors. The Declarant reserves the right to appoint all of the members of the Board of Directors of the Association which shall consist of three (3) members. The Declarant's right to appoint

the members of the Board of Directors shall terminate on the conveyance of at least seventy five percent (75%) of lots within THE SETTLEMENT AT THOMAS DIVIDE and any real estate made a part of and added to The Settlement. Any director may be removed from the Board, with or without cause, by the Declarant during any period in which Declarant has the right to appoint as set out above. In the event of death, resignation or removal of a director, his or her successor shall be selected by the Declarant during any period in which Declarant has the right to appoint and remove officers and directors of the Association as set out in herein.

Section 4.9 Declarant's Rights Regarding Amendment of Declaration.

During the Declarant Control period, the Declarant reserves the right to amend the Declaration in its sole discretion. Additionally, during the Declarant Control Period, the Declarant has the right to approve, to disapprove, to revise, to veto or to revoke any amendment made by the owners in accordance with Article 11 herein.

Articles 5. Lots

Section 5.1 Lots. There may be up to approximately sixty (60) separate Lots in THE SETTLEMENT AT THOMAS DIVIDE, and any additional lots constructed or drawn by Declarant in real estate added to THE SETTLEMENT AT THOMAS DIVIDE subsequent to the recording of this Declaration, if any.

The Lots will be designated on recorded plats when sold or at other times as determined by Declarant in its sole and absolute discretion.

Section 5.2 Allocated Interests. The allocated interest in the common expense liability of and votes in the Association for each Lot is equal with the Owner(s) of each lot receiving one vote per lot only regardless of the number of owners of a lot.

Article 6. Common Areas

Section 6.1 Common Areas. Any areas designated as Common Areas in THE SETTLEMENT AT THOMAS DIVIDE by Declarant will be located outside the boundaries of the owners respective Lots, except as indicated on a plat and presented to a buyer of a lot prior to the closing date, and may include any real estate, both improved and unimproved, within THE SETTLEMENT AT THOMAS DIVIDE owned or leased by the Association and may include facilities and amenities.

In no event does this Article obligate or require Declarant to provide or maintain any Common Areas in THE SETTLEMENT AT THOMAS DIVIDE under any circumstance whatsoever, unless Declarant otherwise agrees to such obligation in writing.

Section 6.2 Conveyance or Encumbrance of Common Areas. Any areas

designated as Common Areas as set out above shall be neither encumbered nor conveyed except as provided in the Planned Community Act, N.C.G.S. §47F-3-112, this Declaration, and the Bylaws.

Section 6.3 Use of Common Areas. Each lot owner shall have the right to use any designated Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroachment upon the rights of other lot owners. The Board shall determine the purpose for which any Common Areas are intended for use, if an issue related to the use arises. The Board shall have the right to promulgate rules and regulations limiting the use of some or all of the Common Areas to lot owners and their guests and to promulgate rules and regulations to provide for the exclusive use of a part of the Common Areas by a lot owner and his or her guests for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any lot owner may delegate, in accordance with the provisions of this Declaration and the Bylaws and reasonable Rules and Regulations of the Board, the right to use the Common Areas to immediate family members living on the Lot, to a limited number of guests, or to tenants who reside on the Lot.

Article 7. Restrictions and Purpose for Lots. The Lots of THE SETTLEMENT AT THOMAS DIVIDE are subject to the restrictions contained in this Declaration and as set forth in the Bylaws and Rules and Regulations of the Association. All Owners and other persons are subject to these restrictions and subject to the enforcement sanctions as are set forth in the North Carolina Planned Community Act, this Declaration, and Bylaws.

Section 7.1 Residential. Each of the Lots in the THE SETTLEMENT AT THOMAS DIVIDE shall be, and the same hereby are, restricted exclusively to single family residential use and shall be occupied only by a single family, its guests except as permitted in Section 4.2 hereinabove.

Section 7.2 Business Activities. No business, commercial or industrial activities shall be conducted on any residential portion of the Lots of THE SETTLEMENT AT THOMAS DIVIDE, provided, however, private home offices may be maintained in residences constructed on Lots so long as such use is incidental to the primary residential use of the Lot, except as permitted in Section 4.2 hereinabove. However, the Homeowners Association may allow in its sole discretion the commercial operation of an equine training facility or other equine related business at the Equine facility and/or other business operation at the Community Center (i.e. catering business), so long as there is no hardship created for the property owners or diminution in value of the property and lots within The Settlement at Thomas Divide.

Section 7.3 . Construction of Homes/Dwellings/Residences/Outbuildings. No Lot owner shall build or construct any permanent structure on a Lot except in accordance with the Architectural Control provisions set out in Article 12 of this Declaration and in accordance with any such rules, regulations, and specifications promulgated by the Board of Directors and the following structure and dwelling restrictions shall apply:

- (i) Each dwelling or home shall be no less than 1600 square feet of heated living area for a one story dwelling and no less than 1800 square feet for a two story dwelling;
- (ii) Upon completion of the dwelling referenced in the preceding provision, a lot owner may construct only one additional structure on a lot to be used as a garage, storage outbuilding, mother-in-law suite, or guesthouse, all of which must be approved by Architectural Committee;
- (iii) The exterior of all structures must be completed within 12 months after the date construction was commenced;
- (iv) The exterior features, including but not limited to siding, windows, trim, roofing, etc. on all structures, homes, dwellings, and outbuildings constructed on a Lot shall be of brick, stone, solid wood, and/or concrete solid board, and additionally shall conform to an earth tone color scheme. There shall be no white siding and no vinyl siding whatsoever.
- (v) No structure on any lot shall exceed 35 feet in height measured from the highest foundation level.

Section 7.4 Temporary Structures/ Mobile Homes. No structure of a temporary character shall be placed upon any portion of THE SETTLEMENT AT THOMAS DIVIDE subdivision property at any time for residential purposes. No mobile homes, double-wides, and single-wides or any type of similar structure shall be permitted to be placed or remain on any lot in THE SETTLEMENT AT THOMAS DIVIDE at any time whatsoever. However, RVs, campers, and tents may be allowed for lot owner's personal camping use on their lots for a period not to exceed 10 days and such must be approved by ACC. Lot owners may store/park their RVs, campers, horse trailers, boats and boat trailers on their lot at any time, so long as they are not being used for residential purposes, however, efforts must be made to keep all items hidden from the view of the subdivision roadways. Any tarpaulin or cover used to cover personal property shall be of an earth tone color only.

