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PRESENTED & RECORDED

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KATHY LAWS  
REGISTER OF DEEDS  
BY LORI PITMAN  
DEPUTY

**BK: RE 537**

**PG: 454-465**

Prepared by and return to:  
Robert E. Dungan, Esq.  
The Dungan Law, P.A.  
One Rankin Avenue, Third Floor  
Asheville, North Carolina 28801

References: Deed Book 440, Page 252  
Deed Book 127, Page 69

STATE OF NORTH CAROLINA  
COUNTY OF MITCHELL

FIRST AMENDMENT TO THE BYLAWS, AS PART OF THE AMENDED AND  
RESTATEMENT DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR SWISS VILLAGE, ATTACHED AS EXHIBIT "B"

This First Amendment to the Bylaws, as part of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swiss Village, attached as Exhibit "B" ("Bylaws") is made this 31 day of MAY, 2013 by the Swiss Village Property Owners Association, Inc., ("Association").

WITNESSETH

WHEREAS, Swiss Village, Inc. executed and recorded Covenants and Restrictions for the development commonly known as Swiss Village located in Mitchell and McDowell Counties, North Carolina, which Covenants and Restrictions are recorded in Book 127 at page 69 of the Mitchell County Registry and Book 171 at page 163 at the McDowell County Registry, as amended by Amendments to Covenants and Restrictions recorded in Book 221 at page 544 of the McDowell County Registry (the "Original Declaration")

WHEREAS, the Association recorded the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swiss Village in Book 440 at page 252 of the Mitchell County Registry and Book 876 at page 737 at the McDowell County Registry (the "Amended and Restated Declaration") which included as Exhibit "B", the Amended and Restated Bylaws.

WHEREAS, Swiss Village is a planned community and is governed by the North Carolina Planned Community Act (NCGS 47F-1-101 et seq.) ("Planned Community Act"); and

WHEREAS, the Planned Community Act further provides that an existing community by affirmative vote, or written agreement signed by lot owners, of the lots to which at least sixty-seven percent (67%) of the votes in the homeowners (property owners) association are allocated; and

WHEREAS, The Association, Inc., at a duly-held meeting the lot owners of lots to which at least sixty-seven percent (67%) of the votes in the Association allocated agreed to submit and to adopt the attached First Amendment to the Bylaws, attached as Exhibit "B" as part of the Amended and Restated Declaration of Covenants, Conditions and Restrictions in accordance with and as permitted by the Act.

NOW, THEREFORE, the Association by and through its owner-members amends the Bylaws by adding the following paragraph to Article 4, Section 4.3:

"Starting with the 2013 annual meeting, two directors will be elected by the members of the Association for a three year term. In 2014 one director will be elected for a three year term. In 2015, two directors will be elected for three year terms, thus ensuring maximum continuity on the Board of Directors. This schedule will be followed in the subsequent years to ensure the staggering of terms."

HENCEFORTH, Article 4, Section 4.3 will read as follows:

"Article 4, Section 4.3 Election. Except as provided in Section 4.5, Directors shall be elected at the annual meeting of the Members by written ballot or a show of hands. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Starting with the 2013 annual meeting, two directors will be elected by the members of the Association for a three year term. In 2014 one director will be elected for a three year term. In 2015, two directors will be elected for three year terms, thus ensuring maximum continuity on the Board of Directors. This schedule will be followed in the subsequent years to ensure the staggering of terms."

IN WITNESS WHEREOF, the undersigned officers of the Swiss Village Property Owners Association, Inc. hereby certify that the attached First Amendment to the Bylaws, as part of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swiss Village, attached as Exhibit "B" was duly adopted by the Association and its membership in accordance with and pursuant to the Declaration of the Swiss Village Property Owners Association, Inc. and North Carolina law.

This 31 day of MAY, 2013.

**SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.**

(Seal)

By: William F. Maire  
President  
Printed Name: WILLIAM F. MAIRE

Attest: Jean W. Holshouser  
Secretary  
Printed Name: Jean W. Holshouser

STATE OF NORTH CAROLINA  
COUNTY OF Mitchell

I Kimberly Suddeth Notary Public for said County and State, certify that William F. Maire and Jean W. Holshouser personally came before me this day and acknowledged that he is Secretary of the Swiss Village Property Owners Association, Inc., 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 him/herself as its Secretary.

Witness my hand and official seal, this the 31 day of May, 2013.

Kimberly Suddeth  
Notary Public

My commission expires August 3, 2013.



EXHIBIT "B" TO  
AMENDED AND RESTATED  
DECLARATION FOR SWISS VILLAGE

SECOND AMENDED AND RESTATED BYLAWS  
SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE 1

NAME AND LOCATION

Section 1.1 Name. The name of the corporation is SWISS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association." The seal of the corporation shall consist of two concentric circles between which is the name of the corporation and in the center of which is inscribed "North Carolina, Seal."

