

**BYLAWS OF
FAIRFIELD MOUNTAINS PROPERTY
OWNERS ASSOCIATION, INC.**

Article I

General

Section 1.1. Name. The name of the corporation is Fairfield Mountains Property Owners Association, Inc. (hereinafter referred to as the Association”). The Association may transact business under such assumed names as may be authorized by the Board of Directors.¹

Section 1.2. Membership. As set forth herein, an Owner or purchaser of a fee interest in a Lot or Living Unit in Fairfield Mountains shall become a Member of the Association upon taking title to the Lot and shall remain a Member for the entire period of ownership. If title to a Lot is held by more than one person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership per Lot. Lots’ votes shall conform to Section 1.3 below. Membership does not include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to each Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title. Any member entitled to the use and enjoyment of the Association facilities and common areas may be accompanied by their guests. The Association may exclude or limit the number of guests.

Non-members property owners of property within the immediate vicinity of Fairfield Mountains may become members of the Association with all of the rights and privileges of membership upon request to and prior written approval by the Association. Final approval for membership in the Association for such property owners shall be conditioned upon such owner subjecting such Lot to the recorded Declaration for the Association by the execution and recordation of the necessary documents.

Section 1.3. Voting. Other than votes by timeshare owners (or interval owners), each Lot shall be entitled to one (1) vote, which may be cast by the Lot Owner in accordance with the terms herein. When more than one person owns a Lot, the vote for such Lot shall be exercised as they between or among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. In the event of disagreement among such persons and an attempt by two or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted. The Association may prohibit any owner from voting, or from being elected to the Board of Directors if such owner is shown on the books or management accounts of the Association to be delinquent in any payment due the Association. No votes allocated to a lot or living unit owned by the association may be cast.²

Again, at each annual or special meeting, each Lot Owner shall have one (1) vote in conducting the affairs of the P.O.A. for each lot or living unit owned, provided that the Lot

¹ Amended January 26, 2007

² Amended September 24, 2008

Owner is not delinquent in payment of any assessments, special assessments or other charges due to the P.O.A. and is otherwise a member in good standing with the P.O.A.

In regard to timeshare, or interval, ownership, the restriction of one (1) vote per lot or living unit shall mean that each owner or group of owners shall be entitled to one (1) vote for each unit owned. However, each unit's vote is not divisible. Therefore, each owner of unit weeks in a unit committed to interval ownership shall only be entitled to one-fiftieth (1/50) vote for each unit week owned. Currently the following associations contain units with timeshare, or interval, ownership: Foxrun Property Owners Association, Inc., The Fairways of the Mountains Association, Inc., Maple Ridge Property Owners Association, Inc., and Mountain Loft Property Owners Association, Inc.

Finally, pursuant to Article III, Section 3 of the Fairfield Mountains Declaration of Covenants and Restrictions, as amended, the Developer Member shall have the same privileges as Regular Members, but shall not have the right to vote.

Section 1.4. **Majority.** As used in these Bylaws, for any vote of the membership held in accordance with or pursuant to the Declaration, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, owners, or other groups. Unless otherwise specifically stated, the words "majority vote" shall mean more than fifty percent (50%) of the eligible votes of the Association represented at a meeting. Unless otherwise provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

Section 1.5. **Purpose.** The Association shall have the responsibility of administering the Planned Community, establishing the means and methods of collecting the contributions to the common expenses, arranging for the management of the Planned Community, enforcing the Declaration and these Bylaws, and performing all of the other acts that may be required to be performed by the Association by the applicable portions of the North Carolina Planned Community Act and the Declaration. The Association shall also amend and supplement the system of administration, the Declaration and these Bylaws as may be required from time to time and perform all other things or acts required or permitted to the Association under the North Carolina Planned Community Act. Except as to those matters which the North Carolina Nonprofit Corporation Act, the North Carolina Planned Community Act, the Declaration, or these Bylaws specifically require to be performed by the vote of the Association, the administration of the foregoing responsibilities shall be performed by the Board of Directors, as is more particularly set forth below.

Section 1.6 **Management** The Board of Directors shall not have the power to discontinue self management of the property owners association. Self management is defined as a general manager or chief executive who is hired by the Board of Directors, is solely an employee of the Association, and reports solely to the Board of Directors. The Association will remain self managed, until such time it is determined not to be in the best interest of the Association and an affirmative vote of fifty percent (50%) plus one (1) of all eligible votes in the

Association. The vote shall be taken by secret ballot at any annual or special meeting of the members, in accordance with Section 3.9 herein.³

Article II

Definitions

Terms as used in these Bylaws shall have the meanings as set forth in Article I of the Declaration unless specifically provided otherwise or the context otherwise requires.

