

INSTRUMENT # 2021001932



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STATE OF NORTH CAROLINA

COUNTY OF BURKE

**REVISED AND RESTATED DECLARATION OF EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS OF
HIGH PEAK MOUNTAIN ESTATES PROPERTY OWNERS ASSOCIATION, INC. (HPME POA, INC.)**

(AS APPROVED BY THE MEMBERS OF THE HIGH PEAK MOUNTAIN ESTATES PROPERTY OWNERS' ASSOCIATION ON NOVEMBER 13, 2020, AND APPLICABLE TO ALL LOTS CONTAINED IN THE HIGH PEAK MOUNTAIN DEVELOPMENT SHOWN IN PLAT BOOK 16, PAGES 84 TO 97, AND HIGH PEAK MOUNTAIN II DEVELOPMENT SHOWN IN PLAT BOOK 18, PAGES 3 TO 12, BURKE COUNTY REGISTRY.)

WHEREAS, separate documents were filed in 2001 by the Developers (N.C. Mountain Investments, LLC and Landstar Development, LLC) governing the Declaration of Easements, Covenants, Conditions, and Restrictions applicable to High Peak Mountain Phase I (Book 992, Page 207), and High Peak Mountain Phase II (Book 1051, Page 467); and

WHEREAS, the Developers, N.C. Mountain Investments, LLC and Landstar Development, LLC, no longer have any ownership interest in any property contained within the boundaries of High Peak Mountain Phase I, or and High Peak Mountain Phase II; and

WHEREAS, over the years confusion has arisen among and between the property owners and the Property Owners' Association regarding the differences and discrepancies contained in these two documents, and the application of the same; and

WHEREAS, as a result of such confusion it has become necessary and beneficial for the property owners and the Property Owners' Association to update, combine and consolidate the Declaration of Easements, Covenants, Conditions, and Restrictions that are applicable to High Peak Mountain Phase I and High Peak Mountain Phase II into a single document; and

WHEREAS, the Declarations of Easements, Covenants, Conditions, and Restrictions applicable to High Peak Mountain Phase I (Book 992, Page 207), and High Peak Mountain Phase II (Book 1051, Page 467) both contain Amendment Provisions in Article XXI that allow these Declarations to be amended at any time by the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association, and

WHEREAS, pursuant to the Amendment Provisions in Article XXI, the foregoing Revised and Restated Declaration of Easements, Covenants, Conditions, and Restrictions were duly approved by an affirmative vote of more than sixty-seven percent (67%) of the authorized votes of the High Peak Mountain Estates POA, Inc., therefore:

Know all men by these presents that High Peak Mountain Estates POA, Inc. a North Carolina non-profit corporation (formerly known as High Peak I & II Property Owners' Association, Inc.), P.O. Box 613, Morganton, NC 28680 does hereby covenant and agree with all persons, firms, or corporations currently owning lots (SEE EXHIBIT A) or hereafter acquiring lots or residences in the High Peak Mountain Subdivision, Phase I and Phase II (as shown on plats recorded in Plat Book 16, Pages 84 to 97 and Plat Book 18, Pages 3 to 12, Burke County Registry), that all of the lots of said subdivision are hereby subjected to the following REVISED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HIGH PEAK MOUNTAIN ESTATES PROPERTY OWNERS' ASSOCIATION, INC., which shall hereafter continue to run with said land and govern the use thereof by whomsoever owned, their heir, successors and assigns, for a period of thirty (30) years from the date hereof, and shall thereafter automatically renew for successive periods of ten (10) additional years, unless altered or amended pursuant to an affirmative vote of more than sixty-seven percent (67%) of the authorized votes of the High Peak Mountain Estates Property Owners' Association, Inc.

The Declarations of Easements, Covenants, Conditions, and Restrictions which have previously been recorded for High Peak Mountain Phase I (Book 992, Page 207), and High Peak Mountain Phase II (Book 1051, Page 467), shall hereafter be modified, consolidated and superseded by this document, to wit:

