

BK 3829 PG 17 - 23 (7) DOC# 968503
This Document eRecorded: 12/01/2021 03:47:35 PM
Fee: \$26.00
Henderson County, North Carolina
William Lee King, Register of Deeds

Prepared by and return to:
Allen, Stahl & Kilbourne, PLLC, 20 Town Mountain Road, Suite 100, Asheville, NC 28801

References: Deed Book 658, Page 44
Deed Book 723, Page 767
Deed Book 1036, page 499
Deed Book 1395, Page 171
Deed Book 1490, Page 197
Deed Book 1502, Page 366
Deed Book 1547, Page 15
Deed Book 1612, Page 677
Deed Book 3017, Page 160
Deed Book 3257, Page 95

STATE OF NORTH CAROLINA
HENDERSON COUNTY

**SIXTH AMENDMENT TO THE THIRD RESTATEMENT AND AMENDMENT TO
COVENANTS AND RESTRICTIONS FOR CUMMINGS COVE**

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

THIS SIXTH AMENDMENT TO THE THIRD RESTATEMENT AND AMENDMENT
TO COVENANTS AND RESTRICTIONS FOR CUMMINGS COVE ("Sixth Amendment") is
made this 1st day of Nov, 2021, by Cummings Cove Company, LLC, a Florida limited
liability company (hereinafter "Declarant" or "Developer").

submitted electronically by "Allen, Stahl, & Kilbourne, PLLC"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Henderson County Register of Deeds.

WHEREAS, on May 7, 1985, BDO Associates ("First Predecessor Declarant"), a North Carolina partnership, subjected certain property described therein in Exhibit A and Exhibit B, to terms and provisions of that Declaration of Covenant and Restrictions ("Declaration"), recorded at Book 658, Page 44, Henderson County Registry; and

WHEREAS, on August 17, 1988, First Predecessor Declarant recorded a Supplement to the Declaration at Book 723, Page 767, Henderson County Registry, submitting the property described therein to the Declaration; and

WHEREAS, on September 15, 2000, Cummings Cove Properties, LLC ("Second Predecessor Declarant") recorded a Restatement and Amendment to Covenants and Restrictions for Cummings Cove, at Deed Book 1036, Page 499, Henderson County Registry; and

WHEREAS, on May 13, 2009, Cummings Cove Company, LLC, ("Successor Declarant" or "Declarant" or "Developer") recorded a Restatement and Amendment to Covenants and Restrictions for Cummings Cove ("Second Restatement and Amendment"), at Deed Book 1395, Page 171, Henderson County Registry, subjecting the property described in Deed Book 945, Page 369 and Deed Book 963, Page 345, as well as property shown on plats for Cummings Cove at that time recorded, as well as any plats for Cummings Cove to be recorded in the future; and

WHEREAS, on March 15, 2012, Declarant recorded a Restatement and Amendment to Covenants and Restrictions for Cummings Cove ("Third Restatement and Amendment") at Deed Book 1490, Page 197, Henderson County Registry; and

WHEREAS, Declarant amended the Third Restatement and Amendment by recording the following: an Amendment to Covenants and Restrictions, on July 17, 2012, at Book 1502, Page 366, Henderson County Registry ("First Amendment to the Third Restatement and Amendment"); an Amendment to Covenants and Restrictions, on September 11, 2013, at Book 1547, Page 15, Henderson County Registry ("Second Amendment to the Third Restatement and Amendment"); an Amendment to Covenants and Restrictions, on April 13, 2015, at Book 1612, Page 677, Henderson County Registry ("Third Amendment to the Third Restatement and Amendment"); an Amendment and Addendum to Covenants and Restrictions, on February 14, 2017, at Book 3017, Page 160, Henderson County Registry ("Fourth Amendment to the Third Restatement and Amendment"); and an Amendment to Covenants and Restrictions, on October 8, 2018, at Book 3257, Page 95, Henderson County Registry ("Fifth Amendment to the Third Restatement and Amendment"); and

WHEREAS, Article XI, Section 11.5 of the Third Restatement and Amendment provides that the Developer may amend the Third Restatement and Amendment without the approval of the Association, the Board, or the members as long as Developer owns a Lot or Dwelling Unit in Cummings Cove; and