Section 2.1. Assessments means any and all sums levied 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, dues, fees, special assessments, specific assessments, fines, late charges, interest and attorney's fees as set forth in the Declaration and Bylaws.

Section 2.2. Association, P.O.A. or Planned Community means Fairfield Mountains Property Owners Association, Inc., a North Carolina non-profit corporation and its successors.

Section 2.3. Board or Board of Directors means the Board of Directors of the Association that is the governing body on behalf of and for the Association.

Section 2.4. Bylaws mean the Bylaws of the Association.

Section 2.5. Common Areas, Common Elements or Common Properties means any real estate within the Planned Community owned or leased by the Association, other than a lot. This real estate and any improvements located thereon are often referred to as common areas and amenities.

Section 2.6. Common Expenses mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with the administration of the Planned Community. These include:

- (a) Expenses of administration, maintenance, repair, replacement, upgrade, installation or addition of the common elements, common areas or amenities;⁴
- (b) Expenses defined, referred to, or declared to be common expenses by the Documents or by applicable provisions of the North Carolina Planned Community Act;
- (c) Expenses agreed upon as common expenses by the Association;
- (d) Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for maintenance, repair, replacement, upgrade, installation or addition to the common elements, common areas or amenities or other real or personal property acquired or held by the Association; and⁵
- (e) 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.

³ Amended September 24, 2008

⁴ Amended February 27, 2012

⁵ Amended February 27, 2012

Section 2.7. **Common Expense Liability** means the liability for common expenses allocated to each lot as permitted by the North Carolina Planned Community Act, the Declaration, Bylaws, or otherwise by law.

Section 2.8. **Declaration** means the Fairfield Mountains Property Owners Association, Inc. Declaration of Covenants and Restrictions, and including any duly recorded amendments to the Declaration.

Section 2.9. **Documents** mean the Declaration, Plats and/or Deeds recorded and filed for real property making up the Planned Community, and the Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association, as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Document.

Section 2.10. **Limited Common Areas, Limited Common Elements or Limited Common Properties** means a portion of the common elements 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, in any Plats filed as exhibits to the Original Declaration and any supplements thereto, which are hereby incorporated by reference and those common elements so designated in the Declaration.

Section 2.11. **Lot** means the physical portion of the planned community designated for separate ownership or occupancy by a lot owner or timeshare unit owners. An Improved Lot means a lot on which a dwelling has been built. An Unimproved Lot means a lot on which no dwelling has been built.

Section 2.12. **Lot Owner** means a declarant or other person who owns a lot situated upon The Properties, but does not include a person having an interest in a lot solely as security for an obligation, and is a member of the Association.

Section 2.13. **Majority of the Total Votes** in the Association means fifty percent (50%) of the Lot Owners entitled to vote, plus one vote.

Section 2.14. **Member** shall be any owner of a lot who is a Member in Good Standing of the Association. A Member in Good Standing is a member who complies with all the rules and regulations of the Association. The determination of a member's standing for the purposes of voting or running for the Board of Directors, or otherwise participating at the annual meeting shall be determined on April 30 of each year.

Section 2.15. **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 2.16. **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 shall be set forth in the Bylaws.

Section 2.17. **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 support and offices as the Board may determine necessary.

Section 2.18. **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 2.19. **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. For purposes stated herein, neither a cooperative nor a condominium is a planned community, but real estate comprising a condominium or cooperative may be part of a Planned Community. "Ownership of a lot" does not include holding a leasehold interest of less than 20 years in a lot, including renewal options.

Section 2.20. **Reasonable Attorneys' fees** means attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees which otherwise may be allowed by law.

Section 2.21. **Real Estate** means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests 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.

Article III

Meeting of Members

Section 3.1. **Annual Meetings.** The annual meeting of Members shall be held during the month of June of each year, within the common areas of the Association. At each annual meeting, the outcome of the secret balloting process for the election of Directors shall be announced by the Board's Election Committee, and the members may transact such other corporate business as shall be stated in the notice of the meeting.⁶

Section 3.2. **Substitute Annual Meetings.** If an Annual Meeting is not held on the day designated by these Bylaws, then a Substitute Annual meeting shall be called in accordance with Sections 4 and 5 of this Article. A meeting so called shall be designated and treated for all purposes as an Annual Meeting.

