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FILED
SWAIN COUNTY NC
DIANA WILLIAMSON KIRKLAND
REGISTER OF DEEDS

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BOOK	00518
START PAGE	0911
END PAGE	0918
INSTRUMENT #	00661
EXCISE TAX	(None)

This instrument Prepared by
Ferikes, Bleynat, & Cannon, PLLC

Return this Instrument to:
Battle Branch Subdivision
P.O. Box 264
Bryson City, NC 28713

**AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF
COVENANTS, RESTRICTIONS, AND EASEMENTS
FOR
BATTLE BRANCH SUBDIVISION**

STATE OF NORTH CAROLINA
COUNTY OF SWAIN

THIS DECLARATION is approved by the Lot Owners in Battle Branch Subdivision and is effective upon recording in the office of the Register of Deeds of Swain County, North Carolina. The property subject to this Declaration is located in Swain County, North Carolina and is more particularly described in the Declaration of Restrictive Covenants for Battle Branch Subdivision recorded on April 20, 1977 in Book 115, Page 233 in the office of the Register of Deeds of Swain County, North Carolina.

WITNESSETH:

WHEREAS, Battle Branch's developer issued deeds with restrictions in each deed for the following deeds conveying property within the Battle Branch Subdivision recorded at the Swain County Register of Deeds (hereafter the "Subdivision Property"):

Deed Book 96, at Page 207
Deed Book 96, at Page 193
Deed Book 104, at Page 483
Deed Book 99, at Page 426

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Deed Book 99, at Page 529
Deed Book 96, at Page 187
Deed Book 95, at Page 313
Deed Book 107, at Page 577
Deed Book 99, at Page 535
Deed Book 103, at Page 113
Deed Book 99, at Page 517
Deed Book 96, at Page 200
Deed Book 99, at Page 523
Deed Book 94, at Page 258
Deed Book 103, at Page 292
Deed Book 93, at Page 426
Deed Book 99, at Page 511
Deed Book 99, at Page 420

WHEREAS, a Declaration of Restrictive Covenants for Battle Branch Subdivision was recorded on April 20, 1977 in Book 116, Page 233 in the Office of the Register of Deeds in Swain County, North Carolina (hereafter the "1977 Declaration") to repeal and release said deed restrictions and adopt the restrictive covenants contained within the Declaration of Restrictive Covenants for Battle Branch Subdivision; and

WHEREAS, an Amended and Restated Declaration of Covenants, Restrictions, and Easements for Battle Branch Subdivision was recorded on May 26, 2021 in Book 492, Page 614 in the Office of the Register of Deeds in Swain County, North Carolina (hereafter the "Restated Declaration") to amend and restate the 1977 Declaration; and,

WHEREAS, Lot Owners within the Subdivision wish to amend the Restated Declaration; and,

WHEREAS, the owners of at least 67% of the Lots constituting the Subdivision Property have approved the application of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes to this Planned Community and the following Restated Declaration of Covenants, Restrictions, and Easements for Battle Branch Subdivision by ballot pursuant to N.C.G.S. § 55A-7-08 and N.C.G.S. § 47F-2-117.

NOW THEREFORE, in consideration of the mutual promises and obligations of each lot owner of record in Battle Branch Subdivision IT IS HEREBY AGREED that the Amended and Restated Declaration of Covenants, Restrictions, and Easements for Battle Branch Subdivision recorded in Deed Book 492, Page 614 in the Office of the Register of Deeds in Swain County, North Carolina on May 26, 2021, shall be amended as follows:

Article 1.04 is amended by adding after "subject to this Declaration or as shall subsequently become subject to this Declaration by amendment of this Declaration" the following language "or by being subdivided from a parcel located in this subdivision pursuant to the requirements in the Restated Declaration and any amendments thereto unless said Lot was in existence prior to the adoption of the Restated Declaration or any amendment thereto."

Article I shall be amended through the addition of the following language:

1.14 Roads: "Roads" shall mean the three categories of roads: "Original Roads," "Secondary Roads," and "Private Roads."

1.15 Original Roads: "Original Roads" shall mean the original Battle Branch Subdivision roads as depicted on the 1970 plat recorded in Plat Book 1, Page 330 B in the Office of the Register of Deeds in Swain County, North Carolina.

1.16 Secondary Roads: "Secondary Roads" shall mean roads built since 1970 and do not appear on the plat recorded in Plat Book 1, Page 330 B in the Office of the Register of Deeds in Swain County, North Carolina, which are traveled by more than one lot owner and said secondary road is necessary for access to multiple lots.

