

## DANCY MOUNTAIN OWNERS ASSOCIATION

FILED  
 WILKES COUNTY NC  
 03/31/1999 10:40 AM  
 RICHARD L. WOODRUFF  
 Register of Deeds  
 By:                      Deputy Assn.

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## INTRODUCTION

This is the basic document for establishing the regime of the DANCY MOUNTAIN OWNERS ASSOCIATION. An interest in the agreement consists of two elements:

- A. The fee simple ownership in an applicable tract of real estate.
- B. Membership in DANCY MOUNTAIN OWNERS ASSOCIATION.

These interests are subject to various easements, restrictions and covenants, and more particularly the obligation to pay the proportion of assessments established by the Board of Directors for each tract. Failure of individual owners to pay such assessment can result in, among other sanctions, the creation of a lien on the title interest in their respective tracts, and can be foreclosed. Thus, the association is assured of an adequate budget to provide it services for DANCY MOUNTAIN OWNERS ASSOCIATION.

The Association provides a certain service which includes: (1) Maintenance of the existing road. (2) Maintenance and installation of common areas for wells, springs, water rights, etc.

## WITNESSETH

## WHEREAS, COLD RIVER PROPERTIES, INC.

hereinafter called the Declarant, are the fee simple owners of certain real property in Mulberry and Walnut Grove Townships, Wilkes County, and desire a portion to be governed by DANCY MOUNTAIN OWNERS ASSOCIATION, and further desires that said property be maintained and managed for the benefit and welfare of owners of property and;

WHEREAS, the Declarant desires to provide for the continued maintenance and operation of the roads and the creation of utility easements and;

WHEREAS: the Declarant has deemed it desirable for maintenance and operation of utility easements, private roads, and that certain easements, assessments and liens be established and declared to be covenants running with the land; and that an agency be created to which will be delegated the powers and duties of maintaining utility and road easements, common areas, collecting and disbursing assessments;

NOW THEREFORE, in consideration of the premises, the Declarant hereby declares that any portion of the property described in Book 810 Page 177, Wilkes County Registry may, at the option of the Declarant, be made subject to this Declaration of Covenants, Conditions and Restrictions. Any property subject to these Covenants are and shall be held, transferred, sold conveyed, occupied and used subject to the Covenants hereinafter set forth, said Covenants to be construed as covenants running with the land which shall be binding on all parties having or acquiring any right, title or interest in the described property, or any part thereof, and which shall insure to the benefit of each owner thereof, for and during the time hereinafter specified. Every party hereinafter acquiring any lot, or portions thereof, in the described properties, by acceptance of a deed conveying title or by the execution of a contract for the purchase thereof, whether from the Declarant or a subsequent owner of such lot or portion thereof, in the described properties, by acceptance of a deed conveying title shall

accept such deed or contract subject to each and all of the covenants, restrictions and agreements contained within these Covenants and also subject to the jurisdiction, rights and powers of the Declarant, DANCY MOUNTAIN OWNERS ASSOCIATION, and their successors and assigns. Each grantee of and tract subject to these Covenants, by accepting the deed or contract thereto, shall for himself, his heirs, personal representatives, successors and assigns, covenant and agree to and with the Declarant, the Association, and with the owners and subsequent owners of each of the tracts within the subject area to keep, observe, comply with said Covenants and agreements.

## ARTICLE 1

### DEFINITIONS

1. [AGREEMENT] shall mean and refer to the DANCY MOUNTAIN OWNERS ASSOCIATION.
2. [TRACT] shall mean any land or lot declared subject to this declaration.
3. [COVENANT] shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.
4. [OWNER] shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any tract as herein defined, excluding however, those parties having such interest merely as a security.
5. [MEMBER] shall mean and refer to every person or entity who holds membership in the association.
6. [COMMON AREA] shall mean any areas of common useage, including but not limited to a gate & key, if any.
7. [DECLARANT] shall mean and refer to Cold River Properties, Inc.
8. [ROAD] shall include roads, culverts, gravel, grassy areas and all area or fixtures within the right of way.
9. [GRANTEE] shall mean any lot or tract owner.
10. [Board] shall mean Board of Directors.