Section 3.3. **Special Meetings.** Special meetings of the members for any purpose may be called at any time by the President, and shall be called upon at the request of a majority of the

⁶ Amended November 17, 2015; Amended March 2, 2019

Board of Directors, or upon the written request of Lot owners having ten percent (10%) of the votes in the Association.⁷

Section 3.4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Members a notice of each annual or special meeting of the Association at least thirty (30) days and not more than fifty (50) days prior to each annual or special meeting. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer. In the case of a Special Meeting, the notice of the meeting shall state specifically the purpose or purposes for which the meeting was called. Notices shall be delivered personally or mailed to each Member of record at his Lot; if any Member wishes notice to be given at an address other than his Lot, the Member shall designate by notice in writing to the Secretary such other address as set forth in Section 7.1(a) below. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered service of notice. In the case of change of date, location or time of such meeting(s), notice thereof shall be given to each member entitled to vote by mail to his last known post office address ten (10) days before the meeting is held.

Section 3.5. Waiver of Notice. Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, shall be deemed waiver by such Owner of notice of the time, date, and place thereof, unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat, unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 3.6. Quorum. The presence of Owners entitled to cast at least ten percent (10%) of the eligible votes of the Association shall constitute a quorum. In the absence of a quorum no business can be conducted at the Meeting, however the absence of a quorum does not invalidate any requirement by these Bylaws, the Declaration or state statute, to hold an Annual or Special Meeting. If business must be conducted (minutes approved, etc.) at the meeting and no quorum is present, the Annual or Special Meeting must be adjourned and the process must start over, beginning with providing proper notification to the Owners as defined in Section 3.4 of these bylaws. For purposes of actions taken by the Members by written secret ballot as hereinafter set forth, such action shall be valid when the total number of written secret ballots received equals or exceeds the quorum required for action at a meeting of the Members (ten percent (10%) of the eligible votes of the Association), and all written secret ballots received shall be counted toward the quorum requirement for the Meeting designated on any Meeting notice that may be sent to the members with the ballots, at which Meeting the results of the written secret ballots shall be announced. However, no additional formal action that was not on the ballots sent to the members may be taken at that Meeting, other than necessary administrative actions such as approval of agenda and/or minutes, recess, adjournment, etc., unless there is a quorum present without regard to written secret ballots received.⁸

⁷ Amended April 23, 2012

⁸ Amended September 26, 2011; Amended November 17, 2015

Section 3.7. **Adjournment.** Any meeting of the Owners may be adjourned from time to time by the President or Chairperson or by a vote of the Owners holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business, which could be transacted properly at the original session of the meeting, may be transacted at an adjourned session, and no additional notice of such adjourned session shall be required.

Section 3.8. **Proxy.** Pursuant to authority granted under Section 55A-7-24, Members shall be prohibited from voting by proxy. As such, no proxy votes shall be counted or otherwise recognized by the Association and proxies will not be used in determining whether a quorum exists at annual or special meetings.

Section 3.9. **Written and Secret Ballot.** In accordance with Section 55A-7-08 of the North Carolina Nonprofit Corporation Act and except where otherwise provided herein, any action that may be taken at any annual, regular, or special meeting of members, specifically including but not limited to the election of Directors, may be taken without a meeting and by written secret ballot if the Association delivers by mail or otherwise a written ballot to every member entitled to vote on the matter. In order to take action by written secret ballot, the Secretary of the Association shall cause notice of such action and ballots therefor to be mailed to each member, and stating that written secret ballots must be returned within thirty (30) days of the date of the notice. Votes by written secret ballot for the election of directors under Section 4.2 shall be tabulated and announced by the Election Committee of the Board, as such committee is constituted under Section 4.3. Otherwise, votes by written secret ballot shall be tabulated and announced by the Board. No member proxy votes shall be allowed or accepted by the Association. Where applicable, any existing references to proxy votes in the Declaration shall refer to secret ballots.⁹

Section 3.10. **Conduct and Business.** Robert's Rules of Order (latest edition) shall govern the conduct of the meeting, when not in conflict with the Declaration, Articles of Incorporation, these Bylaws, or any ruling made by the person presiding over the meeting.

Article IV

Board of Directors

Section 4.1. Composition. The affairs of the Association shall be governed by a Board of Directors. The Board shall be composed of seven (7) directors. Each director shall be an Owner, the spouse or domestic partner of an Owner of at least one Lot. Any member in good standing is qualified to serve on the Board, with the following exceptions:

- (a) Any member who is the subject of litigation with the Association.
- (b) Any member who is the subject of disciplinary action by the Association.
- (c) Any member who has been removed from the Board or a committee or as an officer.
- (d) Any member, spouse or domestic partner of a member, who has a conflict of interest such as:
 - 1. Employed by the Association as an employee (as defined by the Resort Employee Handbook) or as a contractor.¹⁰
 - 2. The spouse, domestic partner or immediate family member related by blood or marriage, that is currently serving on the Board. Immediate family member includes parent, parent-in-law, grandparent, grandparent-in-law, granddaughter, grandson, daughter-in-law, son-in-law, step-parent, step-child, brother or sister (whether natural or adopted), brother-in-law, sister-in-law, son or daughter (whether natural or adopted).
- (e) Any member convicted of or pleading guilty to or no contest to a crime of moral turpitude or involving financial impropriety.
- (f) Any member in violation of the Declarations, Bylaws, Rules or Regulations of the Association.
- (g) Any member who is delinquent in payment of assessments or monies due the Association at time of nomination.
- (h) Any member otherwise ineligible to serve under the Bylaws or by law.