1.0 Scope

- 1.1 This Document is a Revised and Restated Declaration of Easements, Covenants, Conditions and Restrictions for High Peak Mountain Estates, which pertains and applies to all of the property described in those Plats recorded in Plat Book 16, pages 84 to 97 and Plat Book 18, pages 3-12, (less and excepting Lot # 43, Phase II) at the Office of the Burke County Register of Deeds, Morganton, NC.
- 1.2 Definitions and Reference Documents:
- 1.2.1 Development: The term "Development" used herein shall refer to and include all of the property described in Section 1.1 above.
- 1.2.2 The term "HPME" used herein shall hereafter refer to High Peak Mountain Estates Property Owners Association, Inc., and the members thereof.
- 1.2.3 Covenants: The term "Covenants" shall refer to the Declarations of Easements, Covenants, Conditions, and Restrictions applicable to HPME.
- 1.2.4 Covenants Officer: The term "Covenants Officer" shall refer to the person who is elected by HPME to inspect and monitor compliance with these Restrictive Covenants, and to report violations or other compliance issues to the Board of Directors.
- 1.2.5 The term "Board" hereinafter shall refer to the Executive Board of Directors of HPME, designated in the Covenants to act on behalf of HPME. The Board is elected by the membership and shall consist of the President, Treasurer, Secretary, Covenants Officer, and Roads Officer.
- 1.2.6 Assessments: There shall be four (4) types of assessments for HPME expenses. See Section 16.
- 1.2.6.1 Base Assessments: Funds for common expenses and for the general benefit of all Lots. May be referred to as annual dues.
- 1.2.6.2 Special Assessments: Cover unexpected expenses that are not included in the budget.
- 1.2.6.3 Emergency Assessments: Cover emergency replacement/repairs to maintain safe travel, control of security or other unplanned expenses associated with an emergency condition.
- 1.2.6.4 Specific Assessments: Assessments against a particular Lot to cover costs incurred in bringing the Lot into compliance.
- 1.2.7 Lien: An official claim or charge against property or funds for payment of a debt or an amount owed for services rendered. A lien is a formal document signed by the party to whom money is owed and sometimes by the debtor who agrees to the amount due. A lien carries with it the right to sell property, if necessary, to obtain the money. See Section
- 1.2.8 Vote Calculation: All properties included in HPME have a right to cast a vote if they decide to do so.
- 1.2.8.1 For financial and other related issues, the calculation used to determine the results is a minimum of sixty-seven percent (67%) for or against, based on the number of property owners who choose to vote by voting ballots which are properly completed and received by HPME. (Ref DOC-005, F-001)
- 1.2.8.2 For changes or amendment(s) to the Covenants, the calculation used to determine the results is a minimum of sixty-seven percent (67%) affirmative vote of all voting lots. (Ref DOC-005, F-001)
- 1.2.9 Membership Meeting Vote: When voting at a membership meeting where notice that a vote would be taken and a quorum is present, sixty-seven percent (67%) is determined by the number of hands shown as a percent of the members and properties present.

- 1.2.10 Quorum: A quorum present at a membership meeting shall be a minimum of three (3) members from the Board, and a minimum of ten percent (10%) of the total votes of the voting membership, when a vote on a non-financial matter or officer election is conducted at the meeting. A quorum present at a Board meeting shall require a minimum of three (3) Board members.
- 1.2.11 HPME Communications: Membership communications may be in the form of any or all of the following methods; U.S Postal Service, e-mail or other electronic means, phone, FAX, or Registered Mail as appropriate. Where electronic means is used, a signed written agreement between the member and HPME is required. (Ref LA-005)
- 1.2.12 Reference Documents: (Available on association web site; Covenants are also available at the Burke County Register of Deeds Office)
 - 1.2.12.1 DOC-001 HPME Document Format Requirements
 - 1.2.12.2 DOC-005 HPME Voting Instructions
 - 1.2.12.3 DOC-006 HPME Bylaws, Rules and Regulations
 - 1.2.12.4 F-001 HPME Membership Voting Ballot
 - 1.2.12.5 F-002 HPME Architectural Check List
 - 1.2.12.6 LA-005 HPME Web Page Approval Agreement
 - 1.2.12.7 REC-002 HPME Record of Building Standards
 - 1.2.12.8 Chapter 45, Article 2A
 - 1.2.12.9 Chapter 47F, North Carolina Planned Community Act, Article 1, General Provisions - (1998-1999, s.1) or latest revision.
 - 1.2.11.10 Consumer Price Index Website - <http://www.bls.gov/cpi/home.htm>
 - 1.2.12.11 North Carolina Wildlife Resources Commission Hunter Education Course www.ncwildlife.org.

2.0 Purpose

- 2.1 This document has been rewritten, using the original instruments as a guide, to conform to HPME format as stated in the latest revision of DOC-001 (HPME Document Format Requirements).

3.0 Justification

- 3.1 HPME imposes on all lots within its legal control the mutual and beneficial Restrictions, Covenants, Conditions, and Charges (hereinafter collectively referred to as "Covenants") for the benefit and complement of all residential lots in the subdivision in order to promote the best interest and protect the investments of all property owners in the HPME.
- 3.2 HPME declares that all of the lots and parcels hereinabove designated, and such additional property as may by subsequent amendment or supplemental Covenants be added to and subjected to these Covenants, are held and shall be held, conveyed, and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of these Covenants, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and pre-established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof.
- 3.3 The provisions of these Covenants are intended to create mutual equitable servitude upon each of said lots and parcels in favor of each and all other lots and parcels, to create reciprocal rights between the respective owners of all such lots and parcels.
- 3.4 To create privity of contract and estate between the owners of such lots, their heirs, successors and assigns, and shall, as to the owner of each such lot or parcel, their heirs,

successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

4.0 Land Use

- 4.1 All numbered lots and parcels in the Development shown on the recorded plat hereinabove referred to, are hereby designated single-family residential as to their permissible uses:
- 4.1.1 No trade or business of any kind may be conducted on any lot. No trade materials or inventories may be stored upon any lot.
- 4.1.1.1 A business run from a home office shall not be considered a violation of this covenant.
- 4.1.2 Lease or rental of a dwelling for residential purposes shall not be considered to be a violation of this covenant.
- 4.1.2.1 [Reserved]
- 4.1.2.2 Unless accompanied by the lot owner(s), rental properties whose lease or rental agreement terms are less than six (6) months shall prohibit tenants/lessee's, or owner's guests, from having any type of open fire and debris burning.
- 4.1.2.3 The failure of any Owner to comply with any aspect of this Section shall be considered a violation of the Declaration. The Association may, after providing the Owner with notice and opportunity to be heard, impose fines up to one hundred dollars (\$100.00) per day pursuant to N.C.G.S. 47F-3-107.1 for such violation.