Section 1.2 Location. The office of the Association shall be located at P.O. Box 233, Little Switzerland, McDowell County, North Carolina.

Section 1.3 Purpose. The purposes for which the Association is organized are:

a. To further social activities of Owners of Lots in Swiss Village, located in McDowell County and Mitchell County, and in connection therewith to provide services to such property owners, manage and maintain the Roads and Water System, manage and maintain the Common Areas and administer and enforce all covenants and restrictions dealing with the Property located in Swiss Village and any other purposes allowed by law.

b. To acquire, own, hold, maintain, improve, sell, mortgage and otherwise deal with real and personal property owned by the Association within the Swiss Village subdivision.

c. To engage in activity and business which can be appropriately and legally carried on for the recreation, education and civic activities for the general benefit of the property owners.

d. To own and maintain areas as wildlife preserves.

ARTICLE 2

DEFINITIONS

All terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) have the meanings set forth in the Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Swiss Village, and duly recorded in the McDowell County and Mitchell County Public Registry, North Carolina, as the same may be amended from time to time.

## ARTICLE 3

## MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. The annual meeting of the Members of the Association shall be held on July 5 (regardless of the day of the week) at the time set by the Board of Directors. This is for the purpose of electing Directors of the Association and for the transaction of such other business as may be properly brought before the meeting. Roberts Rules of Order shall apply at all meetings. A notice of the meeting, including location, time, agenda, and names of nominees shall be mailed or delivered to all Members not less than fifteen (15) days in advance of the meeting.

Section 3.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Lots and Houses. A notice of the meeting shall be mailed or otherwise delivered in a manner allowed by applicable law not less than fifteen (15) days in advance of the meeting.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of; the Board of Directors, by mailing a copy of such notice, not less than fifteen (15) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote thereat, addressed to each applicable Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots and Houses. There shall be one vote per platted Lot, and one vote per House. When more than one person owns an interest (other than a leasehold or security interest) in any Lot or House, all such persons shall be Members and the voting rights appurtenant to said Lot and House shall be exercised as they, among themselves, determine, but in no event shall, more than one (1) vote be cast.

Section 3.5 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one third (1/3) of the votes appurtenant to the Lots and Houses shall constitute a quorum for any action- except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.6 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 3.7 Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration, or these Bylaws, any act or decision approved by a vote of no less

than a majority of all votes present at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members.

Section 3.8 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.9 Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

## ARTICLE 4

### BOARD OF DIRECTORS

Section 4.1 Number. The business and affairs of the Association shall be managed by a Board of five (5) directors, who must be Members of the Association.

Section 4.2 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee composed of the Board of Directors. Nominations may also be made from the floor at the annual meeting. The committee shall nominate candidates to fill the next occurring vacancies on the Board of Directors. Their nominations must be delivered to the Secretary in time for the annual meeting notice.

Section 4.3 Election. Except as provided in Section 4.5, Directors shall be elected at the annual meeting of the Members by written ballot or a show of hands. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Starting in 2013, two directors will be elected by the members of the Swiss Village Property Owners Association for a three year term. In 2014 one director will be elected for a three year term. In 2015, two directors will be elected for three year terms, thus ensuring maximum continuity on the Board of Directors. This schedule will be followed in the subsequent years to ensure the staggering of terms.

Section 4.4 Term of Office. Each director shall hold office for the term of three (3) years, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. Nothing herein contained shall be construed to prevent the election of a director to succeed himself.

Section 4.5 Removal. Any director may be removed from the Board by a majority vote of the Members of the Association. In the event of death, resignation or removal

of a director, his successor shall be selected by the remaining Members of the Board and shall serve until the next annual meeting. The Members may elect a director at any time to fill any vacancy not filled by the directors.

Section 4.6 Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE 5

### MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board of Directors sees fit, approximately quarterly but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. At least one of the meetings shall be for the purpose of creating the budget and sending to the Members the annual assessment for the coming fiscal year.

Section 5.2 Special Meetings. Special Meetings of the Board of Directors shall be held when called by the President of the Board of Directors, or by any two directors, after not less than three (3) days notice to each director.

Section 5.3 Quorum. The President and at least two Members present at a duly held meeting shall constitute a quorum for the discussion of business. Any action requiring a vote shall require the vote of at least 4 of the 5 Directors. Members not present may vote by proxy or via telecom.

Section 5.4 President. The President of the Board of Directors shall be elected by the directors and shall preside over all Board of Directors actions.

Section 5.5 Liability of the Board of Directors. The Members of the Board of Directors shall not be liable to the owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the Members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are Owner(s).

## ARTICLE 6

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Areas, Roads, Water System, and Amenities;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration.