Section 7.5 Setbacks. All residences and/or other structures shall be set back from the platted roads and easements and side lot lines a minimum of twenty (20) feet. In case of hardship and for good cause shown, the Declarant or Architectural Committee (whichever has authority pursuant to Article 12 hereinbelow) may in their sole and absolute discretion grant variances from these setback restrictions.

Section 7.6 Subdivision of lots. No Lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two or more Lots into one Lot for construction of a single residence thereon (hereinafter referred to as "combined Lot"). The Owner of such combined Lot shall remain responsible for the annual, specific, and special assessments for the number of lots prior to creating the "combined lot". For example, if an owner purchases two lots and then creates one combined lot, the owner is responsible for the annual, specific, and special assessments for two lots.

Notwithstanding anything contained herein to the contrary, the Declarant reserves the right to replat any Lot still owned by the Declarant and shown upon recorded plats of any portion of the Property in order to modify the boundary lines and to take such other steps reasonably necessary or desirable to make such re-platted Lot suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, roads, and other amenities to conform to the new boundaries of such replatted Lot.

Section 7.7 Animals. Horses at THE SETTLEMENT AT THOMAS DIVIDE are to be kept at the equine facility. However, lots that are determined as suitable for horses by developer may be conveyed from developer with express language in the deed from developer. Additionally any normal and customary household or family pets including but not limited to dogs and cats are allowed on lots. Such pets may not be kept or bred for any commercial purposes and shall have such care and control as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, dangerous actions or tendencies, or other nuisance to other property owners within THE SETTLEMENT AT THOMAS DIVIDE. No savage or dangerous animals shall be kept or permitted in THE SETTLEMENT AT THOMAS DIVIDE.

Section 7.8 Nuisances. No nuisances shall be allowed in THE SETTLEMENT AT THOMAS DIVIDE and no person or owner shall engage in any use, practice, or activity upon such property which is noxious, offensive, or a source of annoyance to lot owners or which reasonably interferes with the peaceful possession and proper use of the property by any lot owner. The Board of Directors, in its sole discretion, shall have the power and authority to decide what acts or actions constitute a nuisance. All parts of the planned community shall be kept in a clean and sanitary condition. Any outdoor lighting, other than that directly adjacent to an entry door must be approved by ACC.

There shall be no motorized recreational vehicles allowed on any walking and/or horse trails.

Section 7.9 Satellite Dishes/Antennas. Satellite Dishes and Antennas located on any Lot must have Declarant or Architectural Committee approval (whichever shall have authority as set out in Article 12 hereinbelow) prior to installation, which approval shall not be unreasonably withheld.

Section 7.10 Tree removal/Native Vegetation. Owners may cut and remove only those trees that are necessary for construction of a residence or other permitted structures and including but not limited to, driveways, septic systems, retaining walls or any other construction related to a residence. Any other removal of trees must be by written permission of Declarant or Architectural Committee (whichever shall have authority as set out in Article 12 hereinbelow).

Section 7.11. Fencing. Chain link fencing is prohibited on all lots. Fencing with natural wood materials may be used. If the fencing is for the private use of keeping horses on lots, such fencing must be consistent with the fencing currently used for the community or subdivision pasture land. Invisible fencing is permitted.

Section 7.12. Outdoor lighting. All exterior lighting beyond that needed for the safety purposes to enter and leave any residence or outbuilding is prohibited and must be approved by the Architectural Committee.

Section 7.13. Utility Equipment. Garage service areas, heating and air conditioning equipment, electric meters, trash containers and any other visible utility equipment or fixtures must be screened from view with appropriate landscaping or fencing materials as mentioned hereinabove.

Section 7.14 Rules and Regulations. The Declarant and/or Board of Directors may from time to time promulgate reasonable rules and regulations respecting the restrictive covenants set out in this Article, but such rules and regulations shall be consistent with these restrictions and not in derogation of or intended as an amendment thereof.

Article 8. Easements and Additional Rights

Section 8.1 Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in, to and over any Common Areas, and the easement granted herein shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting right of an Owner for any period during which any assessment against that Owner's Lot remains unpaid for a period of sixty (60) days or more or for any infraction of its published rules and regulations.
- (b) the right of the Association to limit the number of guests of Owners within common areas;
- (c) the right of the Association to borrow money for the purpose of maintaining, improving, or repairing the Common Areas and facilities;
and

Section 8.2 Declarant Easements. In addition to the easements reserved by Declarant as set out in Section 4.4 hereinabove, Declarant shall have easements for development and marketing as set forth in Article 4 hereinabove in any Common Areas.

Article 9. Assessments and Collection

Section 9.1 Purpose of Assessments. The assessments and common expenses as described in Section 47F-3-115 of the North Carolina Planned Community Act and as otherwise provided for in the Documents shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots in THE SETTLEMENT AT THOMAS DIVIDE as may be more specifically authorized from

time to time by the Board, which expenses shall be for, including but not limited to, the following:

- Expenses of administration of a nonprofit corporation known as THE SETTLEMENT AT THOMAS DIVIDE Property Owners' Association, Inc. or some similar name;
- Expenses for the improvement, maintenance, and repair of common areas and easements appurtenant thereto;
- Expenses for maintenance, upkeep, repair and improvements to the subdivision roadways, roadway and utility easement areas, and designated walking trails and horse riding trails;
- Expenses related to required insurance premiums for common areas and roadways;
- Expenses defined, referred to, or declared to be common expenses by the Documents or by the Planned Community Act;
- Expenses related to Equine Facility, riding ring, a barn with several stalls, storage barn for hay and equine related equipment, fencing of approximately 20 acres of pasture, if any;
- Expenses agreed upon as common expenses by the Association;
- Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Areas or any other real or personal property acquired or held by the Association; and
- Expenses levied against or which may be allocated to any particular Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.
- Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Areas or any other real or personal property acquired or held by the Association; and
- Expenses levied against or which may be allocated to any particular Lot and Lot Owner for fines, late charges, interests, costs of collection, and attorney's fees.

NOTE: Maintenance of Barn and Equine Facility shall be treated separately and shall be subject to fee for use as set by and paid to the Homeowners Association for maintenance and upkeep of the Equine Facility, riding ring, barn, storage barn for hay and Equine related equipment, fencing of approximately 20 acres of pasture, if any as set out above.

