

STATE OF NORTH CAROLINA
COUNTY OF AVERY

SECOND AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR THE VIEWS AT CRANBERRY

BACKGROUND STATEMENT

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions for The Views at Cranberry was entered into August 1, 2015 and made effective upon recordation, by the property owners of The Views at Cranberry Lot Owners Association, Inc.

WHEREAS, at the annual meeting of the members on August 1, 2015, the Declaration of Covenants, Conditions and Restrictions for The Views at Cranberry (The "Declaration"), as amended, was further amended by the affirmative vote of owners of at least sixty-seven percent (67%) of the lots within The Views at Cranberry;

NOW THEREFORE, pursuant to the Declaration for The Views at Cranberry recorded in Book 415 at Page 2344, as amended in Book 467 at Page 1122 of the Avery County Register of Deeds, and as may be further amended from time to time pursuant to the provisions of Chapter 47F of the General Statutes of North Carolina NCGS §47F-2-117, the Declaration is hereby further amended as follows:

ARTICLE 2
DEFINITIONS

The following definitions shall be amended, deleted or added only as designated; otherwise, the definitions shall remain unchanged in the Declaration.

2.02 The definition of "Builder" is deleted.

2.08 "Map" shall mean the map of The Views at Cranberry recorded in Map Book 40 at Page 161-165 of the Avery County Public Registry.

2.09 "Leasing" or "Rental" is defined as occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

ARTICLE 3
RESTRICTIONS AND REQUIREMENTS

This Article 3 is amended and restated as follows:

3.01 Dwelling Use. No lot shall be occupied or used except for single-family residential purposes. Only one residence is permitted on any lot. Camping by a property owner, the Owner's family and guests shall be allowed on the owner's lot or lot for a maximum period of seven (7) days over any thirty (30) day period.

3.02 Dwelling Size. Each residential unit shall contain a minimum of 1,800 square feet of heated, enclosed living area, exclusive of patios, porches, garages and unfinished basements.

3.03 Garages. Garages must be constructed of the same materials as the residence and conform to the design and style of the residence, as well as the development standards.

3.04 Structures Not Permitted. No Mobile home, house trailer, or camper (including recreational vehicles) shall be occupied as a residence.

3.05 Home Construction Materials. All homes constructed or placed on any Lot shall be built of substantially new materials, or materials reclaimed from other older buildings.

3.06 Exterior Facade. One hundred percent (100%) of the exterior construction material for a residence, excluding roofing materials, doors and windows (and their trim), eaves, soffits, vents and posts shall be wood siding, log, stone, manufactured stone, timber, bark siding, or other materials native to the Appalachian Region. Engineered cement board or other similar material is permissible.

3.07 Plumbing. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank sewage system constructed by the Owner and approved by the appropriate governmental authority, unless public sewer hook up becomes available to the Lot.

3.08 Foundation/Retaining Walls. All concrete block above ground level must be covered in brick, stone or stucco in order to completely hide the concrete block and any mortar seams. Split faced block may be used as exposed foundation material.

3.09 Driveway. All driveways must have a surface approved by the Architectural Committee. The transition from road to driveway must have an impervious hard surface which extends into the lot by 20 feet beyond the culvert. The Association has prepaid initial culvert fees, therefore, all driveway pipe installed in ditches which are in the road right of way shall be installed by Avery County Public Works and shall meet applicable governmental standards (in no case less than 15" diameter). All improvements (fences, landscaping, etc.) constructed in the road right of way (road right of way typically extends beyond rear slope of roadside ditch) must

meet applicable governmental standards. No other driveway piping is permitted without an encroachment permit issued by Avery County Engineering.

3.10 Fencing. Streetscapes and retaining walls are permitted. All fences shall be architecturally compatible to the Owner's house. No fence in excess of 4 feet in height shall be permitted on any lot.

3.11 Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other household pets may be kept; and one horse per acre of land is permitted. Household pets kept by an Owner shall not be permitted to run free or to roam at large at any time. All animals or pets, when permitted outside the residence or fenced area, must be under the direct control of the Owner or responsible person through use of a leash or similar restraint.

