

**BY-LAWS
OF
THE CROOKED CREEK PROPERTY OWNERS ASSOCIATION**

1. GENERAL PROVISIONS

1.1. Name and Office. The name of this Association is “The Crooked Creek Property Owners Association” (“Association”). The Association is an unincorporated Property Owners’ Association. The principal office of the Association shall be located in Banner Elk, Avery County, North Carolina. The registered office of the Association, if required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.

1.2. Eligibility for Membership. Any person owning real property which is located within the boundaries of Crooked Creek Development shall be eligible for membership in the Association. Crooked Creek Development is located in the Town of Banner Elk, Township of Banner Elk, Avery County, North Carolina. The Planned Development is more particularly described in the Declaration of Restrictions, Covenants, and Conditions for Crooked Creek Development. One and only one owner shall be entitled to membership regardless of the number of owners of any particular lot or parcel of land. Before any new member shall be entitled to the rights and privileges accorded under the Property Owners Association, such member shall (1) pay all assessments and fees applicable to such membership, (2) agree to read and abide by the By-Laws and rules and regulations of the Association.

1.3. Member in Good Standing. Any member who has paid in full all assessments or charges levied by the Association and who is in compliance with the By-Laws and rules and regulations of the Association shall be a member in good standing. The decision of the Board of Directors as to which members of the Association are “members in good standing” shall be conclusive.

1.4. Membership and Voting Rights. Members of the Association shall be all property owners who shall be entitled to one vote for each Lot, according to the most recent Survey recorded in the office of the Register of Deeds of Avery County.

1.5. Compliance with Documents. Each owner shall abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Crooked Creek Property Owners Association Documents.

1.6. Rules and Regulations. The Association, from time to time and subject to the provisions of the Crooked Creek Property Owners Association Documents, may adopt, amend and repeal rules and regulations, to be known as the “Crooked Creek Property Owners Association Rules”, governing, among other things and without limitation:

1.6.1. The use of Open Space;

1.6.2. The use of private roads;

1.6.3. Parking restrictions and limitations; and

1.6.4. A schedule of fines for the infraction of the Crooked Creek Property Owners Association Rules or the Project Documents.

A copy of the Crooked Creek Property Owners Association Rules in effect shall be

distributed to each Member of the Association, and any change in the Crooked Creek Property Owners Association Rules shall be distributed to each Member within a reasonable time following the effective date of the change.

1.7. Assistance to Design Review Committee. The Association shall in all respects cooperate with and assist the Design Review Committee in the complete attainment of the Committee's functions, and in the enforcement of its guidelines, rules, regulations and decisions.

1.8. Manager. The Association may employ or contract for the services of a Manager, provided that no such employment shall be by a contract having a term or more than three years, and each such contract shall be subject to cancellation by the Association on 90 days or less prior notice without cause and without payment of a termination fee. The Manager shall not have the authority to make expenditures for additions or improvements chargeable against the Maintenance Fund except upon specific prior approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

1.9. Ownership of Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within Crooked Creek Development and conveyed to the Association by Declarant.

1.10. Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Crooked Creek Property Owners Association Documents, and the books, records, and financial statements of the Association prepared pursuant to the By-Laws. The Association may charge a reasonable fee for copying such materials.

2. MEETINGS

2.1. Place of Meetings. All meetings of this Association shall be held at the property or at such other place either within or without the State of North Carolina, as shall be determined by the Board of Directors of this Association (hereinafter described and hereinafter called "the Board").

2.2. Annual Meetings. Annual meetings of this Association shall be held during the month of July concurrent with the start of the newly elected Board member terms, at such times and place as may be designated by the Board and specified in the notice of each such meeting, for the transaction of such business as may be properly brought before the meeting.

2.3. Substitute Annual Meetings. If the annual meeting shall not be held on the day designated, a substitute annual meeting may be called in accordance with the provisions of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

2.4. Special Meeting. After the organizational meeting, special meetings of this Association may be called at any time by the Board or upon the written request of Owners owning in the aggregate no less than one-third (1/3) of the total votes of the Association.