Section 9.2 Insurance. To the extent reasonably available, the Board of Directors shall obtain and maintain reasonable insurance coverage for common areas, including but not limited to property and liability insurance coverage for roadways and easement areas, Equine Facility and community center. Further, provide for indemnification of and maintain liability insurance for its officers, executive board, directors, employees and agents. Such premiums shall be a common expense in accordance with Section 47F-3-113 of the North Carolina Planned Community Act and this Declaration.

Section 9.3 Rate of Assessment The 2008 assessments shall be at the rate of \$975.00 and changed pursuant to provision 9.6 hereinbelow.

Section 9.4 Assessment Attributable to Fewer than All Lots.

- (a) At the time any lot owner commences construction of an improvement on their lot, such lot owner shall pay to the Association an impact fee of \$1,500.00 for the purpose of repairing any and all damage to said subdivision roadways, streets, and other Common Areas in THE SETTLEMENT AT THOMAS DIVIDE.
- (b) If a common expense is caused by the misconduct of a Lot Owner, the Association may assess that expense exclusively against that Lot Owner and his Lot, in the sole and absolute discretion of the Board of Directors.
- (c) Any common expense associated with the maintenance, repair, or replacement of a limited Common Area shall be assessed against the lots to which that limited Common Area is assigned, equally, or in any other proportion that the declaration provides.
- (d) Fees, charges, late charges, fines, all collection costs, including reasonable attorneys' fees actually incurred and interest charged against a Lot Owner pursuant to the North Carolina Planned Community Act, the Declaration, Bylaws and Rules and Regulations are enforceable as common expense assessments.

Section 9.5 Lien for Non-Payment of Assessments.

- (a) Any assessment levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when filed of record in the Office of the Clerk of Court of Swain County in the manner provided in N.C.G.S Section 47F-3-116.

The Association may foreclose the lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. (For purposes of foreclosing a lien, the Association is the "mortgagee" and "trustee", as defined by N.C. Gen. Stat. § 45-10, by the execution of a written instrument properly recorded pursuant to Chapter 47 of the North Carolina Statutes).

Fees, charges, late charges, fines, collection costs, reasonable attorneys fees, interest and other charges may be imposed in accordance with N.C.G.S. Sections 47F-3-102, 47F-3-107, 47F-3-107.1, and 47F-3-115, the Declaration, Bylaws, and Rules and Regulations, are enforceable as assessments under this Section.

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

- (c) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the docketing of the claim of lien in the Office of the Clerk of Superior Court in Swain County
- (d) This Section does not prohibit separate collection actions to recover sums for which Article creates a lien or prohibit the Association taking a deed in lieu of foreclosure.
- (e) A judgment, decree or order in any action brought under this Article shall include costs and reasonable attorneys' fees for the prevailing party.

Section 9.6 Computation of Operating Budget and Annual Assessment. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating THE SETTLEMENT AT THOMAS DIVIDE during the coming fiscal year commencing in the year 2009 and thereafter, and amounts necessary to provide working capital, a general operating reserve, and reserves for contingencies and replacements. The Board shall cause the budget and the annual assessments to be levied against each Lot for the coming fiscal year. Within 30 days after adoption of any proposed budget for THE SETTLEMENT AT THOMAS DIVIDE, the Board shall provide to all the lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There is no requirement that a quorum be present at this meeting. The budget shall be ratified unless at that meeting two-thirds of all the lot owners reject the budget.

The annual assessment shall not be increased more than 20% from the previous year.

Section 9.7 Personal Liability of Lot Owners. The owner of a Lot at the time any assessment or portion thereof is due and payable is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, attorneys' fees incurred by the Association. In addition to lien rights described in Section 9.5 herein, the Association has the right to bring a separate collection action to enforce the personal liability of Lot owners to pay assessments.

Section 9.8 Due Date. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in its discretion. Unless otherwise provided, the annual assessment installment payments shall be late and the Lot Owner in default if not paid on or before the thirtieth (30th) day such assessment becomes due.

Section 9.9 No Waiver of Liability for Common Expenses. No Lot Owner may exempt himself or herself from liability for payment of the common expenses by waiver

of the use or enjoyment of any Common Areas or by abandonment of the Lot against which the assessments are made.

Section 9.10 Special Assessments.

- (a) If the annual assessment proves inadequate for any year or in the event of an emergency, the Board of Directors may at any time levy a special assessment against all Owners.
- (b) The Board of Directors may levy special assessments for capital improvements upon the Common Areas and for such other matters as the Board shall determine; provided, however, prior to becoming effective any such special assessment the Board shall provide to all the lot owners a summary of the reasons for and specifics of the special assessment and a notice of the meeting to consider ratification of the special assessment, including a statement that the special assessment may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the lot owners to consider ratification of the special assessment, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There is no requirement that a quorum be present at this meeting. The special assessment shall be ratified unless at that meeting two-thirds of all the lot owners reject the special assessment.

Section 9.11 Interest, Late Charges, Payments, and Suspensions. In accordance with N.C. Gen. Stat. 47F-3-115(b), the Association hereby establishes that any past due common expense assessment or installment thereof, past due special assessments, fines or other past due charges shall bear interest at 18% per annum.

The Board shall set a late charge to be assessed against Lot Owners for late payment of any common expense assessments or installment thereof, special assessments, fines, or any other charges as permitted by N.C. Gen. Stat §47F-3-102(11). Such charges shall not exceed the greater of \$20.00 per month or 10% of any assessment installment unpaid. The Association may also suspend privileges or services provided by the Association during the period any assessment or other amounts due and owing after the Association has given notice and the opportunity to be heard.

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

Section 9.12 Surplus Funds. Any surplus funds of the Association remaining after payment of, or provisions for common expenses and any prepayment shall be retained in the general operating funds or long range fund of the Association in the sole discretion of the Board, and no such surplus funds shall be paid to Lot Owners nor shall such surplus funds be used as a credit to reduce future common expense assessments.

Article 10. Association of Lot Owners

Section 10.1 Association Authority. The Association shall manage and administer THE SETTLEMENT AT THOMAS DIVIDE and shall have all powers and duties granted to it in the North Carolina Planned Community Act and the Documents, including but not specifically limited to the powers as set forth in N.C.G.S. §47F-3-102.