3.12 Prohibited activities. No noxious, offensive, immoral, improper or illegal activities shall be conducted on any lot. Nothing may be done on any lot that shall be or becomes an unreasonable annoyance, inconvenience or nuisance to the residents of the Property, or unreasonably interferes with the quiet enjoyment of occupants of Lots or guests. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area, or which would be in violation of any law. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency. No oil or natural gas drilling, refining, quarrying, mining or timbering operations of any kind shall be permitted upon or in any lot and no derrick or other structure designed for use in boring for oil or natural gas shall be, erected, maintained or permitted on any lot. Clear cutting, logging and timbering of a Lot is strictly prohibited.

3.13 Beautification. Each Owner covenants to preserve and maintain the exterior of all improvements to the real estate, together with lawn, trees and shrubbery in a good and reasonable manner. No Owner shall permit his or her lot or the improvements thereon to become unsightly. Owner may cut and trim trees to open and maintain the view or views from the Lot and for the building site on the Lot, however, clear cutting, logging and timbering of the Lot is strictly prohibited. Except in naturally wooded areas, Owners of such Lots shall cut vegetation and grass in a timely manner by usual methods for maintaining the appearance of such lots. Failure of an owner of any lot to comply with this requirement, after five (5) days notice, shall entitle the Association or its assigns to maintain the lot and include the reasonable cost as an additional assessment to the Owner, plus all attorney fees necessary to enforce this provision. All lots shall be kept free of dead trees or limbs that would be a danger to abutting property or roads.

3.14 Waste Disposal. Trash, construction debris and rubbish shall be disposed of in such a manner as to prevent it from becoming unsightly, unsanitary or a hazard to health or safety of other residences. In the event the Owner, or contractor or agent, fails to comply with the terms of this provision, the Association shall have the right (but not the obligation) to enter upon such lot after the owner has been notified in writing of the violation and no curative action has been taken within 30 days after such notice, or the curative action has started but has not been pursued diligently, in order to effect compliance with this provision. All expenses incurred by the Association shall be paid by the owner of the lot immediately upon receipt of a statement from

the Association. All rubbish, trash, garbage or other waste material shall be kept in sanitary containers out of sight and under cover except on days of trash collection. All equipment for the storage or disposal of such materials shall be kept in a clean sanitary condition. No Lot or portion thereof shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste materials except that composting is permitted with appropriate sanitary and aesthetic measures maintained. Failure of an owner to comply with this requirement, after five (5) days notice, shall entitle the Association to maintain the lot and include the reasonable cost of such maintenance as an additional assessment to the Owner. Yard incinerators for the disposal or burning of trash or yard waste are not permitted.

3.15 Swimming pools. All swimming pools must be completely in-ground and shall be screened from view by adjoining lots and the streets by means of landscaping and/or attractive screening material. It shall be the affirmative obligation of the Owner to enclose any swimming pool with fencing and restrict the access thereof with the appropriate gates, locks and latches.

3.16 Motor Vehicles. No tractor-trailer rigs (as a unit or the individual components thereof), buses or heavy equipment, including, but not limited to, trailers, shall be parked or stored on any lot, except in the normal course of making deliveries or providing services to the lot. Any recreational vehicle, boat, trailer or camper trailer must be stored out of view of nearby lots or the street in a garage or approved auxiliary building. No inoperable, stripped, partially wrecked, or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any street or lot.

3.17 Motorcycles and All Terrain Vehicles. Use of motorcycles and All Terrain Vehicles within the Property shall be restricted to the purpose of traveling on roads in as direct course as possible from the Property entrance to the Owner's residence and back, or from the Owner's residence to the edge of the Property . Riding throughout the Property or any common areas, including logging roads and community trails is prohibited.

3.18 Rights of Way. The Association reserves for itself, a ten (10) foot strip along the margin of each road right of way for the purpose of constructing, installing, maintaining, repairing and operating utility systems, mains and facilities, and water drainage.

3.19 Easement for Access. There is reserved an easement for access, ingress and egress in favor of owners of lots in the Property, and in favor of their invitees, over and across the streets shown on the Map. Any damage (including tracking mud, pouring concrete or depositing debris) to a street shown on the Plat or to the ditches or shoulders of the street, or to the flow of drainage water along the said street, caused by driveway connections or traffic to and from the property owner's lot, shall be repaired at the expense of the owner connecting such driveway. Each property owner is held fully responsible for the acts of his agents, contractors, and subcontractors.