## ARTICLE 2

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

1. EXISTING PROPERTY. The real property recorded with this instrument which is the first tract conveyed to this Declaration of Covenants.
2. ADDITIONAL PROPERTY. Other tracts in the area may, at the option of the Declarant, be made subject to this Declaration.
3. EXCLUDED PROPERTY. No property of Declarant shall be subject to this Declaration except that property made subject thereto as herein provided.

## ARTICLE 3

### COMMON AREA PROPERTY RIGHTS

1. PRIVATE AREA. Each of the roads now or hereinafter constructed or designated on any deed, recorded or unrecorded map is a private road and neither the execution or recording of any plat or any other act of the Declarant is or shall be construed to be a dedication to the public; except those that hereinafter may be dedicated by a specific written and recorded deed or agreement of dedication.

2. **WITHDRAWAL FROM DEDICATION.** Upon request from all affected owners, a side or dead end road may be withdrawn from dedication to these covenants for maintenance purposes only and assume for same.

3. **OWNERS EASEMENTS OF ENJOYMENT.** Every tract owner, including lot or homeowner in the adjoining areas developed at a future time, shall have a non-exclusive right of way, right to and easement of enjoyment in and to the roads which shall be appurtenant to and shall pass with the title to every lot or tract, subject to the provisions of the Declaration and with the charter and By-laws of the Association as to the following provisions:

- A. The right and easement of enjoyment in and to the roads shall be limited to those roads owned or maintained by the Association.
- B. The right of the Declarant, for so long as he holds an interest, the Association, and any individual lot owner to limit use of the roads and common areas to owners, their families and guests.
- C. The right of the Declarant, Association, or any individual lot owner to proceed both criminally or civilly against trespass.
- D. The right of the Agreement to suspend the voting rights and other rights of membership by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty days for any infractions of its adopted rules and regulations.
- E. The right of the Declarant, Association or any individual lot owner to convey utility easements to any public authority.
- F. The right of the Association to convey any kind of easement granted by this Declaration to any public authority.
- G. The right of the Association to place a locked gate upon the property with each member of the Association in good standing having a key to said lock. Said gate and lock to be considered a Common Area for administrative and legal purposes.

#### ARTICLE 4

1. **ADMINISTRATION OF ROADS.** The administration of the roads, including maintenance, repair, and upkeep of the private roads, including the acts required by the Declaration shall be performed by the Association.

2. **RULES AND REGULATIONS.** The Association may also adopt and enforce rules and regulations not inconsistent with these Covenants for the operation and administration of its property.

3. **AUTHORITY.** The Declarant, Association, or any lot owner may enforce by proceedings at law violations of any restrictive covenant in a deed to a tract which is within the scope of these Covenants.

4. **MEMBERSHIP.** Every person or entity who is a record owner of a fee or undivided interest in any tract shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot, shall be transferred automatically when the owner conveys, devises or gives even though deed does not make mention this Declaration or membership rights of the Association. Such membership is not intended to apply to those persons entities who hold an interest in any lot merely as security for the performance or an obligation to pay money. However such secured party should realize upon his security and become the fee owner of a lot or tract, he and his assigns of it will then be subject to all the requirements and limitations imposed in these Covenants on owners or tracts and on members of the Association, including those provisions with respect to payment of Association assessments. The Association may include reasonable rules relating to the proof of ownership of a tract in the DANCY MOUNTAIN OWN ASSOCIATION.

5. **VOTING RIGHTS.** The Association shall have two classes of voting membership:

A. **CLASS A.** Class A members shall be all owners of tracts or lots and owners of any type of dwelling unit other than the Declarant. Any Class A member shall be entitled to one vote for each lot or tract he owns and three votes for each dwelling he owns, limit of 4 votes per lot subject to assessment. When more than one person or entity holds an interest in any lot or dwelling unit, all such persons or entities shall be members. The vote for such lot or dwelling unit shall be exercised as they determine, but in no event shall be more than their authorized (1 or 4) votes.