5.0 Structure Type

- 5.1 One primary single-family dwelling, not to exceed two and one half (2 and 1/2) stories in height, may be erected on each lot. The structure shall be no less than twelve hundred (1,200) square feet of fully enclosed floor area. This structure may have a roofed or unroofed porch, an attached terrace, an attached garage or carport, or other features which do not count as part of the 1,200 square foot requirement.
- 5.2 Additional out buildings may be constructed. These include a garage, carport, workshop, one guest suite building meeting the building permit requirements of Burke County, or a storage building. If horses or ponies are kept on the property, a barn may also be constructed.
- 5.3 All structures on any lot must generally conform in appearance, architecture, quality of workmanship and materials as used for the family dwelling. If the exterior of such structures are painted, it shall be in earth tone colors consistent with existing structures and blending into the natural environment.
- 5.4 All structures except the carport and barn must be fully enclosed on all four (4) sides.
- 5.5 All structures must comply with the HPME Architectural Checklist - F-002 and HPME Record of Building Standards - REC-002 and must be verified by the Covenants Officer and approved by the Board before construction commences.
- 5.6 All structures are for storage of personal items.
- 5.7 Only the primary dwelling and/or the one allowed guest suite are to be used as living quarters.
- 5.8 At the time plans are submitted for review and accepted, the Owner or Builder must post a construction escrow deposit with the HPME in the amount of one thousand dollars (\$1,000) per lot to ensure compliance with the provisions of these Covenants. The Treasurer is to

hold an interest-bearing account until released by the Covenants Officer. In the event of any violation of the provisions hereof, all or any portion of the deposit may be used to rectify or satisfy the violation or to reimburse HPME for expenses incurred in addressing the violation. The deposit, or balance thereof, shall be returned upon timely completion of construction, full compliance with the provisions of these Covenants, satisfaction of violations and reimbursement of expenses incurred by HPME.

6.0 Temporary Structures

- 6.1 No motor vehicles or structures of a temporary character, including but not limited to, any trailer, tractor trailer, mobile home, single-wide or double-wide mobile home/manufactured home, manufactured dwelling, modular building/home, tent, shack or type of structure, whether temporary or permanent, not specifically authorized by these Covenants or any amendment thereto be placed on any lot at any time.
 - 6.1.1 A lot owner may use his or her lot for camping with a tent, recreational vehicle (RV) or professionally manufactured camper trailer for no more than thirty (30) consecutive days.
 - 6.1.1.1 This time limit may be extended with a signed written waiver approved by the Board of Directors.

7.0 Building Locations

- 7.1 No building shall be located on any lot nearer to the lot lines or nearer to the street lines than the minimum building setback lines shown on the recorded plats.
- 7.2 In the event that no minimum building setback line is shown on a plat, all buildings shall be at least the minimum distance specified by the governmental authority having jurisdiction over building setback requirements. (Ref REC-002)
- 7.3 No structure other than a fence may be built within fifteen (15) feet of any lot line.

8.0 Nuisances

- 8.1 It shall be the responsibility of each lot owner to prevent any unclean, unhealthy, unsightly, or unkept condition on his or her lot.
- 8.2 No lot shall be used, in whole or in part, for the storage of any property or thing that will cause such lot to appear to be in an unclean or untidy condition.
- 8.3 No lot shall have an appearance that is obnoxious to the eye, nor shall any plant, substance, animal, thing, device or material be kept upon any lot that will be noxious, noisy, dangerous, unsightly or unpleasant, or which will omit foul or obnoxious odors.
- 8.4 No lot owner, or their tenants, guests or invitees shall cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of HPME.
- 8.5 No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using property adjacent to the lot, or other occupants of HPME.
- 8.6 An owner must maintain an active Burke County building permit for new home construction or improvements on any lot. Once commenced, new home construction or building improvements on any lot must be completed within twelve (12) months. If not completed within twelve (12) months, the owner must continue to maintain an active building permit.
 - 8.6.1 Improvements that are not completed as previously stated shall be deemed nuisances.
 - 8.6.2 After sixty (60) days written notice, HPME may remove or repair or complete any

such nuisances at the expense of the owner, the cost of which shall be levied as an assessment against the lot's owner(s) as referenced in Section 16.5.