3.20 Signs.

(a) No temporary marketing or other signs shall be permitted at the entrance of The Views at Cranberry or within the Common Areas including, but not limited to, real estate signs, banners, balloons, and directional or yard/garage sale signs. A sign such as is used

in the ordinary course of effecting residential sales transactions may be placed on a Lot by real estate agents or by owners to advertise a residence for sale.

(b) One sign, no larger than four (4) square feet, bearing the name or names of a property owner or property address and which is placed within twenty (20) feet of a driveway entrance is permitted on any Lot.

3.21 Fuel Tanks. Fuel tanks (propane, oil, etc.) must be buried according to fuel supplier specifications.

3.22 Exterior Lighting No high intensity lights shall be permitted that cast significant light onto neighboring lots.

3.23 Time-sharing. Time-sharing and time shares as defined in the North Carolina Time Share Act (N.C.G.S. § 93A-39 et seq.) of any Lot in The Views at Cranberry shall be prohibited.

3.24 Lease and Rental of Properties. Resident Lots may be rented or leased only in their entirety; no fraction or portion may be rented. All leases must be for a term of not less than three (3) consecutive nights. All leases and lessees are subject to the provisions of the Covenants, Bylaws, and Rules and Regulations. The Lot Owner must make available to the tenant copies of the Covenants, Bylaws, and Rules and Regulations.

3.25 Time for Compliance. Because of limitations of construction in mountain regions, it is specifically accepted that houses may be occupied before full compliance with these restrictions so long as compliance is achieved within one year of issuance of the certificate of occupancy.

3.26 Variances From Restrictions Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws or any Rule or Regulation, if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Property. A variance might be allowed where circumstances, including but not limited to, topography, natural obstructions, environmental considerations, or hardship, require deviation from the Restrictions and Requirements. Such variances shall be limited in scope and number, allowing no more deviation from these Restrictions and Requirements than is necessary to circumvent the obstacle to the proposed design.

ARTICLE 4 **LOT OWNERS ASSOCIATION**

This Article 4 is amended and restated as follows:

4.01 The Association. A Lot Owners Association has been formed to own, maintain and administer the common areas of the Property; and to enforce the restrictions and conditions contained in this declaration. The Association is organized under the laws of the State of North

Carolina, and each property owner shall automatically become a member of the Association upon purchase of a Lot, with full voting rights.

4.02 Board of Directors. A Board of Directors of the Association is established to manage the Property and Common Areas, and to enforce the Covenants, Bylaws, Rules and Regulations of the Association. The members of the Board will be elected by the process established in the Bylaws of the Association.

4.03 Voting in the Association. In any action of the Members, the owner of each lot shall be entitled to cast one vote for each lot owned.

4.04 Membership Meetings. Annual and Special meetings of the membership may be called in accordance with the Bylaws of the Association. The rules for the meetings will be set in the Bylaws.

4.05 Maintenance Fee. Each owner of a lot is deemed to covenant and agree to, and shall pay to Association, an annual assessment to pay for the cost of operating, maintaining and repairing the Common Areas, as herein defined, within the Property. Assessments will also be used for the maintenance, preservation, improvements, security, landscaping, and lighting of The Views at Cranberry and the administration thereof, including, but not limited to, obtaining general liability and/or errors and omissions insurance, payment of taxes, office expense, legal or attorney's fees incurred for operational requirements or to enforce restrictions. This listing of possible uses of Maintenance Fees is not exclusive, and the actual uses will be determined by the Board of Directors.

4.06 Assessments. Each owner of a lot subject to this obligation shall pay the same annual and special assessment amount, irrespective of the size of the lot, the location of such lot or any other factor. Each lot owner shall be obligated to pay to the Association the sum determined by the Board of Directors of the Association each year. . Each Owner of any Lot, by acceptance of a deed to the Lot, whether or not stated in the deed, covenants and agrees to pay to the Association any and all Assessments determined by the Board of Directors.