Section 4.2. Election and Term of Office. Directors shall be elected by vote of those members in good standing as set forth herein, and shall be by written secret ballot in accordance with Section 3.9 of these Bylaws. Those persons receiving the most votes shall be elected to the number of positions to be filled. Members may vote for the same number of nominees as there are vacancies to be filled. Each nominee can only receive one vote per member, per ballot. In case of ties, the winner shall be selected by vote of the members in good standing by subsequent written secret ballot. The term of each elected director's service shall be for three (3) years and subsequently until his or her successor is duly elected or until he or she is removed in a manner elsewhere provided. No person shall serve as a Director for more than two (2) consecutive three (3) year elected terms, it being understood that the unexpired term served by any Director shall not be counted with respect to this limitation. The spouse or domestic partner of a Director who has served two (2) consecutive elected terms, shall not be eligible to hold office for the following

¹⁰ Amended February 25, 2013; February 22, 2016; April 24, 2017

term. Once a Director's second consecutive term has expired on June 30th, they are not eligible to serve again until July 1st of the following year.¹¹

Section 4.3. Nomination. At least one hundred thirty (130) days prior to each Annual Meeting of the Members, the Board shall appoint an Election Committee to serve until the close of the Annual Meeting. The Election Committee shall consist of a Chairperson and at least two (2) members all in good standing of the Association. In addition to managing and overseeing the Director nomination process set forth herein, the Election Committee shall, in advance of the Annual Meeting, gather and tabulate all written secret ballots submitted by Members for the election of Directors, and shall announce the results of such election at the Annual Meeting.¹²

Nominations of those eligible for election to the Board of Directors shall be made in one of the following ways:

- (a) Committee Nomination - On or around the first week in March, but no later than 90 days prior to the Annual Meeting, a "Notice" will be posted in order to solicit candidates to run for the Board of Directors, utilizing the means of communication available to the Resort (i.e. posting in conspicuous message boards throughout the Resort, email blast, newsletter, website). The "Notice" will provide a way for an interested property owner to receive the Candidate Information and Application paperwork in order to be considered as a nominee. The completed Candidate Information and Application paperwork must be submitted to the Election Committee by the date and time provided in the "Notice". The Election Committee shall determine eligibility of a nominee based on Section 4.1 of the Bylaws. The Election Committee shall then post the names of the nominees not less than sixty (60) days before the date of the annual meeting, utilizing the means of communication available to the Resort.
- (b) Petition Nomination - Additional nominations may be made by filing with the Secretary nominating papers which contain the name of an additional nominee and must be signed by not less than fifty (50) Regular Members in good standing. Any such petition shall be filed with the Secretary, along with the Candidate Information and Application paperwork, not less than forty-five (45) days prior to the date of said annual meeting. The petition shall contain the signature of the Regular Member and their Association property owned, whether it be a lot or living unit. The Regular Member can sign the petition one (1) time for each lot or living unit owned. The Election Committee shall determine eligibility of a nominee based on Section 4.1 of the Bylaws. The Election Committee shall then update the document previously posted advising the Membership of the nominees.
- (c) Deficiency Nomination – If the Committee and Petition Nomination methods do not produce enough candidates for the number of positions available, the Election Committee will be asked to nominate candidate(s) to fill the deficiency. If Necessary, the Election Committee shall meet forty-five (45) days prior to the date of the annual meeting in order to nominate the number of candidate(s) to fill the

11 Amended September 28, 2009; Amended November 17, 2015

12 Amended November 17, 2015

deficiency. The Election Committee shall determine eligibility of a nominee based on Section 4.1 of the Bylaws. The Election Committee shall then update the document previously posted advising the Membership of the nominees.¹³

Section 4.4. Removal of Members of the Board of Directors.