- 8.7 Noxious or offensive activity which is prohibited shall include but not be limited to the following:
- 8.7.1 A public nuisance or nuisance per se.
 - 8.7.2 Any behavior which is inconsistent with both a reasonable, pleasurable use of the properties of the owners of lots and parcels in the Development, or their tenants, guests, and invitees, including a reasonable expectation of vacationing, year-round living, studying, working and recreating, free of excessive noise or behavior which grossly disrespects the rights of others.
 - 8.7.3 Flashing or excessively bright lights.
 - 8.7.4 Racing vehicles regardless of the number of wheels.
 - 8.7.5 Offensive displays of public sexuality.
 - 8.7.6 Public drunkenness.
 - 8.7.7 Significantly loud electronic music distractions or vibrations which extend beyond property lines.
 - 8.7.8 The discharge of fireworks.
 - 8.7.9 The assembly and disassembly of motor vehicles and other mechanical devices which create disorderly, unsightly conditions.
 - 8.7.10 Parking or storing any junked, inoperable trucks, tractors, heavy equipment or unlicensed automobiles on any lot or road in the Development.
 - 8.7.11 Other similar unreasonable behavior or activity that is detrimental to the reasonable pleasure and use of the lot owners in the Development, or their tenants, guests or invitees.

9.0 Maintenance of Lots

- 9.1 All lots, including easement areas, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such a manner as to prevent them from becoming unsightly, unsanitary or a hazard to health. If not so maintained, HPME shall, after thirty (30) days written notice, have the right, through its agents, employees and contractors to do so, the cost of which shall be levied as an assessment against the owner of the lot.
- 9.2 Flow of water through ditches, culverts, drain pipes, and natural runoff areas must not be obstructed. This causes water to overflow and could cause damage to the road and road base. Water that overflows ditches and culverts may also create hazardous driving conditions. Therefore, debris such as leaves and brush shall be removed by the lot owners.
- 9.2.1. If the flow of water is not maintained by the lot owner pursuant to Section 9.1, HPME shall after thirty (30) days written notice to the lots owner(s) have the right, through its agents, employees and contractors to do so, the cost of which shall be levied as a specific assessment against the owner(s) of the lot, as referenced in Section 16.5.
 - 9.2.2. Neither HPME, nor any of its agents, employees or contractors shall be liable for any damage which may result from any such maintenance work.

10.0 Pets and Animals

- 10.1 No swine, goats, sheep, cattle or other livestock may be kept on any lot in the Development at any time without written approval from the Board of Directors.
- 10.2 Horses, ponies and normal household pets, such as dogs and cats, may be kept on lots in the Development provided that they are not bred or maintained for commercial purposes.
- 10.3 No more than one (1) horse or pony per acre may be kept on any lot, and any such animal

must be housed in a barn or other similar structure and enclosed within a fence.

- 10.4 Rabbits, chickens, (no roosters) and other fowl may be raised for personal consumption provided that no more than a total of six (6) stock animals will be allowed. Any animals raised for personal consumption shall be enclosed within a cage or fenced-in area and shall not be located on any lot in such a manner as to be visible from any property line or street.
- 10.5 Any activities associated with raising rabbits, chickens or other fowl or animals for personal consumption shall be subject to the Nuisance provisions outlined at Section 8.0. Nuisances), and shall require written approval by the Covenants Officer and an annual inspection of the site.

11.0 Septic Systems

- 11.1 No septic system shall be permitted on any lot unless such system is located, constructed, and equipped in accordance with the minimum requirements of the State Board of Health.
 - 11.1.1 Approval of such system shall be obtained from the health authority having jurisdiction.
- 11.2 No lot shall receive approval for an outhouse under any condition. Any outhouse presently located on a property is in violation of the covenants and shall be removed at the expense of the property owner.
- 11.3 A temporary Porta-Potty shall be maintained on any lot during home construction.

12.0 Limited Access

- 12.1 There shall be no access to any lot on the perimeter of the Development except from designated streets or roads within the Development as shown on the recorded plats of the Development without the express written consent of the Board of Directors.
 - 12.1.1 Any approvals by the Board of Directors pursuant to Section 12.1 must be recorded in the Office of the Register of Deeds for Burke County, North Carolina.

13.0 Re-Subdivision or Recombination of Lots

- 13.1 A lot within the Development may be subdivided provided that no subdivided lot shall be less than ten (10) acres in size.
 - 13.1.1 It should be specifically understood that any new lot or parcel that is created as a result of being subdivided shall be subject to the HPME Covenants.
 - 13.1.2 Each subdivided lot shall be subject to any and all HPME assessments (i. e. A twenty (20) acre lot that is subdivided into two 10 acres lots will now be responsible for any and all HPME assessments for each of the two (2) lots).
 - 13.1.3 Any lot(s) which increase(s) in acreage because an adjacent lot is subdivided and combined to create a larger lot(s) shall assume the assessments for the subdivided lot at a proper ratio of the property gained in addition to the normal assessments of the original lot.
- 13.2 All Home sites within the Development must be at least one hundred (100) feet apart after the subdivision of a lot(s).