2.5. Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting shall be delivered or mailed not less than ten (10) days nor more than sixty (60) days before the date thereof, to each person entitled to vote at such meeting. In the case of an

annual or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted. In the case of a special meeting the notice of meeting shall specifically state the purpose or purposes for which the meeting is called. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty (30) days in any one adjournment, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is effective.

2.6. Quorum. The presence in person or by proxy at any meeting of the voting members (as defined in this Article) having a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of this Association at which a quorum is present upon the affirmative vote of the voting members having a majority of the total votes present at such meeting. If there is no quorum at the opening of the meeting, such meeting may be adjourned from time to time by the vote of a majority of the voting members present, either in person or by proxy; and at any adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the original meeting. The voting members at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting members to leave less than a quorum.

2.7. Voting Rights. There shall be one person with respect to each membership who shall be entitled to vote at any meeting of this Association. Such person shall be known and hereafter referred to as a “voting member”. Such voting member may be the owner or one of the group composed of all of the owners of a residential unit, or may be some other person designated by such owner or owners to act as proxy on his or their behalf and who need not be an owner. Such designation shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board of the death or judicially declared incompetence of any designator, or by written notice to the Board by the owner or owners. The total number of votes of all voting members shall equal the total number of outstanding votes of Members.

2.8. Waiver of Notice. Any member may at any time waive notice of any meeting of this Association in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of this Association shall constitute a waiver of notice of the time and place thereof, except where a member attends a meeting and indicates immediately upon the meeting’s being called to order that the sole purpose of attending is to object to the transaction of business because the meeting has not been lawfully called.

2.9. Informal Action by Members. Any action which may be taken at a meeting of this Association, except removal of a member of the Board, may be taken without a meeting by written approval, signed by voting members having the voting power required to pass such action at a meeting. Such approval shall be filed with the secretary of this Association and kept in the Minute Book of this Association.

2.10. Proprietary Interest. During the existence of this Association, no member shall own or benefit from any property owned by the Association and upon the dissolution of the Association, the property and assets of the Association shall be conveyed and distributed to a grantee or recipient, chosen by the Board of Directors of the Association, that would, in the discretion of the Board of Directors, best protect the owners of property of the Crooked Creek Property Owners Association and serve the purposes for which the Association is formed.

3.

BOARD OF DIRECTORS

3.1. General Powers. The business and property of the Association shall be managed and directed by the Board or by such Executive Committees as the Board may establish pursuant to these By-Laws.

3.2. Number, Term and Qualification. The number of Directors of this Association shall be the number three (3) or five (5), fixed from time to time upon the affirmative vote of voting members representing a majority of the total vote of the Association. In the year 2006 only, two (2) seats on the Board shall be for a term of one (1) year. The balance of the seats shall be for a term of two (2) years. In the year 2007, the one (1) year terms shall terminate and become two (2) year terms. Any member of the Board of Directors who has served two (2) consecutive terms shall not be re-elected until a period of at least one (1) year has elapsed since the termination of his/her prior term of office. A Board member's term may expire before two years due to death, resignation, retirement, removal, or disqualification. In the event a Board member's term has expired but no successor has been elected or appointed, that Board member can remain in the seat until his or her successor is elected or appointed. If a Board member has three or more consecutive unexcused absences from regular meetings of the Board, the Board may, but is not required to, declare the seat of that Board member vacant. If a lot has more than one owner, only one of said owners shall serve as a Board member at any given time. In the event a property owner has individually deeded lot(s), but has a spousal, or cohabited relationship, only one Owner of that entity shall be eligible to serve as a member of the Board at any given time. In the event an Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, one (1) beneficiary of such trust or one (1) manager of such other legal entity shall be eligible to serve as a member of the Board at any given time.

3.3. Election of Directors. Directors shall be elected to fill seats that are to become vacant in any year by written secret ballot prior to May 15th. Nominations shall be solicited. The information sheets filled out by the candidates shall be mailed to every property owner entitled to vote, along with ballot(s), in sufficient time for the results to be tabulated and for the newly elected Board members to attend at least one (1) working session with the current Board of Directors prior to the annual meeting. Depending on the number of nominations received for the number of seats available, the election shall be either competitive or noncompetitive.