1.17 Private Roads: "Private Roads" shall mean roads built since 1970 and do not appear on the plat recorded in Plat Book 1, Page 330 B in the Office of the Register of Deeds in Swain County, North Carolina, which are not necessary for access to multiple lots and are built solely within a property owners' lot(s).

IT IS FURTHER AGREED that the Amended and Restated Declaration of Covenants Restrictions, and Easements for Battle Branch Subdivision recorded in Deed Book 492, Page 614 in the Office of the Register of Deeds in Swain County, North Carolina on May 26, 2021, shall be amended as follows:

Article II:

Article 2.02 is amended by deleting "the Corporation is responsible for causing the roads and common elements to be maintained, repaired, and replaced when necessary and to assess the Lot Owners as necessary to recover the costs of such maintenance, repair, or replacement, together with the costs of carrying out the responsibilities of the Board of Directors, except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in N.C.G.S. § 47F-3-115(c)(1)" and substituting "the Corporation is responsible for causing the roads and common elements to be maintained, repaired and replaced when necessary pursuant to the terms set forth elsewhere in this Declaration and to assess the Lot Owners as necessary to recover the costs of such maintenance, repair, or replacement, together with the costs of carrying out the responsibilities of the Board of Directors, except that the costs of maintenance, repair, or replacement of a limited common element shall be assessed as provided in N.C.G.S. § 47F-3-115(c)(1)."

Article 2.05 is amended by deleting "allocated to the resulting ots in accordance with" and substituting "allocated to the resulting lots in accordance with."

Article II shall be amended through the addition of the following language:

2.08 Maintenance of the roads shall be undertaken as follows:

(a) Original Roads: The Association will continue to maintain the original roads within the subdivision, except that the Association will have no obligation to maintain

roads that lead to lots with no structure beyond keeping the road free of obstructions (including, but not limited to, trees).

(b) Secondary Roads: New roads built by property owners for the purpose of subdividing or accessing their property must be paid for solely and only by such property owners. Should a new road require access through another member's property, the Association must receive a copy of a legally enforceable easement instrument that has been recorded with the Swain County Register of Deeds prior to the construction of such road.

New roads built by the property owner must be constructed by a road contractor approved by the Battle Branch Road Association Board of Directors. The road must meet safety standards as determined by an insured contractor which can be bonded for each road building project and upon the approval of the Board of Director member(s) as assigned by the Board of Directors President.

Payments for the building of secondary roads (as defined in this Declaration) must be made directly by the property owner to the road contractor. The Association will not collect monies from the property owner to pay the road contractor.

The property owner will pay for all expenses related to building the secondary road, including but not limited to excavation, grading, culverts, ditching, gravel etc.

Building new roads or logging activity is considered a land-disturbing activity. Prior to the commencement of building a road or logging activity within Battle Branch Subdivision, per compliance with Swain County, the owner must complete a Swain County Building Inspections Land Development Application and submit to Swain County for approval. A copy of the Application with the Swain County inspector's signed approval, must be provided to the President of the Association. The Application is required so Swain County is aware of the activity and the property owner and contractor are aware of regulations and penalties including but not limited to erosion control, storm water drainage, forest practice and water quality control. This will be effective for all land-disturbing activities currently undertaken at the time this Amendment is approved and going forward.

If the approved Land Development Plan Application is not submitted to the Association President, the Association will not have any duty to maintain any portion of the secondary road to a lot line at any point in the future should a dwelling be constructed on the lot.

Battle Branch Road Association will maintain only the portion of a Secondary Road to the lot line of the owner's property on a lot only upon the meeting of all of the following conditions:

- i. The construction of the dwelling must be completed.

- ii. A survey has been recorded at the Office of the Swain County Register of Deeds for the property where the dwelling is built to establish the location of the lot line. The costs for the survey and recording fees shall not be paid by the Association.
- iii. Members of the Association are granted a right of way to use the secondary road for ingress and egress.
- iv. A copy of the Certificate of Occupancy must be provided to the president of Battle Branch Road Association.
- v. The secondary road must meet safety standards as determined by an insured contractor which can be bonded for each road building project and upon the approval of the Board of Director member(s) as assigned by the Board of Directors President.

If the above conditions are met, the Association will assume all future costs for maintenance and care of the secondary road to the property lot line, of the surveyed, recorded lot after the dwelling construction is complete.

(c) The Association will not pay to build or maintain any portion of a private road.