14.0 Signs

- 14.1 No sign or billboard of any type shall be erected or placed on any lot other than one (1) "For Sale" or "For Rent" not to exceed 2'x4' (8 sq. ft.) unless written approval is given by the HPME President or designee. A temporary contractor sign may be erected for the period the contract work is being performed. Construction signs must be removed when the work is

completed.

- 14.2 Posting of Cautionary, Regulatory and Speed Limit signs are permitted as appropriate.
- 14.3 Every property in HPME shall have a street address to identify property location for police, fire and 911 emergency responses. This sign shall be located at the driveway entrance to the property and visible from the street in front of the property.

15.0 Parking of Vehicles

- 15.1 No trailer, tractor trailer, bus, truck, tractor, recreational vehicle, camper trailer, boat trailer or any other transportation device, other than an automobile, utility trailer, or pickup truck, may be parked on any road or street in the Development without prior written approval from the Board of Directors.

16.0 HPME - Assessments Declaration

- 16.1 Each lot in the Development is served by roads which connect the Development with the public road.

16.2 Base Assessments

- 16.2.1 The owner of each lot shall, by the acceptance of a deed or other conveyance for such lot, be deemed obligated to pay to HPME an annual assessment or charge of not less than three hundred fifty and *no/100* (\$350.00) dollars per year for the purposes stated within this article to be fixed, established, and collected on a lot by lot basis as hereinafter provided.
- 16.2.2 The amount of the Base Assessment may not be raised more than the national average of the Consumer Price Index + 2% as defined by the Bureau of Labor Statistics.
 - 16.2.2.1 A proposed raise in the Base Assessment over the national average of the Consumer Price Index + 2% as defined by the Bureau of Labor Statistics shall be approved by an affirmative vote of sixty-seven percent (67%) of the members as defined in Section 1.2.8 and the Bylaws - DOC-006 of the Association.
 - 16.2.2.2 Base Assessments for each lot shall be made payable to the HPME and delivered to the Treasurer no later than January 31 of the year for which they are due. The Base Assessments are not pro-rated by month and are not refundable in whole, or in part, if a home owner sells the property during the year.
- 16.2.3 Upon demand, HPME shall furnish to any owner or mortgagee a financial statement showing the assessments, charges or installments approved by the Board that are due and payable as of any given date. Each lot that is subject to these Covenants is hereby made subject to a continuing lien to secure payment of each annual Base Assessment when payable.
- 16.2.4 Use of Funds. Funds collected from the annual Base Assessment may be used for any or all of the following purposes:
 - 16.2.4.1 Maintaining the entrance, property surveillance where appropriate, security gate(s) or landscaping projects including the gate entrance.
 - 16.2.4.2 Maintaining, operating, improving and replacing roads within the Development.
 - 16.2.4.3 The protection of property and roads within the Development from erosion.

- 16.2.4.4 Maintaining lots as provided in Section 9.0, (Maintenance of Lots) herein, and enforcement of these covenants.
- 16.2.4.5 Paying taxes and other just indebtedness of HPME including liability insurance premiums for HPME and its officers, administrative expenses, governmental charges of all kinds and descriptions, legal and accounting fees, and such other actions necessary to maintain the business records and communications of HPME in good order.
- 16.2.4.6 Performing any other function that is necessary to protect the health, welfare and safety of owners and residents of the Development.
- 16.3 Special Assessments. In addition to other authorized assessments, HPME may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted.
 - 16.3.1 Special Assessments shall be recommended to HPME by the Board of Directors and shall be approved by an affirmative vote of sixty-seven percent (67%) of the members as defined in Section 1.2.8 and the Bylaws - DOC-006 of HPME.
 - 16.3.2 In the case of a Special Assessment, all voting will be done by ballot as described in Section 1.2.8.
 - 16.3.3 The owner of each lot by the acceptance of a deed or other conveyance for such lot shall be deemed obligated to pay to HPME any approved Special Assessment, if declared by HPME, to be fixed, established, and collected on a lot by lot basis as hereinafter provided. A Special Assessment, if declared, shall be due on a date to be established by HPME and pursuant to reasonable advance notice to all lot owners.
- 16.4 Emergency Assessments. If an assessment for an emergency replacement or repair is needed, as identified by the Board of Directors, to maintain safe travel, control of security or other unplanned activity associated with an emergency condition, the Board shall make these expenses payable from existing funds. These funds shall be replaced on a date established by the Board, but no later than one year, by assigning an assessment to each property. Emergency Assessments are not subject to a vote by the membership.
- 16.5 Specific Assessments. The Board shall have the power to levy Specific Assessments against a specific Lot or Lots.
 - 16.5.1 If an Owner or occupants of the Lot(s), their licensees, tenants, invitees, or guests cause a Lot(s) to become noncompliant with the terms of these Covenants and/or federal, state, local and HPME governing regulations, laws and documents, a Specific Assessment may be levied to cover costs incurred to bring the Lot(s) into compliance with the terms of these Covenants.
 - 16.5.2 The Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying any Specific Assessment under this Section.
 - 16.5.3 Such rights and powers shall continue in HPME and the lien of such charge shall be deemed to run with the land, and the successive owner(s) of each lot. By the acceptance of a deed to a lot within the Development, each owner shall be deemed personally liable to pay all unpaid assessments or other charges which have been levied against the property and all such assessments or other charges shall become a lien thereon during their ownership.
 - 16.5.4 Any structure, improvement or other matter subject to this document that is placed or constructed in violation of this document shall be deemed to be noncompliant. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove the same and restore the land to substantially the same condition as existed prior to the noncompliant work or activity. Should an Owner fail to remove and restore their property to its original condition, or to remedy any situation causing a safety issue or hazard to common elements, the Board or its designees shall have