Section 10.2 Association Membership. All Lot Owners by virtue of their ownership of a Lot in THE SETTLEMENT AT THOMAS DIVIDE are automatically members of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote on pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the North Carolina Planned Community Act and the Documents, each lot is represented by one vote no matter how many individuals or entities have an ownership interest in said lot. In the event there is acreage owned by Declarant that is not recorded as lots, the Declarant shall be entitled to one (1) vote per every two (2) acres of land not shown as a designated lot on a recorded plat at the Swain County Register of Deeds, excluding the designated open space and pasture lands. Otherwise, the Declarant's lots that are shown as designated lots on a recorded plat at the Swain County Register of Deeds, shall entitled Declarant to one (1) vote per recorded lot.

Article 11 Amendments

With the exception of the Declarants' rights regarding Amendment of the Declaration provided for in Article 4, section 4.9, this Declaration of Planned Community may be amended only by affirmative vote of, or written agreement signed by Lot Owners of Lots to which at least Sixty Seven Percent (67%) of the votes in the Association are allocated. The procedure for amendment shall follow the procedure set forth in N.C.G.S. Section 47F-2-117. No amendment shall become effective until recorded in the office of the Register of Deeds of Swain County, North Carolina.

Article 12 Architectural Control.

Section 12.1 For purposes of this Article, the Declarant shall serve as the Architectural Committee until such time as Declarant shall turn over control of the Association to the owners as referenced in Article 4 herein at which time the Committee shall be the Board of Directors of the Association. In no event shall lot owners, the Board or the Architectural Committee have any authority to affect or to have any control of structures built by the Declarant or its assigns.

Section 12.2 Improvements. No homes, outbuildings, fences, walls or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration thereon be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Declarant or successors and assigns as to harmony of external design, location plans and specifications.

Declarant/Board of Directors or such committee approved by the Board of Directors

shall approve or disapprove such design and location within forty five (45) days after said plans and specifications have been submitted to it by the Owner. In passing upon such plans, the Declarant/Board of Directors/Committee may take into consideration the suitability and desirability of the proposed construction and the proposed materials to the lot involved. Refusal to approve the proposed plans may be based by the Declarant/Board of Directors/Committee on any grounds, including purely aesthetic considerations.

No alterations in the external appearance of any structure shall be made without approval by the Declarant or successors and assigns as provided herein.

In no event shall plans and specifications approved by the Declarant/Board of Directors/Committee hereunder be construed as approving or guaranteeing the structural suitability or quality of any structure or material.

Article 13 Transfer of Declarant's rights. Except for the transfer of Declarant rights pursuant to foreclosure, no special declarant rights as set forth in the Documents or in the North Carolina Planned Community Act may be transferred except by an instrument signed by the Declarant and the transferee evidencing the transfer and recorded in the Office of the register of Deeds of Swain County, North Carolina.

Article 14 Termination

Termination of the Planned Community shall be accomplished only in accordance with N.C.G.S. Section 47F-2-118.

Article 15. Enforcement of Covenants, Restrictions, and Affirmative Obligations.

(a) Subject to the provisions of any amendments hereto as authorized herein, all covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them through December 31, 2025, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless terminated or amended as set out herein.

(b) Enforcement of these covenants and restrictions shall be by proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenants or restriction, either to restrain or enjoin violations, or to recover damages by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies given herein are distinct, cumulative remedies and may be exercised by the Declarant, any individual lot owner or the Association. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. In an enforcement action, the prevailing party shall be entitled as part of any judgment in favor of the prevailing party to recover reasonable attorneys' fees, interest and costs.

Notwithstanding the above, except in case of emergencies, the alleged offender shall be given thirty (30) days notice of a violation prior to the commencement of any enforcement action in order to allow the offender an opportunity to correct same, unless, due to the nature or circumstances of the violation as determined in the sole discretion of the Declarant or Association, immediate compliance is required.

Article 16
Miscellaneous Provisions

Section 16.1 **Captions.** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

Section 16.2 **Gender.** The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

Section 16.3 **Waiver.** No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 16.4 **Invalidity.** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

Section 16.5 **Conflict.** The Documents are intended to comply with the requirements of the Planned Community Act and Chapter 55A of the North Carolina General Statutes. In the event of any conflict between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

FILED Jul 27, 2009
AT 02:52:28 pm
BOOK 00376
START PAGE 0011
END PAGE 0013
INSTRUMENT # 01415

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

This instrument prepared by: Kimberly C. Lay, Attorney at Law, Melrose, Seago & Lay,
PA, Sylva, NC

**FIRST AMENDMENT TO DECLARATION OF PLANNED
COMMUNITY, COVENANTS, RESTRICTIONS AND EASEMENTS FOR
THE SETTLEMENT AT THOMAS DIVIDE**

This First Amendment is made this the 24th day of July, 2009, by The
Bryson City Horse Property, LLC , a North Carolina Limited Liability Company
(hereinafter "Declarant.")

WHEREAS, by that certain Declaration recorded in Book 358 at page 638 of the
Swain County Public Registry, the Declarant is authorized by Section 4.9 of said
declaration to amend the subdivision Declaration at Declarant's sole discretion; and

WHEREAS, since part of the nature of this planned subdivision is and was
planned for the keeping and enjoyment of horses, the Declarant would like to provide and
allow for lot owners to use their own lots for the keeping and housing of the lot owners
horses for their own use and enjoyment and desire to amend the covenants to allow for
the lots to be used in such a manner.

NOW, THEREFORE, for and in consideration of the acts and things herein agreed to be
done and other good and valuable consideration, the receipt of which is hereby
acknowledged, the Declarant does hereby amend the Declaration of Planned Community,
Covenants, Restrictions and Easements for The Settlement at Thomas Divide, to reflect
the following changes:

1) Paragraph 7.3 (ii) shall be amended and restated to read as follows:

"Upon completion of the dwelling referenced in the preceding provision, a lot owner may
construct only one additional structure on the lot which structure may be used as a

01/11
M. J. L.

garage, storage, outbuilding, mother-in-law suite, guesthouse or barn/paddock, any and all of which must be approved by the Architectural Committee prior to the commencement of construction.”