B. CLASS B. The Class B member shall be the Declarant, which shall be entitled to 10 votes to start with. Each tract sold shall diminish this by one vote, provided that at no time shall the Declarant have less than 4 votes. Provided further that when all the subject tracts are conveyed Declarants voting and other interests in the Association are extinguished.

6. VIOLATION OR DELINQUENCY. During any period in which a member shall be in default in the payment of any assessment levied by the Association, his right to vote and all other rights and incidents of membership in the Association may be suspended by the Board of Directors until such assessment is paid. A members voting rights may also be suspended for violation of the Associations rules and regulations; provided that prior to any suspension for such violation, the Board of Directors (or committee thereof) shall conduct a hearing regarding the alleged violation after giving the accused member at least ten days notice specifying each alleged violation and setting the time, place and date of the hearing. At the hearing, the accused member shall have the right to call and question his own witnesses as well as any opposing witnesses. A determination of violation as well as the terms of any suspension shall be made only by a majority vote of the Board.

7. ORGANIZATIONAL SETUP. Roberts Rules of Order Parliamentary Procedure shall be used. A President, Vice President, Secretary and Treasurer shall be duly elected. A Board of Directors shall be created and all owners shall serve on said Board unless a different number be chosen.

## ARTICLE 5

### COVENANTS FOR MAINTENANCE ASSESSMENTS

1. CREATION OF LEIN AND OBLIGATION FOR ASSESSMENTS. The owner of each tract by acceptance of a deed therefore is deemed to covenant and agree to pay to the Association:

- A. Annual Assessments, if any.
- B. Special Assessments, if any.

Such covenant will be deemed to arise whether or not expressly stated in the deed or other conveyance to the owner. The annual and special assessments, together with interest, costs and reasonable attorneys fees, shall be the personal obligation of the person who was owner of such property at the time when the assessment fell due. However, the personal obligation for delinquent assessments shall not pass to his successor in title other than as the continuing lein on the land unless expressly assumed by such successor.

2. SEVERE USE OF ROAD. If any member of the Association uses, causes or allows heavy vehicles, equally between all owners with Declarant being counted as one owner.

4. MULTIPLE LOTS. Any owner of two or more lots which adjoin may, at his option, elect to treat them as one for assessment and voting purposes, provided further that if more than one dwelling, the owner will be assessed one maintenance share for each.

5. INITIATION FEE. There shall be no initiation fee for membership in the Association, its successors and assigns.

6. LATER ADDITIONS. If lots or tracts are later split into two or more owners, or Declarant adds tracts after control is passed to the Association, the only fees due will be assessment fees pro rated from that date on.

7. PURPOSE OF ASSESSMENTS. All assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine for the benefit of its members. This shall be limited to three areas, roads, utilities and common areas, if any. Such funds may be used for the cost of labor, equipment, materials, taxes, employment of professionals, and such other needs as may arise.

8. DETERMINATION OF ASSESSMENT AMOUNT. Prior to December 31 of each year the Board of Directors may prepare a budget for the next calendar year and based upon such budget, the Board shall fix the assessment amount for each class of property owned on the following basis:

A. Each tract shall be assessed one share.

9. PAYMENT OF ASSESSMENTS. All annual and special assessments provided for herein shall commence as to all tracts on the first day of the month following transfer of title to owner. The annual assessment, if any, shall be adjusted according to the number of months remaining in the calendar year. Thereafter, payment of assessments shall be made annually to the Association or its designee on or before the due date established by the Board, provided however, that the Board may elect to receive payments on an installment basis. The Board shall fix the amount of annual assessment at least thirty days before the due date and written notice of the charge so fixed shall be sent to each member.

10. SPECIAL ASSESSMENTS. In addition to the annual assessment authorized above the association may levy, in any assessment year, a special assessment applicable the that year only for the purpose of defraying, in whole or part, the cost of any repair or replacement. Two thirds of members voting at such meeting called to consider such assessment and at which a quorum was present, must vote their assent to its imposition. Each tract shall be assessed one share.