the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs incurred in restoring the property to its original condition, together with the interest at the maximum legal rate, shall be assessed against the Owner(s) of the noncompliant Lot and collected as a Specific Assessment. Should an Owner fail or refuse to restore their property to compliance with these Covenants, HPME shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this document, including the remedies set forth in Chapter 47F of the North Carolina General Statutes.

17.0 Enforcement Procedures

- 17.1 Upon the failure of the owner of any lot to pay any assessment or charge when due, HPME shall have the right to collect the amount due by an action at law against the owner(s) as for a debt, and may bring and maintain such other suits and proceedings at law or at equity as may be legally available.
- 17.2 Such rights and powers shall continue in HPME and the lien of such charge shall be deemed to run with the land, and the successive owner(s) of each lot.
- 17.3 By the acceptance of a deed to a lot within the Development, each owner shall be deemed personally liable to pay all unpaid assessments or other charges which have been levied against the property and all such assessments or other charges shall become a lien thereon during their ownership.
- 17.4 Procedures for assessment of other charges, including fines and the suspension of HPME privileges or services, will be governed by North Carolina Planned Community Act, Chapter 47F. In such instance, a hearing shall be held before the Board or an adjudicatory panel appointed by the Board to determine if any lot owner should be fined or if planned community privileges or services should be suspended pursuant to the powers granted to the association in 47F-3-1 02 (11) and (12).
- 17.5 Pursuant to the provisions of Section 8.0 - Nuisances and Section 9.0 - Maintenance of Lots, no Owner's request for abatement or relief of assessment shall be allowed for any alleged damage, inconvenience or discomfort arising from the completion by HPME of repairs, improvements or removal of nuisances.

18.0 HPME - Liens Declaration

- 18.1 All liens levied pursuant to the provisions of this Revised and Restated Declaration of Easements, Covenants, Conditions, and Restrictions of HPME shall include the amount of any unpaid assessments, plus any other charges thereon, including a late charge of no less than twenty-five dollars (\$25.00) to cover administrative expenses, interest at the legal rate from the due date, and the costs of collection, including attorney's fees if incurred.
- 18.2 Any assessment or charge levied against a lot that remains unpaid for a period of thirty (30) days or longer, or after a written agreement between the lot owner(s) and HPME has expired, shall constitute a lien on that lot when a claim of lien (sometimes herein referred to as a "Notice of Assessment and Lien") setting forth the name and address of HPME, the name of the record owner of the lot at the time the lien is filed, a description of the lot and the amount of the lien claimed, is a file of record in the office of the Clerk of Superior Court for Burke County.
- 18.3 Each Notice of Assessment and Lien shall be signed by the President of HPME, or such other person or legal entity to which the Association may assign the authority to file Notices of Assessments and Liens pursuant to a resolution of the Board of Directors.

- 18.4 Upon the filing of any such lien pursuant to the authority granted under these Covenants, HPME may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes.
 - 18.5 Any lien filed by HPME shall be prior to all other liens recorded subsequent to the filing of such Notice of Assessment and Lien or as required by the State of North Carolina. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in HPME, or such other person or legal entity to whom HPME may assign the authority to file Notices of Assessments and Liens, the right and power to bring all actions against said owner personally for the collection of such charges set out in said Notice of Assessment and Lien as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement for real property.
 - 18.6 The lien shall be in favor of HPME and it shall have the power to bid on the lot in any foreclosure proceeding or to acquire, hold, lease, mortgage, or convey the lot.
 - 18.7 Charges received for payment of a lien shall be applied first to costs and attorney fees, then to late charges, then to interest, then to delinquent assessments.
 - 18.8 Upon payment of all assessments and other charges, costs and fees provided for in a particular Notice of Assessment and Lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further notice stating the satisfaction and release of the lien.
- 19.0 Prohibition of Oil and Gas Wells and Subsurface Mining
- 19.1 No well for the production of or from which there may be produced, oil, gas or minerals, shall be dug or operated upon any lot.
 - 19.2 No machinery, appliance or structure shall be placed, operated or maintained on any lot in connection with the production of oil, gas, or minerals.
 - 19.3 There shall be no subsurface mining or drilling activity thereon, provided further that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the installation of utilities and communication facilities, soil testing, construction of building foundations or master drainage control.
- 20.0 Tree Removal, Grading and Site Cleaning
- 20.1 No commercial cutting of timber shall be permitted on any lot.
 - 20.2 Partial clearing of lots is permitted provided that no more than twenty percent (20%) of any lot shall be cleared without the prior written approval of the Board of Directors. The removal of any dead or leaning trees is not prohibited under any circumstances. Any grading or other land use which creates erosion runoff into streams or onto other lots is prohibited.
 - 20.3 Any grading performed in violation of any county, state or federal ordinance, statute or regulation shall be deemed to be a noxious or offensive activity as defined in Section 8.0 Nuisances, of these Covenants.
- 21.0 Firearms
- 21.1 No lot or lots within the Development shall be used for the establishment of a hunt club, gun club, or commercial rifle or skeet range.
 - 21.2 No property within the Development shall be leased for the purpose of hunting or recreational shooting.
 - 21.3 Each individual lot owner shall have the right to hunt or shoot for recreational purposes on their own lot provided that:
 - 21.3.1 No firearm shall be discharged within one hundred (100) feet of any lot line or