2) Paragraph 7.7 shall be amended and restated to read as follows:

“**Animals.** Lot owners may keep and/or house horses upon their respective lots for non-commercial purposes. In doing so, there shall be a 50 feet wide setback from the boundaries of each lot and no structure used for horse-related purposes shall be constructed or located any closer than 50’ of the each boundary line of said lot(s). Further, in the event a lot owner keeps and/or houses horses upon their lot, such lot owner shall keep their lot clean and free from excessive manure and free from offensive odors from the keeping of horses upon their respective lot(s).

Lot owners may also keep and house their horse(s) at the equine facility as designated by Declarant and located at THE SETTLEMENT AT THOMAS DIVIDE and shall follow the rules and regulations related to the use thereof as set out herein and otherwise established by the property owners association.


Additionally, any other normal and customary household or family pets are allowed on lots, including but not limited to dogs and cats.

No pets, including but not limited to horses, dogs and cats, shall be kept or bred for any commercial purposes whatsoever. Animals shall be kept for the sole purpose of enjoyment of the lot owner. All lot owners shall exercise and have such care and restraint over their animal(s) as is necessary and reasonable to prevent the animal(s) from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions, or other nuisance to other lot owners within THE SETTLEMENT AT THOMAS DIVIDE. No savage or dangerous animals shall be kept or permitted in THE SETTLEMENT AT THOMAS DIVIDE at any time.”

Unless changed as set out herein, all other provisions of the Declaration recorded in Book 358, Page 638, Swain County Public Registry shall remain effective and the property described within said Declaration shall be held, transferred, sold, conveyed and occupied subject to the matters set out within said recorded Declaration and this Amendment.

IN WITNESS WHEREOF, the Declarant has caused this First Amendment to the Declaration of Planned Community, Covenants, Restrictions and Easements for The Settlement at Thomas Divide to be executed as of the day and year first written above.

Bryson City Horse Property, LLC

By: 
Benjamin Logan, Member/Manager

By: [Signature]
Kevin Gould, Member/Manager

By: [Signature]
Byron D. Jones, Member/Manager

STATE OF NY
COUNTY OF New York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing documents:
Benjamin Logan, Member/Manager of Bryson City Horse Property, LLC

[Signature] Date: 7/24/09
Notary Public
My commission expires:

STUART BLOJ
Notary Public, State of New York
No. 02BL6202136
Qualified in New York County
Commission Expires 03/09/2013

STATE OF NY
COUNTY OF New York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing documents:
Kevin Gould, Member/Manager of Bryson City Horse Property, LLC

[Signature] Date: 7/24/09
Notary Public
My commission expires:

STUART BLOJ
Notary Public, State of New York
No. 02BL6202136
Qualified in New York County
Commission Expires 03/09/2013

STATE OF NY
COUNTY OF New York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing documents:
Byron D. Jones, Member/Manager of Bryson City Horse Property, LLC

[Signature] Date: 7/24/09
Notary Public
My commission expires:

STUART BLOJ
Notary Public, State of New York
No. 02BL6202136
Qualified in New York County
Commission Expires 03/09/2013

FILED
SWAIN COUNTY
DIANA WILLIAMSON KIRKLAND
REGISTER OF DEEDS

FILED Mar 01, 2010
AT 01:04:39 pm
BOOK 00382
START PAGE 0039
END PAGE 0043
INSTRUMENT # 00305

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

This instrument prepared by: Kimberly C. Lay, Attorney at Law, Melrose, Seago & Lay,
PA, Sylva, NC

**SECOND AMENDMENT TO DECLARATION OF PLANNED
COMMUNITY, COVENANTS, RESTRICTIONS AND EASEMENTS FOR
THE SETTLEMENT AT THOMAS DIVIDE**

This Second Amendment is made this the 25 day of February, 2010, by The
Bryson City Horse Property, LLC, a North Carolina Limited Liability Company
(hereinafter "Declarant.")

WHEREAS, by that certain Declaration recorded in Book 358 at page 638 of the
Swain County Public Registry, the Declarant is authorized by Section 4.9 of said
declaration to amend the subdivision Declaration at Declarant's sole discretion; and

WHEREAS, the Declarant has considered the request of adjoining property
owners and determined that the use of the subdivision roadways for up to four residential
single family dwellings will not over burden the existing road system and not be a
detriment to the use or value of the lands of existing property owners within The
Settlement at Thomas Divide or the subdivision as a whole and believes it is in the best
interest of the subdivision, property owners and Association to make this Amendment to
the Declaration as set out herein,

NOW, THEREFORE, for and in consideration of the acts and things herein agreed to be
done and other good and valuable consideration, the receipt of which is hereby
acknowledged, the Declarant does hereby amend the Declaration of Planned Community,
Covenants, Restrictions and Easements for The Settlement at Thomas Divide, to reflect
the following changes:

- 1) The reference to a deed recorded in Book 328, Page 367 on Page 1 and 2 and any
other references in the Declaration describing the property to be made subject to
the Declaration is inaccurate. The proper reference of the property which is
considered The Settlement at Thomas Divide and subject to the Declaration of
Planned Community, Covenants, Restriction and Easement for The Settlement at

Thomas Divide in the deed recorded at Book 349, page 371 from Martin Cook and wife Ora Blance Cook to Bryson City Horse Property, LLC.

- 2) Section 7.1, entitled "Residential", provides that each lot in the development is restricted to single family residential use only. The following shall be added as subsection (a) to Section 7.1 :

(a) However, Lot 14 may be used by the owner thereof to provide access to four (4) single family residential dwellings (two existing residential dwellings located at 1077 McCracken Road and 795 McCracken Road and two other residential dwellings that may be built in the future), all of which dwellings shall be built upon said Owner's adjoining property, which property is described in Section 8.3 below.

- 3) Article 8 describes easements and other rights of the owners within the Settlement at Thomas Divide. Declarant adds Section 8.3 as follows:

"Section 8.3. Easement for Benefit of Adjoining Property Owners.

(a)The following described property is hereby granted and conveyed a road right of way easement through and upon the subdivision access roads within The Settlement at Thomas Divide and its continuations from the public road (SR #1353) to Lot 14 and then through Lot 14, which easement granted herein is for the purpose of providing ingress and egress for only four (4) single family residential dwellings described in Section 7.1(a) herein:

i)All of the property conveyed in a deed from Lonnie L. Hawkins and Mary Lynne Hawkins to Vicki Beatrice Cyr, Kelli Ann Geoghegan and Sheri Leigh Geoghegan dated September 11, 1992 and recorded in the Swain County Registry in Deed Book 180 at page 573. The property is shown on a map of a survey by William G. Davis, RLS dated 8-1-78 entitled Gormin, Geoghegan, Easley & Granese, PA, contains 32.7 acres, more or less, that is recorded in the Swain County Registry in Map Book 7, page 49.