3.3.1. If the nominations received are at least one greater than the number of vacancies to be filled, a competitive ballot shall be used. Candidates' names shall be listed, and property owners may vote for up to and including the number of vacancies on the Board. Candidates receiving the most votes shall be elected. In the event of a tie vote, the names of the candidates involved in the tie shall be placed in a container and the winner(s) shall be drawn to fill the vacant seat(s).

3.3.2. If nominations received do not exceed the number of vacancies to be filled, a non-competitive ballot shall be used. Candidates' names shall be listed, and property owners shall vote either "yes" or "no" for each candidate. Any candidate receiving more than 60% "no" votes shall not serve on the Board.

3.3.3. Property owners shall receive separate ballots for each lot owned. To

ensure a secret election, a two (2) envelope return system shall be required. A completed ballot shall be sealed in a plain envelope. The plain envelope shall be returned in an outer envelope which shall be identified with a lot number and shall require the Lot owner's signature to be considered a legal ballot. The sealed ballot envelopes shall be turned over to a Counting Committee. This committee shall consist of three (3) property owners who have been appointed by the Board, but are independent of that Board. After tabulating, the results shall be reported to the Board and the ballots shall be sealed.

3.3.4. Candidates who are not elected to the Board shall not be eligible to be selected to fill a vacancy occurring on the Board during the term for which the candidate was seeking election.

3.4. Removal. Directors may be removed from office with or without cause by affirmative vote of a majority of the total votes entitled to vote at an election of Directors. However, unless the entire Board is removed an individual Director may not be removed if the number of members voting against the removal would be sufficient to elect a Director if such members voted cumulatively at an annual election. If any Directors are so removed, new Directors may be elected at the same meeting.

3.5. Vacancies. A vacancy occurring in the Board of Directors, including Directorships not filled by the members, may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining Director; but a vacancy created by an increase in the authorized number of Directors shall only be filled by written mail-in ballot. Voting members may elect a Director at any time to fill any vacancy not filled by the Directors.

3.6. Compensation. Directors shall receive no compensation for their services.

3.7. Executive Committees. The Board may by resolution designate two or more Directors to constitute an Executive Committee, which committee to the extent provided in such resolution shall have and may exercise all of the authority of the Board.

3.8. Powers and Duties. The Board shall have the powers and duties necessary for the Administration of the affairs of the Association and may do all such acts and things except such acts as by law or by the Declaration or by these By-Laws may not be delegated to the Board. Such powers and duties of the Board shall include, but shall not be limited to, the following:

3.8.1. Operation, care, upkeep and maintenance of the property which is owned and/or maintained by the Association.

3.8.2. Determination of the common expense required for the affairs of the Association, including, without limitation, the operation and maintenance of the property owned and /or maintained by the Association.

3.8.3. Collection of the common charges.

3.8.4. Employment and dismissal of personnel.

3.8.5. With the approval of the members of the Association having the majority of the total votes, the adoption and amendment of such reasonable Rules and Regulations as it may deem advisable for the maintenance, conservation, and beautification of the property owned, controlled, or maintained by the Association, and the enforcement of the Declaration. Written notice of such rules and regulations shall be given to all owners and occupants and the entire property shall at all times be maintained subject to such Rules and Regulations.

3.8.6. Opening of bank accounts on behalf of the Association and designating the signatories required thereon.

3.8.7. Purchasing or leasing or otherwise acquiring in the name of the

Board or its designee, corporate or otherwise, on behalf of the Association, property offered for sale or lease.

3.8.8. Purchasing of real property within Crooked Creek Development at foreclosure or other judicial sales in the name of the Board, or its designees, corporate or otherwise, on behalf of the Association

3.8.9. Selling, mortgaging, voting the votes appurtenant to or otherwise dealing with property acquired by the Board or its designee, corporate or otherwise, on behalf of the Association, subject to the Declaration and other applicable restrictions, and organizing corporations to act as designees of the Board in acquiring title to property on behalf of the Association.