WHEREAS, this Sixth Amendment is intended to and shall add or modify only certain provisions of that Third Restatement and Amendment and, except as explicitly and specifically amended herein, the said Third Restatement and Amendment shall remain in full force and effect.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer does hereby amend the Third Restatement and Amendment as follows:

Amendment to Caption of the Third Restatement and Amendment

The caption of the Third Restatement and Amendment to the Covenants and Restrictions for Cummings Cove shall be amended by adding the following language after the heading RESTATEMENT AND AMENDMENT TO COVENANTS AND RESTRICTIONS FOR CUMMINGS COVE" as follows and which is reflected in this Sixth Amendment to said Restatement and Amendment:

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS

Amendments to Article V

Article 5.3.1. and Article 5.3.2 shall both be deleted in their entirety.

Amendments to Article VI

Article 6, Section 6(d) shall be amended by deleting the second and third sentence and adding the following language such that the entire provision shall now read as follows:

6.6(d). 45 Day Period to Remedy Noncompliance After Board Ruling. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of the announcement of the Board ruling. If the Applicant does not comply with the Board ruling within such period, the Board, pursuant to Article 10, Section 2, may invoke the enforcement provisions of Article X of this Declaration including but not limited to a legal action in law or in equity, an action for injunctive relief, damages, or a combination thereof, as a means to enforce the noncompliance. Additionally, the Board may invoke the fining provisions of Article 10, Section 3 and may pursue all remedies described therein. All costs and expenses incurred by the Association in terminating or resolving a violation of this Declaration, including reasonable attorneys' fees, may be recovered pursuant to the provisions of Article 10, Section 4.

Article 6, Section 11 shall be amended as follows by deleting the phrase "in the form of an assessment" and substituting the phrase "pursuant to the provisions of Article V of this Declaration, including the enforcement proceedings contained therein" which shall now read as follows:

6.11. Attorney's Fees. For all purposes necessary to enforce this article, the Association shall be entitled to collect reasonable attorney's fees, court costs and other expenses against an owner, whether or not litigation is instituted, and the Board may assess such amounts

pursuant to the provisions of Article V of this Declaration, including the enforcement proceedings contained therein.

Amendments to Article IX

Article 9, Section 4 shall be amended by adding a second sentence and a third sentence to the existing language to that section, which shall now read as follows:

9.4. Parking. Vehicles shall be parked only in garages, driveways, and designated parking areas. A maximum of two (2) vehicles per Dwelling Unit may be parked in driveways and designated parking areas. One of the two vehicles may be a golf cart.

Article 9, Section 4.1, as amended in the Third Amendment to the Third Amended and Restated Declaration, shall be amended by retaining the first sentence of said section and deleting sentences two (2) through four (4) which shall now read as follows:

9.4.1. Commercial and Recreational Vehicles, Boats, and Campers. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the board.

Article 9, Section 8, shall be amended by retaining the first sentence of said section and by deleting sentences two (2) through six (6) and substituting the following languages after the first sentence, such that the entire provision shall now read as follows:

9.8. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except dogs, cats and other usual and common household pets may be permitted within the Properties. No pets shall be kept, bred, or maintained for any commercial purpose. The Board shall have the authority to restrict or prohibit the keeping of breeds of dogs with a known history of dangerous or vicious behavior. The Board shall also have the authority to request the removal of a pet which, in the sole discretion of the Board, makes objectionable noise, endangers health or safety, or constitutes a nuisance or inconvenience to others. Dogs are not allowed to roam free in the Properties and are required to be on a leash held by responsible person when outside a Dwelling Unit, except if they are in the Dog Park or in a dog yard.

Article 9, Section 13, shall be amended by deleting the phrase "as a Special Assessment" and substituting the phrase "pursuant to the provisions of Article V of this Declaration, including the enforcement proceedings contained therein" which shall now read as follows:

9.13. Right to Abate Violations. The Association or the Developer, until Turnover, and the Association thereafter, after reasonable notice and opportunity to cure a violation given to an Owner, may cure the violation and charge the cost thereof against the Owner pursuant to the provisions of Article V and Article X of this Declaration, including the enforcement provisions contained therein.