IT IS FURTHER AGREED that the Amended and Restated Declaration of Covenants Restrictions, and Easements for Battle Branch Subdivision recorded in Deed Book 492, Page 614 in the Office of the Register of Deeds in Swain County, North Carolina on May 26, 2021, shall be amended as follows:

Article III is amended by deleting subparagraph 3.06 in its entirety and substituting the following therefore:

3.06 *Impact fees.* Recognizing that construction, logging, and road building activity requires an increase in heavy equipment traffic on the subdivision roads contributing to the need for increased maintenance of roads, within thirty (30) days of issuance of a building permit for construction of a dwelling upon a lot or any logging or building new secondary or private roads that results in use of the subdivision roads by vehicles having a gross vehicle weight equal to or greater than 14,001 pounds, the owner of such lot upon which the construction or logging or secondary/private road building/repair activity is taking place shall pay to the Association an initial deposit equal to the cost of two 15-ton loads of gravel plus one hour of scraping. In addition, the owner will pay additional fees commensurate with the distance traveled on Battle Branch Road Association maintained roads to the activity site per one-tenth (1/10th) of a mile based on the condition of the road at the time such activity commences. The additional fees will be due and payable to the Association as follows: twenty-five percent (25%) due two months after deposit is paid, fifty percent (50%) due four months after deposit is paid, and remaining twenty-five percent (25%) six months after deposit is paid, or at the completion of the activity, whichever is sooner. If the construction or logging or secondary/private road building/repair continues for more than one twelve (12) month period, additional fees per one-tenth (1/10th) of a mile may be assessed pending the duration of the activity and/or weather conditions during that

period. This Section applies to all lots in the subdivision, including those otherwise exempt from annual assessments.

IT IS FURTHER AGREED that the Amended and Restated Declaration of Covenants Restrictions, and Easements for Battle Branch Subdivision recorded in Deed Book 492, Page 614 in the Office of the Register of Deeds in Swain County, North Carolina on May 26, 2021, shall be amended as follows:

Article IV:

Section 4.03 is amended by deleting "less than 1.5 acres in size" and substituting "less than 5.0 acres in size."

Section 4.11(a) is amended by deleting "provided that none of the resulting Lots are less than 1.5 acres in size" and substituting "provided that none of the resulting Lots are less than 5.0 acres in size."

Article IV is amended by deleting in its entirety 4.20.

IT IS FURTHER AGREED that this Amendment shall be binding upon the parties, their respective heirs, successors and assigns and shall run with the titles to the lands of the undersigned and all other land subject to the aforesaid Declaration of Battle Branch Subdivision.

Other than the amendments set forth herein the Amended and Restated Declaration of Covenants, Restrictions, and Easements for Battle Branch Subdivision recorded in Deed Book 492, Page 614, shall remain in full force and effect.

The undersigned officers of Battle Branch Road Association, Inc. certify that a vote by the membership of the Association was taken by written ballot on a resolution that the Amended and Restated Declaration of Restrictive Covenants for Battle Branch Subdivision recorded on May 26, 2021, in Book 492, Page 614 in the Office of the Register of Deeds of Swain County, North Carolina, as the same may have been amended from time to time, be amended as set forth above and the Resolution was approved by the owners of 51 Lots of the 67 Lots in the subdivision (76%).

This 30 day of March, 2023.

BATTLE BRANCH ROAD ASSOCIATION

By: Janet Kolb
Janet Kolb, President

STATE OF NORTH CAROLINA

Swain COUNTY

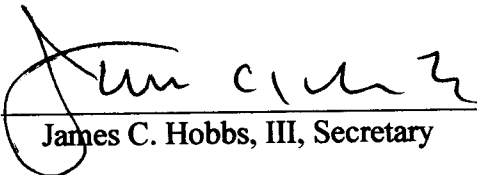
I, Theresa H Cotton, a Notary Public for the above state and county, certify that Janet Kolb personally came before me this day and acknowledged that she is President of Battle Branch Road Association, Inc., a corporation, and that she, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 30 day of March, 2023.



Theresa H Cotton
Notary Public

My Commission Expires: 08/26/2024

ATTEST: 
James C. Hobbs, III, Secretary

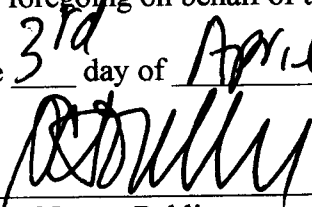
STATE OF GEORGIA

Gwinnett COUNTY

I, James C Hobbs III, a Notary Public for the above state and county, certify that James C. Hobbs, III, personally came before me this day and acknowledged that he is Secretary of Battle Branch Road Association, Inc., a corporation, and that he, as Secretary, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 3rd day of April, 2023.

(Official Seal)


Notary Public

My Commission Expires: March 9, 2024.

