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NEDRA W. MOLES, Henderson COUNTY, NC

Prepared by: Shon B. Alexander

**AMENDMENT TO COVENANTS AND RESTRICTIONS
FOR CUMMINGS COVE**

This AMENDMENT TO COVENANTS AND RESTRICTIONS FOR CUMMINGS COVE is made this 10 of July, 2012, by CUMMINGS COVE COMPANY, LLC, a Florida Limited Liability Company, hereinafter call "Developer".

WITNESSETH:

WHEREAS, that property known as CUMMINGS COVE was subjected to the Covenants and Restrictions on May 7, 1985, recorded in Deed Book 658 at page 44, Henderson County Registry, which covenants were supplemented by instrument recorded in Deed Book 723 at Page 767, Henderson County Registry; and Restatement and Amendment recorded in Deed Book 1036 Page 499, Henderson County Registry; to Restatement and Amendment to Covenants and Restrictions dated May 12, 2009 and recorded in Deed Book 1395, Page 171, and to Restatement and Amendment to Covenants and Restrictions dated March 13, 2012 and recorded in Deed Book 1490, Page 197, Henderson County Registry.

WHEREAS, all property recorded in Deed Book 954 at Page 369, Henderson County Registry, and Deed Book 963 at Page 345, Henderson County Registry, and all property shown on Plats currently recorded at the Henderson County Registry for Cummings Cove and on all Plats for Cummings Cove recorded in the future are hereby made subject to this Restatement and Amendment to Covenants and Restrictions; and

WHEREAS, there are certain additional restrictions that pertain to only certain parts or neighborhoods of the development, such as townhouses and condominiums. These additional restrictions are not being amended by this Restatement and Amendment to Covenants and Restrictions. Any reference, however, to the original Covenants and Restriction recorded in Deed Book 658 at Page 44, Henderson County Registry are replaced by this Restatement and Amendment to Covenants and Restrictions; and

WHEREAS, the Covenants and Restrictions for Cummings Cove, both originally and as amended, provides that the Developer may change said covenants in whole or in part; and

WHEREAS, the undersigned is the Developer; and

WHEREAS, said undersigned Developer hereby amends said covenants; and

WHEREAS, this Amendment is intended to and shall supercede and replace in their entirety only certain provisions of that Restatement and Amendment to Covenants and Restrictions for Cummings Cove which is of record in Deed Book 1490, Page 197 in the office of the Register of Deeds for Henderson County, North Carolina, and except as explicitly and specifically amended herein the said Restatement and Amendment to Covenants and Restrictions for Cummings Cove shall remain in full force and effect.

NOW, THEREFORE, the Developer does hereby make and establish the following Amendment to Covenants and Restrictions for Cummings Cove and declares that all property recorded in Deed Book 954 at page 369, Henderson County Registry, and Deed Book 963 at Page 345, Henderson County Registry, and all property shown on Plats currently recorded at the Henderson County Registry for Cummings Cove and on all Plats for Cummings Cove recorded in the future, are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

AMENDMENT TO ARTICLE III

Subsection 3.3.1 shall be deleted in its entirety, and in its place the following shall be substituted:

3.3.1 Board Members. There shall be a Board of Directors of the Association ("Board") made up of a total of nine (9) Members and the Developer as follows:

- i. Developer.** The Developer shall have one (1) seat on the Board for the period of time beginning with the effective date of the Articles of Incorporation, and ending one year after the Developer ceases to own any portion of the Properties or encumber any portion of the Properties, or until such time as the Developer resigns from the Board. At such time, this seat on the Board shall dissolve and not be filled.
- ii. Owner of Commercial Unit.** The Owner of the Commercial Unit or the corporations whether profit or non-profit, controlling the Commercial Unit, if that is the case, shall designate a person at his or its discretion to be his or its Board Member and shall be entitled to one (1) seat on the Board.
- iii. Remaining seats.** As long as the Developer has a seat on the Board, the remaining eight (8) seats shall be filled by the

Developer. At all times after the Developer no longer has a seat on the Board, the Owners shall fill the remaining eight (8) seats on the Board by majority vote of the Members of the Association as outlined in the By-Laws.

AMENDMENTS TO ARTICLE V

1. Section 5.7 is deleted in its entirety, and in its place the following shall be substituted:

5.7 Developer Responsibilities To Pay Assessments. Until the Turnover, the Developer shall only be responsible to pay any Periodic Assessments or Special Assessments as follows:

- (a) **Developer Fee.** The Developer shall pay a Developer Fee of \$500.00 to the Association for any Lot or Dwelling Unit sold in the development.
- (b) **Road Maintenance.** The Developer shall, at its sole expense, maintain all the roads in the Properties that the Developer retains responsibility and ownership of. Once the Developer offers control of all or a portion of any road in a particular section of the Properties to the Association, and the Association accepts said offer, said road or section of road shall then be maintained by the Association at its expense from the date of said acceptance. The Association shall accept said offer unless the road or a substantial portion of the road is in immediate need of repair.
- (c) **Developer Assessment.** The Developer shall only owe the Periodic and Special Assessments on any Lot or Dwelling Unit in Phase II of the development, or later Phases developed by Developer, if any, it then controls and owns in a particular section or street of the Properties where the Association maintains the roads or section of the road as outlined in Paragraph 5.7(b) above. Developer shall receive a credit against any such Assessments owed by Developer equal to the number of lots on roads or portions of roads which the Developer continues to maintain and which have not been offered to the Association.

2. Section 5.12 is deleted in its entirety, and the following substituted in its place:

5.12 Collection of Assessments. The Cummings Cove Community Association shall be responsible for collecting all assessments by the Association against Owners. If the Association collects any assessments in regard to Lots or Dwelling Units on roads which are being maintained by Developer or any

portion of which is being maintained by the Developer, all such assessments shall be paid to Developer to reimburse for the costs of such maintenance.

AMENDMENT TO ARTICLE VIII

Section 8.4 is deleted in its entirety, and the following is substituted in its place:

8.4 Roads. The Association shall maintain the Roads or portions of Roads within the Properties that (1) have been deeded by the Developer to the Association or (2) control of which has been given by the Developer to the Association.

IN WITNESS WHEREOF, this Restatement and Amendment to Covenants and Restrictions for Cummings Cove has been signed by Developer, the day and year first above set forth. The undersigned Managing Member signs for and on behalf of Developer, with full authority to do so from all of the general partners of Developer.

CUMMINGS COVE COMPANY, LLC

By:

 (SEAL)
CUMMINGS COVE COMPANY, Managing Member

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

On the 10th day of July, 2012, before me personally appeared Shannon R. Ginn, to me known, who being by me duly sworn, deposes and says that he is the Managing Member of CUMMINGS COVE COMPANY, LLC., a Florida Limited Liability Company, and that the seals affixed to the foregoing instrument in writing are the seals of CUMMINGS COVE COMPANY, LLC, and that the writings have been signed by him on behalf of CUMMINGS COVE COMPANY, LLC.

WITNESS my hand and notarial seal, this the 10th day of July, 2012.

Nancy E. Trehan
Notary Public

My Commission Expires: May 20, 2017