4.07 Maintenance of Original Lot Assessment. Any subsequent combination of lots will not reduce owner's responsibility to continue to pay an assessment for each lot originally purchased prior to the lot combination.

4.08 Remedies of Association. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt, or to foreclose the lien. The lien in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale, or to acquire, hold, lease, mortgage or convey the Lot. No additional notice or hearing shall be required to the Owner.

4.09 No exemptions. No Owner may waive or otherwise exempt himself or herself from liability for assessments by abandoning the Lot or in any other manner. The obligation to pay

assessments is a separate and independent covenant on the part of each Owner and no reduction of any assessment shall be claimed or allowed by reason of:

- (a) Any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association;
- (b) For inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association; or
- (c) For any action of the Association which may be disputed by the Owner.

4.10 Lien for Assessments. The assessments, late charges, interest, costs and reasonable attorney's fees, and any other fees or costs which may be permissible under the laws of North Carolina shall constitute a continuing lien upon each Lot, and the personal obligation of every Person who is an Owner of the Lot. Each person acquiring title to a lot binds himself, his heirs, and assigns to the maintenance fees, and further binds and obligates himself, his heirs, and assigns to pay the assessment to Association once it has been levied by Association. All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees, shall be secured by a lien on the Lot in favor of the Association from the time the sums become due and payable. The Association shall have the right, but not the obligation, to evidence the existence of the lien by filing a notice of lien in the Avery County North Carolina records. The Board of Directors is authorized to take any necessary action to collect Assessments by foreclosing liens.

4.11 Qualification for Officers and Directors. Only lot Owners who have paid all Assessments of the Association may be officers and directors of the Association.

4.12 Rules and Regulations. The Board of Directors shall also have the right to promulgate Rules and Regulations concerning the use of the Common Areas and recreational areas. They may also establish Rules and Regulations for other activities that may affect the Property as a whole.

4.13 Common Area. The Association retains the legal title to the Common Area in the Property, and shall be responsible for the maintenance and management thereof.

4.14 Violations. In addition to the Association's rights to enforce, if any person shall violate or attempt to violate any of the covenants, Rules or Regulations established by these Declarations or by the Board of Directors, it shall be lawful for any other person or persons owning or having an interest in any portion of the Property to institute and prosecute any proceeding in law or equity against such person or persons to restrain such violation or to recover damages and legal fees or other compensation for such violations.

4.15 Failure to Enforce. The failure of the Association or its Board of Directors to enforce any provision of the Declaration, Bylaws or any Rule or Regulation, shall not be deemed a waiver of the right of the Association or Board to do so thereafter.

4.16 *Security*. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the Property. However, each Owner, for himself or herself and his or her tenants, guests or other invitees, acknowledges and agrees that the Association is not a primary provider of security, and does not have the duty to provide security. Furthermore, the Association does not guarantee that non-Owners will not gain access to the Property. Nor does the Association guarantee that criminal acts will not be committed by other Owners, occupants or invited or uninvited persons. It is the responsibility of each Owner to protect his or her person and property, and all responsibility to provide such security lies solely with the Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security, or the ineffectiveness of security measures taken.

ARTICLE 5

ARCHITECTURAL REVIEW

This Article 5 is amended and restated as follows:

5.01 *Development Standards*. The Declaration describes the minimum standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping and relevant criteria deemed important by the Association for the construction of improvements of any nature in the Property.

5.02 *Purposes*. The purpose of the Development Standards set forth herein is to protect the value of all real property subject to this Declaration and to promote the interest, welfare, and rights of all lot owners. Decisions of the Board of Directors of the Association approving or disapproving of plans and specifications shall be based on criteria established for the Property, consistently applied. Such decisions shall be final and not subject to review or appeal.

5.03 *Continuance of Standards, Rules and Regulations*. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agree to be bound by all provisions of such Development Standards, Rules and Regulations, as well as all covenants set forth herein.

5.04 *Architectural Review Requirement*. No lot clearing, construction, reconstruction, remodeling, or alteration of, or addition to, any building, improvement, device or structure of any kind, including, in addition to the residential structure and its appurtenant structures, all walls, fences, porches, patios, drives, walks, decks and swimming pools shall be commenced without the prior written approval of the Board of Directors, or its assigns. The enumeration of items above is made for clarification and example and is not intended to be, and shall not be construed to be, a limitation to the buildings, improvements, devices or structures controlled by this provision.