(ii) All of the property described in a deed from Colvert Jenkins to Cecil O. Clark and Lillian M. Clark dated January 19, 2001 and recorded in the Swain County Registry in Book 241, page 393.

- 4) Article 9 provides for the right to collect assessments and Declarant and Association shall, as a result of the granting of the easements herein, assess the owners of the property referenced in Section 8.3 as follows and add Section 9.13 as follows:

"Section 9.13. Rate of Assessment for the property described in Section 8.3.

- (a) At the time any property owner of property described in Section 8.3 herein, commences construction of a dwelling on their property (see Section 7.1(a) for description of dwellings), such owner shall pay to the Association an impact fee of \$1,500.00 for the purpose of repairing any and all damage to said subdivision roadways, streets, and other areas within THE SETTLEMENT AT THOMAS DIVIDE.
- (b) If damage is caused in excess of damage incurred through ordinary usage by any property owner with the right to go upon the property and subdivision known as The Settlement at Thomas Divide as described within Section 8.3, then the Association may assess an expense in the amount of the actual damage and cost to repair, exclusively against that property owner, which assessment is in the sole and absolute discretion of the Board of Directors of the Association.
- (c) As stated herein in Sections 7.1(a) and 8.3, there is granted a right for up to 4 dwellings to access their property via the subdivision roads of The Settlement at Thomas Divide. The two existing dwellings described in Section 7.1(a) herein are exempt from the payment of assessments. However, the owner(s) of the property described in Section 8.3 shall pay an annual assessment in the amount of \$200.00 to the Association for any other single family residential dwelling to be built as contemplated herein, which assessment is for the use, maintenance and upkeep of said subdivision roadways for access and may be used by the Association as it uses annual assessments from subdivision lot owners as set forth in the Declaration.
- (d) The owners of the property described in Section 8.3 shall provide to the Association a list of the owner(s) and their addresses benefitted by this easement through The Settlement at Thomas Divide as soon as possible after the signing hereof and also provide notification to the Association in the event of transfer of title as soon as possible after the transfer of title.
- (e) In the event of non-payment of any assessment contemplated herein, Declarant/Association shall have the right to enforce lien rights as set forth in and pursuant to the terms of N.C.Gen.Stat. § 47F-3-116. The property to which the lien may be asserted shall be the property upon which the dwelling to be constructed as described in Section 7.1(a) is located and the immediately surrounding land together with a right of way easement from said dwelling to and through Lot 14 of The Settlement at Thomas Divide.

Unless changed or added as set out herein, all other provisions of the Declaration recorded in Book 358, Page 638, and the First Amendment recorded in Book 376, Page 11, Swain County Public Registry shall remain effective and the property described within said Declaration shall be held, transferred, sold, conveyed and occupied subject to the matters set out within said recorded Declaration, the First Amendment and this Second Amendment.

IN WITNESS WHEREOF, the Declarant has caused this Second Amendment to the Declaration of Planned Community, Covenants, Restrictions and Easements for The Settlement at Thomas Divide to be executed as of the day and year first written above.

Bryson City Horse Property, LLC

By: [Signature]
Benjamin Logan, Member/Manager

By: [Signature]
Kevin Gould, Member/Manager

By: [Signature]
Byron D. Jones, Member/Manger

STATE OF New York
COUNTY OF New York

STUART BLOJ
Notary Public, State of New York
No. 02BL6202136
Qualified in New York County
Commission Expires 03/09/2013

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing documents:
Benjamin Logan, Member/Manager of Bryson City Horse Property, LLC

[Signature] Date: 2/25/10
Notary Public
My commission expires: 3/9/13

STATE OF New York
COUNTY OF New York

STUART BLOJ
Notary Public, State of New York
No. 02BL6202136
Qualified in New York County
Commission Expires 03/09/2013

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing documents:
Kevin Gould, Member/Manager of Bryson City Horse Property, LLC

[Signature] Date: 2/25/10
Notary Public
My commission expires: 3/9/13

0382
0043

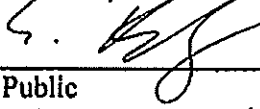
BK:00382 PG:0043

STATE OF New York
COUNTY OF New York

STUART BLOJ
Notary Public, State of New York
No. 02816202136
Qualified in New York County
Commission Expires 08/08/2013

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing documents:

Byron D. Jones, Member/Manager of Bryson City Horse Property, LLC



Date: 2/24/10

Notary Public

My commission expires: 7/9/13

FILED
 SWAIN COUNTY NC
 DIANA WILLIAMSON KIRKLAND
 REGISTER OF DEEDS

FILED	Sep 11, 2013
AT	02:29:53 pm
BOOK	00415
START PAGE	0797
END PAGE	0799
INSTRUMENT #	01626
EXCISE TAX	(None)

Third Amendment to the Declaration of Covenants, Conditions and Restrictions for The Settlement at Thomas Divide

THIS Third Amendment to the Declaration of Covenants, Conditions and Restrictions for The Settlement at Thomas Divide (as may be further amended or supplemented, "Third Amended Declaration") is made this 11th day of September, 2013, by Bryson City Horse Property, LLC, a North Carolina Limited Liability Company (the "Declarant or Developer").

WITNESSETH:

The property that is subject to this Third Amended Declaration is all of the property conveyed in a deed from Martin Cook and Ora Blanche Cook to Bryson City Horse Property, LLC, dated July 25, 2007 and recorded in the Swain County Registry in Deed Book 349 at page 371 ("Property" or "Development") and such other land as the Developer may add.

The Developer has recorded a document entitled Declaration of Planned Community, Covenants, Restrictions and Easements for the Settlement at Thomas Divide, dated February 25, 2008 and recorded in the Swain County Registry in Book 358, page 638 ("Original Declaration"), a First Amendment to the Declaration in Book 376, page 11, a Second Amendment to the Declaration in Book 382, page 39, and desires to further amend the Original Declaration. Except as amended herein, the Original Declaration, as amended, shall remain in full force and effect.