designated street or road within the Development as shown on the recorded plats of the Development.

- 21.3.2 No firearm shall be discharged in a way that would allow the bullet or projectile to cross a property line.
- 21.3.3 The lot owner or guest of a lot owner shall exercise due caution while hunting or shooting, and shall follow the safety practices of the North Carolina Hunter Education Course as taught by the North Carolina Wildlife Resources Commission.
- 21.3.4. Unless accompanied by the lot owner(s), rental properties whose lease or rental agreement terms are less than six (6) months shall prohibit their tenants /lessees and guests from hunting or shooting firearms for recreational purposes.
- 21.3.5 The failure of any Owner to comply with any aspect of this Section shall be considered a violation of the Declaration. The Association may, after providing the Owner with notice and opportunity to be heard, impose fines up to one hundred dollars (\$100.00) per day pursuant to N.C.G.S. 47F-3-107.1 for such violation.

22.0 Clotheslines, Garbage Cans, Tanks, Woodpiles, etc.

- 22.1 All clotheslines, garbage cans, above ground tanks, woodpiles, building materials and other similar items shall be located or screened so as to conceal them from the view of the other lots, streets, and common areas in the Development.
- 22.2. Each lot owner shall provide closed sanitary receptacles for garbage, rubbish, and trash.
- 22.3 Rubbish, trash, and garbage shall be regularly removed from each lot and shall not be allowed to accumulate thereon.
- 22.4 No bedding or clothing of any type, nor any towels, clothes or other items of wearing apparel, or any mops, brushes, brooms or other types of cleaning apparatus shall be hung or placed outside of any structure located on any lot in the Development in such a manner as to be visible from any street, other lot, or area located in the Development.

23.0 Outdoor Lighting

- 23.1 No outdoor lighting shall be utilized on any lot in a manner that unreasonably interferes with the privacy, use or enjoyment of any other lot owner at any time.

24.0 Energy Conservation/Generation Equipment

- 24.1 No solar energy collector panels, attendant hardware, windmills, or other energy conservation/generation equipment shall be constructed or installed on any lot unless it is an integral and harmonious part of the architectural design of a structure or landscape.
 - 24.1.1 With written review and installation approval by the Board of Directors, equipment which is not part of a building structure may be located on the property owner's lot in the Development in such a manner as to not be visible from any street, other lot, or area located in the Development. Any approval by the Board of Directors must be written and signed by the President or his/her designee.

25.0 Easements

- 25.1 The following easements over each lot or parcel and the right to ingress (permission or right to enter) and egress (an opening or means of going out) to the extent reasonably necessary to exercise such easements, are reserved to HPME:
 - 25.1.1 Utilities - A fifteen (15) foot wide strip running along the inside of all lot lines. Where

lot lines run along the center of roads or along road right-of-way lines, such strips shall run along either the inside or the outside of the road right-of-way line. Said strips shall be used for the installation, maintenance and operation of utilities, including radio and television transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation.

25.1.2 Roads - An easement on, over and under all roads in the Development for the purpose of installing, maintaining and operating utilities thereon or there under, for the purpose of drainage control, for access to any lot or parcel, and for the purpose of maintenance of said roads.

25.1.3 Other Easements - Any other easements shown on recorded plats of portions of the Development.

25.2 Use of and Maintenance by Owners - The areas of any lot(s) affected by the easements reserved herein shall be maintained continuously by the owners of such lots. No structures or other material shall be placed or permitted to remain or other undertaken thereon, which may damage or interfere with the use of said easements for the purposes herein set forth.

25.3 Improvements within such areas shall be maintained by the owners of said improvements, except those for which a public authority or utility company is responsible.

25.4 Plantings and landscaping projects located within the easement and performed by HPME intended for beautification of the Development shall be maintained by HPME or their designee.

26.0 High Peak Mountain Estates POA, Inc.

26.1 Membership

26.1.1 Every person (or entity) who/which is a record owner of a fee or undivided fee interest in any lot that is subject to these Covenants as recorded with the Burke County Register of Deeds, shall be deemed to have a membership in HPME.