At any regular or special meeting of the Association duly called at which a quorum is present, any one or more of the members of the Board of Directors may be removed, with or without cause, by at least a majority of all Members present and entitled to vote at such meeting. Any director whose removal has been proposed by the Members shall be given at least fifteen (15) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any member of the

Board of Directors who has been absent without an excuse from three (3) consecutive Board meetings may be removed from the Board by the vote of a majority of the Board members present at a Board meeting, a quorum being had.¹⁴

The Board of Directors, in its sole discretion, may establish from time-to-time, rules on conduct pertinent to service as a Board member, and provide sanctions for violations thereof. The rules so established shall not expand the duty or liability of any director beyond that established by law, nor provides any person a private cause of action not otherwise established by law.¹⁵

Section 4.5 Resignations and Leaves of Absence. Any Director may resign at any time by giving written notice of such resignation to the Board of Directors. Unless otherwise specified in such written notice, such resignation shall take effect upon receipt thereof by the Board of Directors or any such officer.

Any Director may take a leave of absence from the Board of Directors for medical or other reasons deemed appropriate, at the sole discretion of the Board of Directors, by giving a written notice for such leave of absence to the Board of Directors. The leave of absence shall be for no more than three (3) months and shall not be considered a vacancy under Section 4.5 of these Bylaws. Such leave of absence shall be considered a temporary resignation of the Director and shall have the effect of reducing the number of Directors which constitutes the whole Board of Directors by one, subject to the provisions of these Bylaws. At the conclusion of the leave of absence, the Director on leave of absence shall, upon the approval of the Board of Directors, resume service as a Director and the number of Directors which constitutes the whole Board of Directors shall then be increased by one, subject to the provisions of these Bylaws. Unless otherwise specified in such written request, such leave of absence shall take effect upon receipt thereof by the Board of Directors or any such officers.¹⁶

¹³ Amended June 28, 2010

¹⁴ Amended April 21, 2003

¹⁵ Amended July 27, 2009

¹⁶ Amended September 27, 2010

Section 4.6. **Vacancies.** Vacancies in the Board of Directors caused by any reason shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each person so selected shall serve for the unexpired term.¹⁷

Section 4.7. **Compensation.** No Member of the Board shall receive any compensation from the Association for acting as such; provided, however, each Director, upon approval of the Board, shall be reimbursed for reasonable out-of-pocket expense incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Association from compensating a Director for unusual and extraordinary services rendered to the extent authorized by the Members of the Association at any meeting called for that purpose; further provided, each Director, by assuming office, waive his right to institute suit against or make claim upon the Association for compensation.

Section 4.8. **Organizational Meeting.** The first meeting of a newly elected Board shall be held within ten (10) days of election at such time and place as may be determined by the directors.

Section 4.9. **Regular Meetings.** Meetings of the Board of Directors shall be held regularly at such time and place as shall be determined from time to time by the Board. There shall be a minimum of twelve (12) meetings of the Board of Directors per year.

Section 4.10. **Special Meetings.** Special Meetings of the Board of Directors may be called by the President on three (3) days' notice to each director given by mail, in person or by telephone, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 4.11. **Waiver of Notice.** Any director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall also constitute a waiver of notice by him of the time and place of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 4.12. **Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. Robert's Rules of Order (latest edition) shall govern the conduct of the meetings of the Board of Directors when not in conflict with the North Carolina Planned Community Act, the Declaration, the Articles of Incorporation, these Bylaws, or any ruling made by the person presiding over the meeting. A majority of directors shall constitute a quorum for the transaction of business. A decision of the Board of Directors shall be by a majority of those directors present at the duly called meeting. The President may vote.

Section 4.13. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the members of the Board of Directors shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the Board of Directors. Any action taken without a meeting, must be unanimously agreed upon by the Board and written consent to the action by all Directors must be filed with the minutes of the Board of Directors.

Section 4.14. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Planned Community and may do all such acts and things as are not by the Declaration, Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the Association Members. The Board shall have the power to adopt, modify, and repeal such reasonable rules and regulations as it deems necessary and appropriate for the governance of the Planned Community or the administration of the affairs of the Association and to impose sanctions for violations thereof, including, without limitation, monetary fines. Such powers and duties shall include but not be limited to:

- (a) Adopt and amend Rules and Regulations not inconsistent with these Bylaws or the Declaration of Covenants and Restrictions, as amended;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves;
- (c) Collect assessments for common expenses for Lot Owners;
- (d) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (e) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Planned Community;
- (f) Make contracts, open bank accounts, and incur liabilities;
- (g) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (h) Cause additional improvements to be made as a part of the common elements within the limits of expenditures permitted by the Declaration and/or Bylaws;
- (i) Acquire, hold, encumber, and convey in its own name any right, title or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to Section 47F-3-112 of the North Carolina Planned Community Act;
- (j) Grant easements, leases, licenses, and concessions through or over the common elements;
- (k) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements other than limited common elements and for services provided to Lot Owners;
- (l) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed One Hundred Fifty Dollars (\$150.00) per violation (on a daily basis for continuing violations) of the Declaration, Bylaws, and Rules and Regulations of the Association pursuant to Section 47F-3-107.1 of the North Carolina Planned Community Act;¹⁸
- (m) Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid assessments;