11. NOTICE AND QUORUM. Except for a vote to amend the Covenants Conditions and Restrictions contained herein, which vote shall be conducted pursuant to Section 1 of Article 8 below, the notice and quorum required for any actions of the Association authorized by Article 4 and 5 of this Declaration or as otherwise in these Covenants or by law provided, shall be as follows:

A. Written notice of any meeting called for the purpose of any action authorized under Articles 4 and 5 of these Covenants shall be sent to all members not less than ten days nor more than sixty days in advance of the meeting.

B. Members may attend and may vote in person or by notarized proxy executed in writing by a member. No proxy shall be valid after eleven months from the date of its execution, or after conveyance by the member of his lot.

C. At any meeting called for the purpose of taking some action by the Association membership twenty percent of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and any number of members such subsequent meeting, so long as such number represent at least ten per cent of all the outstanding votes shall constitute a quorum. No such subsequent meeting shall be held more than two months following the scheduled date of the preceding meeting.

12. EXEMPT PROPERTY. The lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of purchasing the lot or for permanent financing and/or constructing a residence or other improvement thereon recorded in accordance with the applicable state laws from the date of recordation, shall be superior to any and all liens provided for herein. The sale or transfer of any lot by foreclosure of any first mortgage or any proceeding in lieu thereof, shall not extinguish the lien of such assessments as to payments due prior to such sale or transfer.

13. CONTINUANCE OF LEIN. The assessments and charges created herein shall constitute a continuing lien upon all lots in the Association and no owner may waive or any way reduce his liability for the assessment by not using the common area, abandonment of his tract. In the event that any charge or assessment created in this declaration remains unpaid by an Association member for 30 days after the due date announced by the Board of Directors, the Association, through its agents or members, may record with the Yadkin County Register of Deeds, Clerk of Court, or appropriate agency a notice of the lien created by this Declaration.

14. EFFECT OF NON-PAYMENT OF ASSESSMENTS. Remedies of the Association. In the event that any assessment or charge created herein remains unpaid for thirty days after the due date

announced by the Board of Directors, such unpaid assessment shall bear interest from the date of delinquency, said interest rate to be set by the Board of Directors from time to time, but in no event shall it exceed the maximum interest rate allowed by law. Unless changed by the Board interest on delinquency shall be twelve per cent. The Association, its agent or representative, or any individual member may bring an action by law against the owner personally obligated to pay the same and/or foreclose the lien against the lot subject to the unpaid assessment. In either case, interest, costs, and reasonable attorneys fees shall be added to the amount of such assessment to the extent allowed by law. Any foreclosure conducted pursuant to this section shall comply fully with the North Carolina procedure for judicial foreclosure.

15. **CERTIFICATE OF PAYMENT.** The Association shall, upon demand at any time, furnish a certificate in writing certifying that the charges on a specified lot have been paid or that certain charges against said lot are unpaid, as the case may be. For the purpose of obtaining a certificate, interested parties should contact the Association at its address.

## ARTICLE 6

### RESTRICTIVE COVENANTS, EASEMENTS & RIGHT OF WAY

**EASEMENTS.** The Declarant, the Association, and any individual lot owner reserves for itself, its successors and assigns for purposes incident to development of the real property subject to development of the real property subject to these Covenants, following Easements and/or right of way.

A. An easement over each tract within the road right of way for any purpose, including but not limited to ingress, and utilities.

B. Said easement is non-exclusive in nature.

C. The right of Declarant, Association or any individual to convey said easement to any public utility.

**RESTRICTIVE COVENANTS.** Any lot or tract subject to this Declaration is made subject to the following restrictive covenants for a period ending twenty years from date:

1. No Mobile Homes.

2. **GARBAGE and REFUSE DISPOSAL.** No tract shall be used or maintained in an unsightly manner or as a dumping ground for rubbish, trash or debris. Rubbish, trash, debris, garbage and other waste shall be kept only in closed sanitary containers.