26.1.2 Membership shall be appurtenant (a right) to and may not be separated from lot ownership.

26.1.3 Persons who hold interests merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership.

26.1.4 No owner, whether one or more persons, shall have more than one membership per lot owned.

26.2 In the event that an owner of a lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided for in DOC-006 - Bylaws, Rules and Regulations of the HPME.

26.3 Voting

26.3.1 Members shall be all owners and shall be entitled on all issues to one (1) vote for each lot in which they hold the interest required for membership as defined by Section 26.1.

26.3.2 There shall be only one vote per lot regardless of the number of persons or other entities owning an interest in a particular lot.

27.0 Streams

27.1 No lot owner shall pollute any stream or lake in the Development.

27.2 No lot owner shall cause or allow any stream in the Development which may flow across their lot to be diverted in part or in whole from its natural direction and course of flow.

27.3 No solid or liquid waste of any kind shall be drained, dumped or disposed of in any way into open ditches or water courses.

28.0 Amendment

28.1 These Covenants may be amended or revised at any time and from time to time as follows:

28.1.1 By a written amendment to these covenants signed by the owners of at least sixty-seven percent (67%) of the voting lots in the Development, recorded in the Office of the Burke County Register of Deeds. (Ref 1.1)

28.1.2 By a document prepared and executed by the Secretary of the Board of Directors certifying that the amendment to these Covenants set out therein has been approved by the affirmative vote of at least sixty-seven percent (67%) of the voting lots in HPME, which shall be recorded in the Office of the Burke County Register of Deeds.

28.1.3 All voting records shall be maintained by HPME for a minimum of twenty-five (25) years after recordation in the office of the Register of Deeds for Burke County, North Carolina.

28.1.4 The signatures appearing on such documents shall be witnessed or notarized.

28.1.5 Any such amendment shall become effective upon the date of its recordation in the office of the Register of Deeds for Burke County, North Carolina; unless a later effective date is specified.

29.0 Term of Restrictions

29.1 All restrictions, conditions, Covenants, charges, easements and agreements contained in these Covenants shall run with the land and be binding on all parties and all persons claiming under them up to and including January 1, 2043.

29.2 After January 1, 2043, these Covenants shall be automatically extended for successive periods of ten (10) years, unless by a written instrument executed by at least sixty-seven percent (67%) of the then voting owners of said lots, and duly recorded in the office of the Register of Deeds for Burke County, North Carolina within three (3) months of any anniversary date of any such automatic renewal, it is agreed to change said covenants in whole or in part.

30.0 Grantee's Acceptance

30.1 Each grantee or purchaser of any lot or parcel in the Development shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of these Covenants and all amendments thereto, and to the jurisdiction, rights, powers, privileges and immunities of HPME herein provided for.

30.2 By such acceptance such grantee or purchaser shall for themselves, their heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with purchaser of each other lot or parcel to keep, observe, comply with and perform the covenants, conditions and restrictions contained in these Covenants, and all amendments and revisions and supplemental Covenants.

31.0 Suspension of Covenants

31.1 The provisions of these Covenants which are applicable to improvements, use and

occupancy, shall be suspended after written notice from the Board of Directors as to any lot, parcel or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such lot, parcel or area for the purposes for which it was acquired or leased.

- 31.2 On cessation of such use, such provisions shall become applicable again in their entirety.
- 31.3 While owning or leasing and using, such owner shall not have rights as a member of HPME nor shall it be liable for any HPME assessments.

32.0 Legal Rights of Members

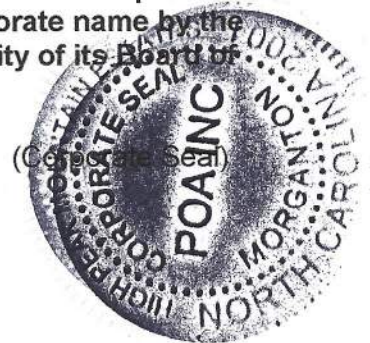
- 32.1 HPME and other lot owners in the Development may proceed at law or in equity against any person or other legal entity violating or attempting to violate any provisions of these Covenants, either to restrain violation, to recover damages, or both.
- 32.2 The Covenants Officer shall have the responsibility to enforce the Covenants, to verify compliance to the Covenants or to inspect a violation that has been observed. The Covenants Officer or his designee shall make inspections of a property as appropriate to verify compliance to the approved Covenants, architectural, building, and grading standards.

33.0 Severability

- 33.1 Invalidation of anyone of these Covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, High Peak Mountain Estates POA, Inc., a North Carolina non-profit corporation, has hereunto caused this instrument to be signed in their corporate name by the President of the corporation, and their seal to be hereunto affixed by authority of its Board of Directors, this the 19th day of February, 2021.

HIGH PEAK MOUNTAIN ESTATES POA, INC.



By: Jim Craig
Jim Craig, Interim President

ATTEST: Sheila B. Fletcher
Sheila B. Fletcher, Secretary