3.8.10. Maintaining the property, if necessary in the discretion of the Board or by operation of applicable restrictions to protect the common areas and facilities or any other portion of Crooked Creek Development where the Owner has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered or mailed by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair.

3.8.11. Entering upon any lot when necessary in connection with any maintenance for which the Board is responsible, provided such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expense shall be treated as common expense.

3.8.12. Signing all agreements, contracts, deeds and vouchers for payment for expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the Treasurer and countersigned by the President of the Association.

3.8.13. Obtaining of insurance for the property owned, maintained or controlled by the Association, or any other insurance the Board deems necessary, pursuant to applicable provisions of these By-Laws and the Declaration.

3.8.14. Making of repairs, additions and improvements to or alterations of the property and repairs to and restoration of the property of the Association in accordance with the other provisions of these By-Laws and the Declaration, after damage or destruction.

4. MEETINGS OF DIRECTORS

4.1. Regular Meetings. A regular meeting of the Board shall be held

immediately after, and at the same place as the Annual Meeting or substitute annual meeting of this Association. In addition to the Annual Meeting, two open Board meetings shall be required, one during the month of September or October and one between January and April. Property owners shall be notified of such meetings. In June an executive Board meeting shall be held with the newly elected and existing Board members. In addition, the Board shall provide by resolution the time and place either within or without the State of North Carolina, for the holding of a regular meeting of the Board. A regular meeting of the Board may be held via teleconference or videoconference.

4.2. Special Meetings. Special meetings of the Board may be called by or with the request of the President or by a majority of the Directors. Such meetings may be held either within or without the State of North Carolina.

4.3. Notice of Meetings. Regular meetings of the Board may be held without notice. The person or persons calling a special meeting of the Board shall, at least two days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

4.4. Waiver of Notice. Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof, except where a Director attends the meeting and announces immediately upon the meeting's being called to order that he is attending for the sole purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Board are present at any meeting of the Board, and no objection is made, no notice shall be required and any business may be transacted at such meeting.

4.5. Quorum. A majority of the number of Directors fixed by these By-Laws shall be required for and shall constitute a quorum for the transaction of business at any meeting of the Board.

4.6. Manner of Acting. Except as otherwise provided in this Section, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

A vote of a majority of the number of Directors fixed by the By-Laws shall be required to adopt a resolution constituting an Executive Committee. The vote of a majority of the Directors then holding office shall be required to adopt, amend, or repeal a By-Law.

4.7. Organization. Each meeting of the Board shall be presided over by the President of the Board, and in the absence of the President, by any person selected to preside by vote of the majority of the Directors present. The Secretary, or in his absence, an Assistant Secretary, or in the absence of both the Secretary and the Assistant Secretary any person designated by the Chairman of the meeting, shall act as Secretary of the meeting.

4.8. Informal Action of Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

4.9. Minutes. The Board shall keep minutes of its proceedings.

4.10. Liability of the Board. The members of the Board shall not be liable to the members of the Association for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of

contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or knowingly contrary to the provisions of the Declaration or these By-Laws. It is intended that the members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent they are members of the Association.

5. OFFICERS

5.1. Number. The principal officers of the Association shall consist of a President, a Vice President, a Secretary, a Treasurer and such other officers as the Board may from time to time elect. Any two or more offices may be held by the same person except the office of President.

5.2. Election and Term. The officers of the Association shall be elected by and from among the Board. Such elections may be held at the regular annual meeting of the Board. Each officer shall hold office for a period of one year or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualifies.

5.3. Removal. Any officer or agent elected or appointed by the Board may be removed by the Board with or without cause; but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

5.4. Compensation. No officer shall receive any compensation.

5.5. President. The President shall be the principal executive officer of the Association and, subject to the control of the Board, shall supervise and control the management of the Association. The President shall when present reside at all meetings of the Board and of this Association and shall, in general, perform all duties incident to the office of President and such other duties as may be prescribed from time to time by the Board.

5.6. Vice President. The Vice President and if there be more than one, the Vice President designated by the Board shall, in the absence or disability of the President, have the powers and perform the duties of said office. In addition, each Vice President shall perform such other duties and have such other powers as shall be prescribed by the President.