Paragraph 7.3 (ii) of the Original Declaration, as amended and restated by Section 1 of the First Amendment stated that upon completion of a dwelling a lot owner was limited to "only one additional structure", giving examples of permissible structures.

After sales of multiple lots and commencement of construction, it is the considered opinion and the experience of the Developer that because of their size and topography, there are certain lots within the development on which up to two additional structures could be built without affecting the experience of the adjoining owners.

Provided the lots on which up to two additional structures can be built shall be determined by the Architectural Committee in its sole discretion based upon the size and topography of each lot and the effect on adjoining lot owners of up to two additional structures on a lot, it is the considered opinion and the experience of the Developer that such a change preserve the primary characteristics of the Development as originally intended.

THEREFORE, Pursuant to Section 4.9 of the Original Declaration, Developer amends the Original Declaration by adding the following Section to the qualify Paragraph 7.3 (ii) of the Original Declaration, as amended and restated by Section 1 of the First Amendment.

Amendment:

Lot owners shall have the right to apply to the Architectural Committee for a written variance from the requirement set forth in Paragraph 7.3 (ii) of the Original Declaration, as amended and restated by Section 1 of the First Amendment, which currently provides that upon completion of a dwelling a lot owner is limited to "only one additional structure". The Architectural Committee shall have the sole discretion to determine form and substance of each application. Upon receipt of the application for a variance, the Architectural Committee shall, in its sole discretion, based upon the size and topography of each lot and the effect on adjoining lot owners, shall have the right to grant a variance from the provisions of Paragraph 7.3 (ii) of the Original Declaration, as amended and restated by Section 1 of the First Amendment, and allow up to two additional structures on a lot. The type of structures allowed shall be consistent with the types of structures allowed Paragraph 7.3 (ii) of the Original Declaration, as amended and restated by Section 1 of the First Amendment.

IN WITNESS WHEREOF, the LLC Grantor has caused this instrument to be signed in its name by its duly authorized Chief Executive Manager, in the ordinary course of business, the day and year first above written.

BRYSON CITY HORSE PROPERTY, LLC, a North Carolina Limited Liability Company

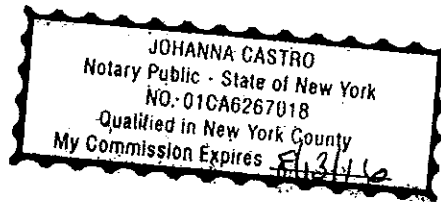
By: *Ben Logan*
Benjamin Logan,
Chief Executive Manager

New York COUNTY STATE OF New York

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: Benjamin Logan, Chief Executive Manager of Bryson City Horse Property, LLC, a North Carolina limited liability company, Grantor.

Witness my hand and official seal, this 10th day of September 2013.

Johanna Castro
Notary Signature
Johanna Castro
Notary Printed Name
8/31/13
Date Commission Expires



FILED
SWAIN COUNTY NC
DIANA WILLIAMSON KIRKLAND
REGISTER OF DEEDS

FILED Mar 17, 2017
AT 11:52:09 am
BOOK 00447
START PAGE 0093
END PAGE 0096
INSTRUMENT # 00436

EXCISE TAX (None)

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

**FOURTH AMENDMENT TO
DECLARATION OF PLANNED COMMUNITY, COVENANTS
RESTRICTIONS AND EASEMENTS
FOR
THE SETTLEMENT AT THOMAS DIVIDE**

THIS FOURTH AMENDMENT made this the 15th day of March, 2017
by **BRYSON CITY HORSE PROPERTY, LLC**, a North Carolina limited liability
company, also known as The Bryson City Horse Property, LLC, hereinafter referred to as
DEVELOPER.

W I T N E S S E T H:

THAT WHEREAS, the DEVELOPER is the owner of a certain tract or parcel of land
lying and being in Swain County, North Carolina, the same being conveyed by to them by deed
recorded in Book 349 at page 371, Swain County Registry, reference to which are hereby made
for a metes and bounds description, to be hereafter known as THE SETTLEMENT AT
THOMAS DIVIDE, reference to which is hereby expressly made for a more complete and
particular description of said tract included in this declaration; and

WHEREAS, The Settlement at Thomas Divide is or will be comprised of approximately
60 lots (Section 4.2 and 5.1), which are subject to that certain Declaration of Planned
Community, Covenants, Restrictions and Easements for The Settlement At Thomas Divide
recorded in Book 358 at page 638, Swain County Registry; amended by instruments recorded in
Book 376 at page 11, Book 382 at page 39 and Book 415 at page 797, Swain County Registry;
and

WHEREAS, DEVELOPER has sold 19 lots and still owns approximately 20 lots and
approximately 89 acres of undeveloped land designated for development; and

WHEREAS, DEVELOPER controls more than Sixty-Seven percent (67%) of the votes

and has the right to unilaterally amend the covenants without joinder of any lot owners.

WHEREAS, DEVELOPER desires to amend Section 7.6 of the covenants to continue to allow for the combining of two contiguous Lots into one Lot for the construction of a single residence thereon but amend the existing requirement that the resulting combined lot shall remain responsible for the annual, specific and special assessments for the number of lots prior to creating the "combined lot"; combining lots will result in the forfeiture of the additional right to vote attached to the second lot in Property Owners' Association matters as described in Section 10.1 and any and all further rights attached thereto. In essence the combined lot will be viewed as a single lot within the Covenants.; and

NOW, THEREFORE, DEVELOPER does hereby amend the Declaration of Planned Community, Covenants, Restrictions and Easements for The Settlement At Thomas Divide, as follows:

Section 7.6 of the covenants is hereby amended to read:
Section 7.6 **Subdivision of lot.** No lot may be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Notwithstanding the foregoing, nothing herein shall prevent Declarant or the Owners of any Lots from combining two contiguous Lots into one Lot (hereinafter referred to as "combined Lot"). The Owner shall hold the combined Lots as one lot for all purposes. Once two or more lots are combined they may not be thereafter split, divided or subdivided for sale, resale, gift, transfer, or otherwise. In no event may an Owner combine more than two lots into a single lot.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN TESTIMONY WHEREOF, said DEVELOPER has hereunto set their hands and seals this the day and year first above written.