- (n) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;
- (o) Borrow money and assign its right to future income, including the right to receive common expense assessments subject to approval of the purpose of the borrowing by a majority of the vote of the members of the Association;
- (p) Prepare, execute, certify and record amendments to the Declaration and Bylaws on behalf of the Association;
- (q) After Notice and Opportunity to be Heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to lots; however, such access may be denied for such period as the Association determines to ensure the safety, welfare and protection of the Resort and persons thereon) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association;¹⁹
- (r) Exercise any other powers conferred by the Declaration or Bylaws;
- (s) Exercise all other powers that may be exercised in this State by nonprofit corporations; and
- (t) Exercise any other powers necessary and proper for the governance and operation of the Association.

Section 4.15. Email Voting. Any vote of the Directors held in accordance with or pursuant to the Declaration, the term "majority" shall mean those votes, Directors totaling more than fifty percent (50%) of the total number of eligible votes, and shall be by voice vote at the meeting or by email vote. Email voting may be used for issues of timeliness; otherwise, votes should be tabled for regularly scheduled or special meetings. If an issue arises that needs to be voted on via email, at the next regularly scheduled meeting the issue and the result of the vote will be documented in the minutes of that meeting.²⁰

Section 4.16. Architectural Control and other Committees. The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards on Planned Community property, as hereinafter provided. In addition, the Board may establish such other committees, as it deems desirable.

Section 4.17. Committee Chairpersons and Members. The Board shall approve the chairperson and the members of each committee established.

Article V

Officers

Section 5.1. Designation. The officers of the Association shall consist of a President, a Secretary, a Treasurer, and such Vice-Presidents, Assistant Secretaries, Assistant Treasurers, and other officers as the Board may from time to time elect. Except for the President, no officer need be a member of the Board.

¹⁹ Amended February 27, 2012

²⁰ Amended February 22, 2010

Section 5.2. **Election of Officers.** The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 5.3. **Removal of Officers.** Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

Section 5.4. **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board of Directors. The President shall have all of the general powers and duties, which are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.5. **Vice Presidents.** The Vice Presidents, if any, in the order of their election, unless otherwise determined by the Board shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 5.6. **Secretary.** The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with North Carolina law.

Section 5.7. **Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. Furthermore, the Treasurer shall cause an annual independent audit of the Association's books as directed by the Board or the Association pursuant to Article VII, Section 7.6.²¹

Section 5.8. **Amendments to Declaration and Bylaws.** The Board of Directors shall prepare and the President shall execute, certify, and record amendments to the Declaration and Bylaws on behalf of the Association. The Secretary shall attest to such execution and certification.

Article VI

Indemnification of Officers and Directors

The Association shall indemnify every officer and director against any and all expenses, including legal fees, reasonably incurred by or imposed upon such officer or director in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made

²¹ Amended May 19, 2003

a party by reason of being or having been an officer or director, whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a common expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Article VII

Miscellaneous

Section 7.1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be duly Delivered. Delivery shall mean any and all Notices or any other communication between the parties shall be made in writing by hand-delivery, registered or certified first class mail with return receipt requested, or recognized overnight courier guaranteeing next business day delivery, to the last known address of each party or the address each party may from time-to-time specify by written notice to the Resort or by facsimile or e-mail with proof of delivery thereof.

Notwithstanding the above, an oral notice or directive of the CEO or his/her designee may be given if reasonable under the circumstances to protect the Resort or persons thereon, which oral notice or directive shall be binding. Written confirmation of such notice or directive shall be thereafter Delivered within a reasonable time.²²

- (a) if to a Lot Owner, at the address which the Lot Owner has designated in writing and filed with the Secretary, or, if no such address has been designated, at the address of the Lot of such Owner; or
- (b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in accordance with subsection (a) hereof.

Section 7.2. Severability. The invalidity of any part of the Declaration or these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of the Declaration or these Bylaws.

Section 7.3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of the Declaration or these Bylaws or the intent of any provision thereof.

Section 7.4. **Gender and Grammar.** The use of the masculine gender in the Declaration or these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 7.5. **Fiscal Year.** The fiscal year shall be set by resolution of the Board of Directors.