3. **Wrecked, junked or disabled motor vehicles.** No wrecked, junked or disabled motor vehicle shall be parked or permitted to remain upon any tract. No discarded tires, automobile parts, or similar discarded material shall be permitted to remain upon any tract.

4. Any dwellings on property must have Wilkes County approved Septic System, electricity and inspection of building.

5. No camping trailers or RV's can be used as permanent residence.

6. Property shall be used for residential purposes only. No commercial use permitted

## ARTICLE 7

### GENERAL PROVISIONS

1. **ENFORCEMENT.** The Association, Declarant, or any lot owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
2. **TERM.** These Covenants shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming them until January 1, 2020, at which time these covenants may be extended in 5 year increments at the end of each five years by a majority vote of the membership.
3. **AMENDMENTS.** These restrictions may be amended by a fifty per cent vote of total voting rights, provided that no rights be taken from a member previously given.
4. **MUTUALLY OF BENEFIT AND OBLIGATION.** These Covenants set forth herein are made for the mutual benefit of each and every tract in the Association and are intended to create mutual equitable servitude upon each lot in favor of each and all of the other lots therein; to create a privity of contract and estate between the owners of said tracts, their heirs, successors and assigns, and to the Association, and shall as to the owner of each lot, his heirs, successors and assigns operate as covenants running with the land for the benefit of each and all other lots in the development and their respective owner. Declarant, so long as it shall exist, any lot owner or the Association shall have the right to enforce these Covenants.
5. **SEVERABILITY.** Every part of these Covenants are hereby declared to be independent of and severable from the rest of the Covenants and of and from every other one to the Covenants and from every combination of these Covenants. Therefore, if any of the Covenants shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holding shall be without effect upon the validity or running quality of any other of these Covenants.
6. **CAPTIONS.** The captions preceding the various paragraphs and subparagraphs of these Covenants are for the convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Covenants. Wherever and whenever applicable, the singular form shall be taken to mean or apply to the plural, and the masculine form shall be taken to apply also to the feminine or to the neuter.
7. **RIGHT OF ASSOCIATION TO ACHIEVE TAX-EXEMPT STATUS.** The Declarant, for so long as it retains control of the Association, and thereafter, the Association, may amend this Declaration as shall be necessary in its opinion, and without the consent of any owner, in order to qualify the Association or the properties or any portion thereof for tax-exempt status. Such Amendment shall become effective upon the date of its recordation in the Wilkes County Registry.
8. **RIGHT OF ASSOCIATION TO BECOME A LEGAL ENTITY.** The Association, by a majority vote may, at any duly called meeting elect to become a legal entity, such as corporation, partnership, etc.
9. **CERTIFICATE OF ASSUMED NAME.** Acting under the provisions of N.C.G.S. 66-68, the name and style of DANCY MOUNTAIN OWNERS ASSOCIATION in recorded in Book 810 Page 176 Wilkes County Registry

IN WITNESS WHEREOF, COLD RIVER PROPERTIES, INC. have caused this Declaration to be executed this 31<sup>st</sup> day of April, 1999.

Cold River Properties, Inc

John J. Blak  
Vice-President



Arden P. DeB  
Secretary

NORTH CAROLINA

ACKNOWLEDGEMENT

WILKES COUNTY

I, Arvetta Brooks, a Notary Public, do hereby certify that Gordon Deeb personally came before me this day and acknowledged that he is Secretary of Cold River Properties, Inc. and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice- President, sealed with its corporate seal, and attested by himself as its Secretary.

Witness my hand and official stamp or seal this 31<sup>st</sup> day of March, 1999.

ARVETTA BROOKS  
NOTARY PUBLIC  
WILKES COUNTY, NC  
MY COMMISSION EXPIRES  
11-16-99

Arvetta Brooks  
Notary Public

My commission expires: 11-16-99

NORTH CAROLINA WILKES COUNTY

The foregoing certificate of Arvetta Brooks

Deeb

Richard L. Woodruff

Register of Deeds

certified to me by

By Diana Landee

Deputy-Asst Register of Deeds