5.7. Secretary. The Secretary shall keep accurate records of the acts and proceedings of all meetings of this Association and Directors. He shall give, or cause to be given, all notices required by law and by these By-Laws. He shall have general charge of the minute books and records of both this Association and the Board. He shall sign such instruments as may require his signature, and shall, in general, perform all duties incident to the Office of the Secretary and such other duties as may be assigned him from time to time by the President or by the Board.

5.8. Treasurer. The Treasurer shall have custody of all Association funds and securities and shall receive, deposit or disburse the same under the direction of the Board. The Treasurer shall keep full and accurate accounts of the finances of the Association in books especially provided for its assets and liabilities as of the close of each fiscal year, and of the results of its operations and of changes in surplus for such fiscal year, all in reasonable detail, to be prepared and distributed to the members of the Association and members of the Board on or before the 15th day of the third month following the close of each fiscal year. The statement so filed shall be kept available for inspection by any member of the Association for a period of three (3) years. The Treasurer shall also file all reports and returns required by Federal, State or local law and shall

generally perform all other duties as may be assigned to him from time to time by the President or the Board.

The Treasurer may disburse from the funds of the Association amounts up to \$100.00 for the needs of the Association without receiving prior Board approval.

6. DESIGN REVIEW COMMITTEE

6.1. Membership. There is established a Design Review Committee which shall be responsible for the establishment and administration of Design Review Guidelines to carry out the purposes and intent of the Declaration. The Committee shall be composed of five (5) persons, who must be property owners. All of the members of the Committee shall be appointed, removed, and replaced by the Board of Directors in its sole discretion. No member of the Crooked Creek Board of Directors shall be a member of the Design Review Committee.

6.2. Purpose. The Committee shall review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the rules and regulations of the Committee and the Design Guidelines adopted and established from time to time by the Committee.

6.2.1. The Committee shall exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the building site, height, grade and finished ground elevation, and all aesthetic considerations set forth in this Declaration or in the Design Guidelines.

6.2.2. No Improvement on the Property shall be or altered on any Lot nor shall any construction be commenced until plans for such Improvement shall have been approved by the Committee; provided, however, that improvements and alterations which are in a building may be undertaken without such approval.

6.2.3. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties, subject to appeal.

6.2.4. Appeal. Decisions of the Design Review Committee may be appealed to the Crooked Creek Board of Directors. The request for an appeal hearing shall be made in writing within 15 days of receiving the decision/disapproval from the Design Review Committee. The Board of Directors shall hold said appeal hearing within 30 days of receipt of the written appeal request. Decisions of the Board shall be binding.

6.3. Organization and Operation of Committee.

6.3.1. Term. The term of office of each member of the Committee, subject to Paragraph 6.1, shall be one year, commencing in August, and continuing until a successor shall have been appointed. Each member of the Committee shall serve no more than two (2) consecutive terms. After one (1) year off, an individual may again be appointed to serve as a member of the Design Review Committee. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in paragraph 6.1.

6.3.2. Chairman. As the Committee is appointed by the Board of Directors, the

chairman shall be elected annually from among the members of the Committee by majority vote of said members.

6.3.3. Operations. The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting. Notice may be waived by any member. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, a temporary successor.

6.3.4. Voting. The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee. A quorum shall consist of a majority of the members.

6.3.5. Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

6.4. Expenses. Except as provided below, and subject to the Association's Board of Directors right of approval of such expenses, all expenses of the Committee shall be paid by the Association. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation. Until December 31, 1995, the filing fee shall not exceed \$250 per dwelling unit, but may be subject to reasonable increase after the date as determined by the Board on recommendation from the Committee.

6.5. Design Guidelines and Rules. The Committee shall adopt, establish, and publish from time to time Design Guidelines, which shall be a Crooked Creek Property Owners Association Document. The Design Guidelines shall not be inconsistent with this Declaration, but shall more specifically define and describe the design standards for Crooked Creek Development and the various uses within Crooked Creek Development. The Design Guidelines may be modified or amended from time to time by the Committee, with the approval of the Board of Directors; further, the Committee, with the approval of the Board of Directors, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the Crooked Creek Property Owners Association design review process is not a substitute for compliance with local and state building, zoning, and subdivision regulations, and each owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

6.6. Procedures. As part of the Design Guidelines and Rules, the Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings.