Section 7.6. **Audit.** An independent audit of the accounts of the Association shall be made annually in the manner directed by the Board and results communicated to each of the members. However, after having received the Board's audit at the annual meeting, the Owners may, by a majority of the total Association vote, require that the accounts of the Association be audited as a common expense by another independent accountant.²³

Section 7.7. **Conflicts.** In the event of conflicts between the applicable portions North Carolina Planned Community Act, the Declaration, these Bylaws, and Board Resolutions, these documents shall control in the following order: applicable portions of the North Carolina Planned Community Act, the Declaration, the Bylaws and Board Resolutions.

Section 7.8. **Amendment.** These Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent, or any combination of affirmative vote and written consent of the members of the Board of Directors. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment.^{24 25}

Section 7.9. **Books and Records.**

- (a) All members of the Association, in good standing, and their authorized agent or attorney shall, upon written request which is at least five (5) business days prior to the date of the requested inspection, be entitled to inspect and copy:
1. its Articles of Incorporation and all amendments to them currently in effect;
 2. its Bylaws and all amendments to them currently in effect;
 3. resolutions adopted by its members or Board of Directors relating to the number or classification of directors or to the characteristics,
 4. qualifications, rights, limitations, and obligations of members or any class or category of members;
 5. The minutes of all membership meetings, and records of all actions taken by the members without a meeting for the past three (3) years;
 6. all written communications to members generally within the past three (3) years, including the financial statements, furnished or would have been required to have been furnished to a member upon proper request for the past three (3) years ; and
 7. a list of the names and addresses of its current directors and officers;
- (b) A member of the Association in good standing may inspect and copy the following

23 Amended May 19, 2003

24 Amended January 20, 2003

25 Amended April 23, 2012

1. records upon written notice at least five (5) business days prior to the requested inspection date only if the member's demand is made in good faith and for a proper purpose, the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose. If the records are to be used for purposes, including but not limited to; any commercial use; used to solicit money or property; sold to, given, granted or purchased by any person, it will be deemed not to be for a proper purpose.
 2. excerpts from the minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the Members, and records of action taken by the Members or the Board without a meeting, to the extent not subject to inspection under Section 7.9 (a);
 3. accounting records of the Association which consists of the latest annual financial statement, that include a balance sheet as of the end of the fiscal year and statement of operations for that year and the annual income and expense statement. If the annual financial statement is reported upon by a public accountant, the accountant's report shall accompany them; and
 4. a list of members of the Association (containing name and address), only if for the purpose related to the member's legitimate interest as a member, and such list may be the list of members compiled no earlier than the date of such requesting member's demand.
- (c) Within ten (10) business days after receipt by the Association of a member's written request the Association shall furnish to such member or such member's authorized agent, a statement setting forth the amount of unpaid assessments and other charges against any Lot held by the member.
- (d) The Association may impose a reasonable charge, covering the costs of labor and materials, for producing for inspection or copying any records providable under Section 7.9. The charge shall not exceed the estimated costs of production or reproduction of the records.
- (e) The member's right to receive records includes, if reasonable and at the discretion of the Board of Directors, the right to receive copies by photographic, xerographic, electronic, magnetic, or other means.
- (f) Inspection of records shall be at a reasonable time and location specified by the Association.
- (g) Records shall not be requested or used by a member for any purpose not allowed by the Bylaws or by law.
- (h) The following Association documents shall be deemed to be protected ("Protected Documents") and shall not be made available to the owners or their authorized agent for inspection at any time without the express prior approval of at least a simple majority of the entire Board after its receipt of a written request stating the purpose(s) for requesting the document(s). If the Board deems that such a request is for a proper purpose and approves same, any granting of such a request shall be subject to such necessary and reasonable restraints and/or conditions as the Board or its representative may impose. In exercising its judgment under this or the preceding

paragraphs, the Board's decisions must be made for good cause based upon the factors listed in this paragraph. The Board must consider among other things: (i) whether the stated purpose of the request is improper to the best interests of the Association or constitutes an unwarranted invasion of privacy; (ii) whether compliance with such request will impose an unreasonable administrative burden or expense upon the Association; (iii) the advice of counsel; or (iv) any other matters which are relevant to the welfare of the Association and its Members. The Board must inform the owner or authorized agent of its basis for any denial of making the requested document(s) available for inspection within five (5) business days of such denial. Documents which are included within the definition of Protected Documents include:

1. Matters Protected by the Provisions of Non-Profit Act (55A) and Planned Community Act (47F) or otherwise by law or court order or agreement;
2. Any document, the disclosure of which would constitute an invasion of individual privacy;
3. Any document relevant to pending or anticipated litigation or contract negotiations;
4. Any document falling within the attorney-client privilege;
5. Any document involving the employment, promotion, discipline or dismissal of a specific officer, director or employee
6. Contract Bids and Proposals
7. Employee Applications
8. Employee Files
9. Payroll Records
10. Legal Files
11. Mortgage, Loan documents, including, but not limited to any agreements, letters or documents not a matter of public record, registered with the Rutherford County Register of Deeds.
12. Any other documents not expressly provided for herein, which is not required to be disclosed to a member or such member's representative.²⁶