(c) declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and prescribe their duties;

(e) employ attorneys to represent the Association when deemed necessary;

(f) grant easements for the installation and maintenance of sewer or water lines and other utilities or drainage facilities upon, over, under and across the Common Areas without the assent of the Membership when such easements are requisite for the convenient use and enjoyment of Swiss Village.

(g) appoint and remove at pleasure all agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient;

(h) do anything necessary, including but not limited to, establishing any rules or regulations which the Association deems necessary to carry out the purposes of the Association as set forth herein or as permitted by law;

(i) enforce the provisions of the Declaration and the Bylaws, including the imposition of fines, penalties, and late charges to the full extent authorized under the North Carolina Planned Community Act;

(j) levy assessments as more particularly set forth in the Declaration.

Section 6.2 Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration:

(1) fix the amount of the Annual Assessment, Special Assessment, and Special Individual Assessment;



(2) send written notice of each assessment to every Owner subject thereto before its due date; and

(3) enforce actions spelled out in the Declaration with regard to assessments not paid within thirty (30) days after the due date as established by the Board of Directors when assessments are sent out, including any action at law against the Owner personally obligated to pay the same;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability insurance covering the Association and the directors thereof and adequate hazard insurance on the property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) cause the Common Areas to be maintained, and if damaged, to replace or repair such Common Areas (and any improvements located thereon) as they see fit.

## ARTICLE 7

### OFFICERS OF THE BOARD OF DIRECTORS AND THEIR DUTIES

Section 7.1 Officers. The officers of the Board of Directors shall be a President, a 1st Vice-President, a 2nd Vice President, a Secretary, a Treasurer, and such other officers as the Board of Directors may elect from time to time by resolution; who shall at all times be Members of the Board of Directors. This constitutes the entire Board of Directors.

Section 7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3 Term. Each officer of the Board of Directors shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.4 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board of Directors may determine.

Section 7.5 Vacancies. A vacancy on the Board of Directors will be filled by appointment by the Board of Directors. The Board Member appointed to such vacancy shall serve until the next annual meeting, at which time a vote will be held to fill the position for a regular three (3) year term.

Section 7.6 Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 7.7 Duties. The duties of the officers are as follows:

President

(a) The President shall be the principal executive officer of the Association, and subject to the control of the Board of Directors, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all leases, mortgages, deeds and other written instruments.

1st Vice-President

(b) The 1st Vice-President, or in his absence the 2nd Vice-President, shall act in the place and stead of the President in the event of his absence, inability or refusal to act. The 1st Vice-President and the 2nd Vice-President shall share the responsibility of managing the Water System, the Roads, and the Common Areas and any other duties as determined by the Board of Directors.

2nd Vice President

(c) The 2nd Vice-President shall share the responsibility of managing the Water System, Roads, and Common Areas and any other duties as determined by the Board of Directors.

Secretary

(d) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board of Directors and of the Members, shall keep appropriate current records showing the Members of the Association together with their addresses.

Treasurer

(e) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors. The Treasurer or the Treasurer's designee shall co-sign all checks of the Association along with one (1) other officer of the Association, shall keep proper books of account, and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members. The Treasurer shall be bonded.

ARTICLE 8

COMMITTEES

The Board of Directors shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

#### ARTICLE 9

#### BOOKS AND RECORDS

The books, records and papers of the Association shall be subject to inspection by any Member in good standing, with sufficient notice to the Board of Directors.

#### ARTICLE 10

#### ASSESSMENTS

Each Member is obligated to pay to the Association the Annual Assessment, Special Assessment and Special Individual Assessment, as defined in the Declaration. Any assessments which are not paid when due shall be delinquent. If an assessment is not paid by its due date, as set forth in the Declaration, the assessment shall bear interest from such due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Member personally obligated to pay the same. The interest charges, costs of collection and reasonable attorneys' fees related to any such action shall be added to the amount of such assessment. No Member may waive or otherwise escape liability for the assessments.

#### ARTICLE 11

#### CORPORATE SEAL

The seal of the corporation shall consist of two (2) concentric circles between which is the name of the corporation and in the center of which is inscribed "North Carolina, Seal."

#### ARTICLE 12

#### AMENDMENTS

These Bylaws may be amended at any time and from time to time by the affirmative vote or written agreement of Owners holding sixty-seven percent (67.0%) of votes appurtenant to the Lots and Houses which are then subject to these Bylaws. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Amended Bylaws must reference the date(s) and wording of previous amendments for the affected Bylaw.

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

#### ARTICLE 13

#### MISCELLANEOUS

The fiscal year of the Association shall begin the first (1st) day of July and end on the thirtieth (30th) day of June.

#### ARTICLE 14

#### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not-for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by law, agreement, vote of Members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article 14, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable State or Federal law.