Amendments to Article X

Article 10, Section 2 shall be amended by retaining the first sentence of said section, by deleting sentences two (2) through four (4) and by substituting the following language after the first sentence, such that the entire provision shall now read as follows:

10.2. Enforcement – General. Failure of an Owner to comply with a provision in this Declaration or a provision in the By-laws, Articles or Rules and Regulations of the Association shall provide the Association and each Owner with the right to bring legal action in law or in equity, including but not limited to an action for injunctive relief, damages, or a combination thereof. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure of the Board to enforce any provision of the Act, Declaration, Bylaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective.

Article 10, Section 3 shall be eliminated in its entirety and a new Article 10, Section 3 shall be added as follows:

10.3. Fining Powers. Pursuant to N.C.G.S. Sections 47F-3-102(a)(11) and 47F-3-107.1, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under this Declaration, the By-laws, or Rules and Regulations duly adopted pursuant thereto against Lot Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with Article V hereof, and become a personal obligation of the Lot Owner, and a lien upon the property; to suspend a Lot Owner's or occupant's right to use the common elements; and to suspend a Lot Owner's right to vote.

A new Article 10, Section 4 shall be added to Article X and shall read as follows:

10.4. Recovery of Attorney Fees and Costs. All costs and expenses incurred by the Association in terminating or resolving a violation of this Declaration, including reasonable attorneys' fees (whether or not litigation is instituted) shall be the responsibility of the Owner determined by the Association to be in violation. Collection of such reasonable attorneys' fees may be enforced by any method in this Declaration providing for the collection of Assessments, including but not limited to, the filing of a lien or a foreclosure proceeding.

A new Article 10, Section 5 (Including Section 10.5.1 and 10.5.2) shall be added to Article X and shall read as follows:

10.5. Enforcement Procedures. In accordance with Section 47F-3-107.1 of the Act, the Board shall not impose a fine or charge for damages against a Lot Owner or suspend a

Lot Owner's planned community privileges or services unless and until the following procedure is followed:

10.5.1. Notice. If it appears that a Lot Owner is in violation of the Declaration, Bylaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the Lot Owner is not in violation of the Declaration, Bylaws, or Rules and Regulations; (iii) that any statements, evidence and witnesses may be produced by the violator at the hearing; and (iv) that the Lot Owner has the right to be represented by an attorney at the hearing.

10.5.2. Hearing. The hearing shall be held before the Board and the violator shall be given a reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of planned community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The Board shall render its Final Decision to the Lot Owner regarding imposition of the fine or suspension of planned community privileges or services.

Amendment of Article XI

Article 11, Section 2 shall be amended by deleting the erroneous reference to "Chapter 47R" of the North Carolina General Statutes by substituting "Chapter 47F" of the North Carolina General Statutes, which is the correct reference, such that the Article shall read as follows:

11.2. Planned Community Act. The provisions of Chapter 47F of the North Carolina General Statutes referred to as the "Planned Community Act," as amended from time to time, shall be applicable to these covenants and the Properties.

IN WITNESS WHEREOF, this Sixth Amendment to the Third Restatement and Amendment to Covenants and Restrictions for Cummings Cove has been executed on behalf of the Developer, on the day and year first set forth above. The undersigned managing member is executing this Sixth Amendment to the Third Restatement and Amendment to Covenants and Restrictions for Cummings Cove on behalf of the Developer and with the full authority to do so.

CUMMINGS COVE COMPANY, LLC

BY: 

Shannon R. Ginn, Managing Member

STATE OF North Carolina

COUNTY Henderson

I Nancy E. Trahan, Notary Public for said County and State, do hereby certify that Shannon R. Ginn, as Managing Member of Cummings Cove Company, LLC, a Florida limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

Witness my hand and official seal, this the 22nd day of November, 2021.

NANCY E. TRAHAN
NOTARY PUBLIC

Henderson County
North Carolina

My Commission Expires May 20, 2022 Commission expires May 20, 2022.


Notary Public