5.05 *Approvals Required Before Construction*. Any Owner who fails to obtain the approval will be constructing an improvement at his own risk. In the event that the Association, or assigns, must resort to legal action to enforce the restrictions herein set forth, the Association, or its assigns, shall be entitled to recover reasonable costs attorney's fees from the violating lot owner.

5.06 Process. The Association, or assigns, shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. In the event, the Association, or assigns, fails to approve or disapprove such plans and specifications within thirty (30) days, Owner or Builder shall notify Association in writing by certified mail of such failure and Association shall have five (5) business days from the receipt thereof to approve said plans.

5.07 Violation of Approved Plans and Right of Entry. If the Board of Directors determines that work completed on any Lot has not been completed in compliance with the final plans approved by Association, the Board may notify the Owner in writing of such non-compliance within thirty (30) days of inspection, specifying in reasonable detail the particulars of non-compliance; and may require the owner to remedy the same. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance within 30 days of the date of the notice, the Board of Directors shall notify the Owner in writing that it shall take action to remove the non-complying improvements and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine to be determined in accordance with the Bylaws of the Association. The Association shall have the right to enter upon the Lot of any Owner to remedy non-compliance as ordered by Board of Directors and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand thereof.

5.08 Non-Liability for Approval of Plans. The Association's approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications, the Association does not assume any liability or responsibility therefore, for any defect in structure constructed from such plans or specifications. The Association shall not be liable to any member, owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the constructions or performance of any work, whether or not pursuant to the approved plans, drawings and specification.

5.09 Non-Liability for Subsurface Soil Conditions. The Association is not responsible for any subsurface soil conditions on any Lot.

ARTICLE 6

CONSTRUCTION ACTIVITY

This Article 6 is amended and restated as follows:

6.01 Construction activity. Any partially completed structures or improvements for which construction activity has ceased for 90 consecutive days, and the debris or remains of any structure damaged by wind, fire or other causes, shall constitute a nuisance and may be removed by the Association, or its assigns, if the owner of the lot fails to abate such nuisance within 30 days after written notice thereof is given. All costs expended by the Association, shall be paid by

the owner and shall constitute a lien upon the lot until paid in full together with the maximum charges and/or interest as permitted by North Carolina law.

6.02 Construction area upkeep and environmental protections. All construction areas shall be kept in good order and properly maintained so that they do not become unsightly or a nuisance to the neighborhood. All debris shall be placed in dumpsters, which shall be emptied as necessary during construction in order to prevent spillage of debris on the ground. Portable rest room facilities shall be required upon each Lot during any construction activity, and shall be located within the building setbacks. Reasonable efforts shall be made to screen locations of construction material storage areas, chemical toilets, dumpsters and other unsightly items from the line of the roadway. Silt fencing will be required where needed to keep eroded soils contained on a lot. Gravel will be required to be kept on construction driveways at all times. Construction projects shall minimize disturbance of tree concentrations to the maximum extent reasonable and all development proposals and permit applications shall require an erosion and drainage control plan.

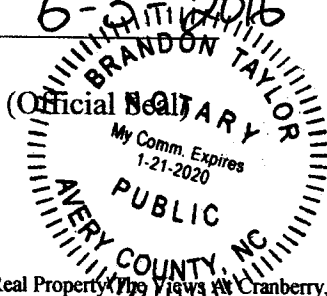
IN WITNESS WHEREOF, the undersigned, has executed this Second Amendment to the Declaration of Covenants, Conditions and Restrictions for The Views at Cranberry, this 3rd day of June 2016.

The Views at Cranberry Lot
Owners Association, Inc.

By: Dennis Perry
Dennis Perry, _____ President

Avery County, North Carolina

I certify that the following person **Dennis Perry**, _____ **President of The Views at Cranberry Lot Owners Association, Inc.**, personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: 6-3-2016


Brandon Taylor
Print Name: Brandon Taylor
My Commission expires: 1-21-2020