Section 7.10. Conference Call Attendance. Board members are allowed to attend up to three (3) Board meetings every twelve month period (July through June), via conference call. Conference call attendance affords the Board member with all the same rights and responsibilities of a Board member who attends in person. A Board member who attends via conference call will not be considered absent. If a Board member wishes to attend more than three (3) Board meetings via conference call, this can only be authorized through an affirmative vote of the Board of Directors.

Conference call attendance is afforded only to Board members. Unless expressly approved by affirmative vote of the Board of Directors, no other individual(s) may attend a Board meeting via conference call. A Board member, who attends the Board meeting via conference call, must ensure confidentiality of any executive session of the meeting. The Board

member must also ensure a quiet and private environment while they are in attendance via conference call.²⁷

Section 7.11 Major Capital Expenditures. Unless otherwise required by state law, Declaration, Bylaws, insurance or other contractual obligation, the Board of Directors must consult with the Finance Committee before making a decision regarding a capital expenditure in excess of \$100,000. Should an emergency situation arise and a meeting with the Finance Committee cannot take place prior to a decision being made, the meeting must take place at a reasonable time thereafter.

The Board of Directors must first consult with the Finance Committee, then hold an open forum with the membership, before making a decision regarding a capital expenditure in excess of \$500,000. A Notice of the open forum must be posted at least thirty (30) days prior to the open forum. The notice must state the time and place of the forum and the items on the agenda. The Notice shall be delivered to the Membership by posting it on message boards throughout the Resort, email, website, and any other reasonable form of media available to the Resort. Should an emergency situation arise and the open forum cannot take place prior to a decision being made, the open forum must take place at a reasonable time thereafter in order to make sure the information is provided to the Membership.²⁸

Section 7.12. Notice and Opportunity to be Heard.

(a) Notice shall be set forth in paragraph 7.1

(b) Opportunity to be Heard shall be:

1. as to any proposed action or meeting of members solely by virtue of status as members of the Association as a group, the member shall have such rights set forth in Section 1.3 and Article III;
2. as to any decision of the Association directly respecting an Owner singly and individually for acts or omissions of the Owner or of the Owner's Immediate Family and not the Owner solely as a member of the Association may be appealed to the Board of Directors as follows:
 - a. The decision of the Association may be appealed to the Board by written Notice Delivered to the Chairman of the Board or his/her designee. The Board must be notified of the intent to appeal in writing within fifteen (15) days after Delivery of the Notice. Delivery shall mean any and all Notices or any other communication between the parties shall be made in writing by hand-delivery, registered or certified first class mail with return receipt requested, or recognized overnight courier guaranteeing next business day delivery, to the last known address of each party or the address each party may from time-to-time specify by written notice to the Resort or by facsimile or e-mail with proof of delivery thereof. The appeal hearing date, time and structure will be set by the Board.

²⁷ Amended October 27, 2008

²⁸ Amended November 22, 2010

- b. Within 15 days of the decision of the Board an appeal shall be made to either the District or Superior Courts of the General Court of Justice, Civil Division, Twenty-ninth Judicial District, of the State of North Carolina.
- c. For suspension on an indefinite period requiring the offender to request Board review or appeal, Notice to the Board must be Delivered to the Board 30 days prior to the next scheduled Board meeting.
- d. Failure to timely appeal or complete the appeal shall be deemed to be an abandonment of the appeal for all purposes.
- e. A Guest, Vendor or other invitee or other Covered Person other than an Owner or immediate family member of an Owner shall have no right of appeal²⁹

IN WITNESS WHEREOF, the undersigned President of Fairfield Mountains Property Owners Association, Inc. hereby certifies that the above restated Bylaws were duly adopted by the Association in accordance with and pursuant to its Bylaws.

This the _____ day of June, 2002.

FAIRFIELD MOUNTAINS PROPERTY
OWNERS ASSOCIATION, INC.

(Seal)

By: _____
President

Attest: _____
Secretary

STATE OF NORTH CAROLINA
RUTHERFORD COUNTY

I, _____, Notary Public for said County and State, certify that the Secretary, _____ personally came before me this day and acknowledged that (s)he is Secretary of Fairfield Mountains Property Owners Association, Inc. a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself/himself as its Secretary.

Witness my hand and official seal, this the _____ day of _____, 2002.

(Seal) _____ Notary Public

My Commission Expires _____