Bryson City Horse Property, LLC

By: Byron Jones (SEAL)
Byron Jones, Manager

STATE OF NEW YORK
COUNTY OF New York

I, Jennifer Outridge, a Notary Public for said County and State, do hereby certify that BYRON JONES manager of BRYSON CITY HORSE PROPERTY, LLC, a manager managed North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

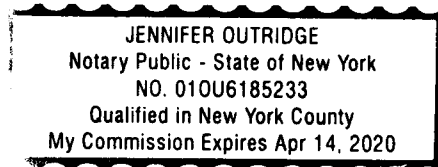
Witness my hand and official stamp or seal, this 18th day of March, 2017.

Jennifer Outridge
Notary's Signature

(Notary Seal)


Jennifer Outridge
Notary's printed name

04-14-2020
Date Commission Expires



IN TESTIMONY WHEREOF, said DEVELOPER has hereunto set their hands and seals this the day and year first above written.

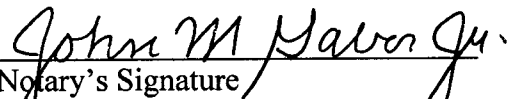
Bryson City Horse Property, LLC

By:  (SEAL)
Benjamin Logan, Manager

STATE OF NEW YORK
COUNTY OF NY

I, John M. Gabor Jr., a Notary Public for said County and State, do hereby certify that BENJAMIN LOGAN manager of BRYSON CITY HORSE PROPERTY, LLC, a manager managed North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

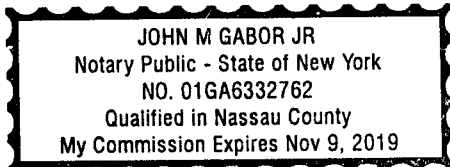
Witness my hand and official stamp or seal, this 15th day of March, 2017.


Notary's Signature

(Notary Seal)

John M. Gabor Jr.
Notary's printed name

11/9/19
Date Commission Expires



FILED
 SWAIN COUNTY NC
 DIANA WILLIAMSON KIRKLAND
 REGISTER OF DEEDS

FILED May 31, 2018
 AT 08:05:43 am
 BOOK 00458
 START PAGE 0402
 END PAGE 0404
 INSTRUMENT # 00816

EXCISE TAX (None)

This instrument prepared by:
 Eric Ridenour
 RIDENOUR & GOSS, PA
 PO Box 965
 Sylva, NC 28779
 (828) 586-3131

STATE OF NORTH CAROLINA
 COUNTY OF SWAIN

**FIFTH AMENDMENT TO
 THE DECLARATION OF PLANNED COMMUNITY, COVENANTS,
 RESTRICTIONS, AND EASEMENTS
 FOR
 THE SETTLEMENT AT THOMAS DIVIDE**

THIS FIFTH AMENDMENT TO THE DECLARATION OF PLANNED COMMUNITY, COVENANTS, RESTRICTIONS, AND EASEMENTS FOR THE SETTLEMENT AT THOMAS DIVIDE, hereinafter the "Declarations," is made this the 26th day of May, 2018 by BRYSON CITY HORSE PROPERTY, LLC, a North Carolina Limited Liability Company, hereinafter "Declarant."

WITNESSETH:

WHEREAS, pursuant to those certain Declarations recorded in Book 358, Page 638 of the Swain County Registry, the Declarant is authorized by Section 4.9 of said Declarations to amend the Declarations; and

WHEREAS, Collateral Assignment of Declarant Rights by BRYSON CITY HORSE PROPERTY, LLC to UNITED COMMUNITY BANK previously provided and recorded in Book 387, Page 649 was released by that Satisfaction recorded in Book 434, Page 597, both of the Swain County Registry.

WHEREAS, pursuant to Section 9.4(a) of the Declarations, a lot owner who commences construction of an improvement on their lot shall pay to the Association a

Ridenour

road impact fee of \$1,500.00; and

WHEREAS, it is the desire of the Declarant to amend Section 9.4(a) to provide for a second road impact fee in the event that construction of an improvement is not completed within 365 days of the commencement of construction.

NOW THEREFORE, based upon the authority provided in Section 4.9 of the Declarations and NCGS §47F-2-117, THE DECLARATION OF PLANNED COMMUNITY, COVENANTS, RESTRICTIONS, AND EASEMENTS FOR THE SETTLEMENT AT THOMSAS DIVIDE, first recorded in Book 358, Page 638 of the Swain County Registry, North Carolina, is hereby amended as follows:

Section 9.4 Assessment Attributable to Fewer than All Lots.

- (a). At the time any lot owner commences construction of an improvement on their lot, such lot owner shall pay to the Association an impact fee of \$1,500.00 for the purpose of repairing any and all damage to said subdivision roadways, streets, and other Common Areas in THE SETTLEMENT AT THOMAS DIVIDE. In the event that construction of such improvement is not complete, or Certificate of Occupancy has not been issued by the Building and Code Enforcement Office of Swain County, within one year (365 days) of first commencing such improvement, then such lot owner shall pay to the Association another \$1,500.00 impact fee. Said additional \$1,500.00 impact fee shall be due and payable on the 366th day after commencement of construction and each year thereafter on the anniversary of the initial commencement of construction until exterior of the house is complete. The Association shall have the authority to grant a waiver of any subsequent \$1,500 impact fee if, in the Association's sole discretion, there were a Natural Disaster or other Act(s) of Nature that reasonably prevented the lot owner from completing construction within one year of commencement of construction.

[SIGNATURE PAGE INTENTIONALLY PLACED ON SEPARATE PAGE]

IN WITNESS WHEREOF, the Association hereby amends Section 9.4(a) of the Declarations as stated above and caused this instrument to be executed in its company name by its duly elected Manager.

BRYSON CITY HORSE PROPERTY, LLC

By: Byron Jones (SEAL)
Byron Jones, Manager

STATE OF NY
COUNTY OF NY

I, Debra Weigand, a Notary Public of the County and State aforesaid, certify that BYRON JONES personally came before me this day and acknowledged that she is the Manager of BRYSON CITY HORSE PROPERTY, LLC a North Carolina Limited Liability Company, and that by authority duly given and as the act of that company, the foregoing instrument was signed in its name, under seal, by him as its Manager.

Witness my hand and official seal, this 26th day of May, 2018.

Debra Weigand

Notary Public

My Commission Expires: Aug 29, 2020