6.7. Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual Committee member, shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for Banner Elk, NC. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of the Improvements. Neither the Board, the Design Review Committee, or any agent thereof, shall be responsible in any way for any defects in

any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee shall be adjudged to be liable for negligence or misconduct in the performance of their duty as a member of the Committee, unless and then only to the extent that the Court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

6.8. Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Board, and upon written request of any Owner or his agent, an existing or prospective Mortgagee or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the Owner is in violation of any of the terms and conditions of the Crooked Creek Property Owners Association Documents. Unless such request shall be complied with within 30 days after the receipt of the request, it shall be conclusively presumed that the Owner and the Owner's Improvement are in conformance with all the terms and conditions subject to the control of the Committee.

7. **DAMAGE OR DESTRUCTION**

Association as Attorney in Fact. Each and every owner irrevocably constitutes and appoints the Association as such owner's true and lawful attorney in fact in such Owner's name, place, and stead for the purpose of dealing with the Common Elements upon damage or destruction as provided in this Paragraph or a complete or partial taking as provided in this Declaration. Acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney in fact.

8. **RECORDS, AUDITS, REPORTS AND NOTICES**

The Board shall keep records of the actions of the Board, minutes of the meetings of the Board, minutes of the meetings of the members, and financial records and books of account of the Association, including a chronological listing of receipts and expenditures, as well as a separate account for each member which, among other things, shall contain the amount of each assessment of the common charges against such member, the date when due, the amounts paid thereon, and the balance remaining unpaid. The financial records and books of account, as well as copies of the Declaration, By-Laws and any Rules and Regulations then in effect, as amended to the time, shall be available for examination by all members upon request during normal business hours or under other reasonable circumstances.

9. SUSPENSION AND DISMISSAL

9.1. **Suspension of Rights and Privileges for Non-Payment.** In any membership dues, accounts, or assessments shall remain unpaid for a period of SIXTY (60) days subsequent to the time when each is due, such non-payment shall, at the discretion of a majority of the Board of Directors, work a total suspension of all rights and privileges of the debtor member until such dues, accounts, or assessments are paid. During such suspension, the debtor member shall not enjoy the rights and privileges which belong to a member. The debtor member shall be notified of such suspension and its duration in writing, at his last known mailing address, by the President.

9.2. **Reinstatement of Rights and Privileges of Debtor Member.** The Board of Directors may, in its sole discretion, reinstate the suspended rights and privileges of the delinquent member upon the payment of all outstanding dues and accounts owed and a penalty in the form of a reinstatement fee in amount set by the Directors.

10. RESOLUTION OF DISPUTES

If any dispute or question arises between Members or between Members and the Association or the Design Review Committee relating to the interpretation, performance or non performance, violation, or enforcement of the Crooked Creek Property Owners Association Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the By-Laws.

11. AMENDMENT

These By-Laws may be amended by the affirmative vote of the owners representing a majority of the members; provided, however, that any such amendment shall not become operative until recorded. All members shall be bound to abide by any amendment.

State of North Carolina – County of Avery

I, the undersigned Notary Public of the county and state aforesaid, certify that *Dorothy Pullease* personally came before me and acknowledged that she is the Secretary of the Crooked Creek Board of Directors and that she signed the foregoing instrument in its name and on its behalf as its act and deed. Witness my hand and Notarial stamp or seal this _____ day of July, 2006.

Commission Expires: _____
Notary Public

CERTIFICATION

I certify:

I am the duly elected and acting Secretary of Crooked Creek Property Owners Association;

The foregoing By-Laws constitute the original By-Laws of the Crooked Creek Development Association with amendments voted and approved by members of the Crooked Creek Property Owners Association.

IN WITNESS WHEREOF, I have hereunto subscribed my name on _____.

_____(SEAL)
Secretary