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State of North Carolina  
County of Buncombe

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*Dunger Law Firm*

**Fifth Amendment  
To**

**Declaration of Covenants, Conditions and Restrictions for Starview Heights**

This **Fifth Amendment to Declaration of Covenants, conditions and Regulations for Starview Heights** (herein "Fifth Amendment") made and entered this 9th day of December, 2019 by **CPBI,LLC**, a North Carolina limited liability company (herein "Successor Declarant") and **Starview Heights Property Owners Association, Inc.(POA)**, a North Carolina non-profit corporation and all Future Owners within Starview Heights.

**Witnesseth:**

**That Whereas**, a predecessor Declarant filed that certain **First Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Starview Heights** as recorded in **Book 4939, at Page 1165** and that certain **Confirmation of First Amendment and Restatement of Declaration** as recorded in **Book 4966, at Page 514** of the Buncombe County, NC Registry's Office ("Registry") and Successor Declarant filed that certain **Second Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Starview Heights** as recorded in **Book 5234, at Page 189**, that certain **Supplement to Declaration of Covenants, Conditions and Restrictions for Starview Heights** as recorded in **Book 5307, at Page 1496**, and that certain **Third Amendment to Declaration of Covenants, Conditions and Restrictions for Starview Heights** as recorded in **Book 5373, at Page 1894** of the Registry and that certain **Fourth Amendment and Restatement of Declaration of Covenants, Conditions and Restrictions for Starview Heights** as recorded in **Book 5521, at Page 846-849** of said Registry (herein collectively "Declaration"); and

**Whereas**, Successor Declarant is the assignee under the certain Assignment of Declarant Rights, Contracts and Permits for Starview Heights as recorded in **Book 5020. At Page 950** of the Registry; and

**Whereas**, the Successor Declaration desires to modify and amend the Declaration as set forth herein.

**Now Therefore**, the Successor Declarant, by this Fifth Amendment to the Declaration does hereby modify and amend the Declaration as follows:

1. Article IV, Section 4, Dwelling Units is hereby modified and amended to add: No dwelling structure shall be erected, altered, placed, or permitted to remain on any Lot that exceeds the variance. No dwelling and/or improvements (i.e: porches; patios; decks, etc) shall be constructed within the following set-backs : front set-back - 7 feet, side set-back - 5 feet, and rear set-back - 10 feet.
2. Article IV, Section 9, Animals is hereby modified and amended by adding the following:

Pet owners are responsible to/for:

- follow all rules and regulations including but not limited to the posted rules.
- When outside, dogs must be on a leash at all times, with the exception of when they are in the fenced-in area of the dog park.
- accompany and be in control of their dog(s) and are responsible for the behavior of their dog(s) at all times.
- any damages their pets do in the community.
- clean up their pet's waste and dispose of it properly.

The Dog Park is for the exclusive use of the Starview Heights Community Members and their guests. The respective community member is responsible for the use of the dog park by their guest(s). Community members must sign and submit an indemnification and hold harmless agreement to the Property Manager before they or their guest(s) are permitted to bring their dog(s) into the Dog Park area.

3. Article IV, Section 10, Parking is hereby modified and amended to provide the following:

No parking of unlicensed, uninspected or inoperable vehicles shall be allowed on the Property.

No parking of any motor vehicles shall be allowed on streets within the property, per directive from the Buncombe County Fire Marshall in compliance with local and state ordinances and is prohibited by the Association. The **only exception** is when someone is **actively** loading or unloading a vehicle. Failure to comply puts both the homeowner and the Starview Heights Property Owners Association at risk of receiving a citation and being fined. If a fine is assessed against Starview Heights Property Owners Association (POA) as a result of a property owner (or their guest(s)) violation of State or County Laws/Ordinances, the property owner will be required to reimburse the POA for any and all costs the POA has incurred. In an effort to control potential parking violations within the property, the POA, after notice and opportunity to be heard by the Association may fine violators up to \$100.00 per violation or \$100.00 per day for a continuing violation.

Campers, motorhomes and boats may be parked on homeowners property for no more than twenty-four (24) hours. Overflow parking on Dani Lane is available for up to five (5) days. Parking for a period beyond five (5) days must have prior approval of Property Advisor/Declarant or designee. Residents of dwelling units may wash motor vehicles in their driveways.

In addition, no one shall store or keep a tractor, commercial business vehicle or any non-road worthy vehicle (with the exception of a golf cart or small utility vehicle) on the Property except in designated areas and with prior approval of Declarant or Property Manager.

There can be (a) no more than a total of four motor vehicles or (b) no more motor vehicles than can be reasonably parked in the Owner's driveway and garage at any dwelling unit, and except as may be otherwise provided in the rules and regulations enacted by the Association.

Temporary overflow parking is available in designated areas in the community. Prior approval from the Property manager or designee is required to park in the overflow parking and at the Clubhouse parking for a period longer than 24 hours.

If you or your guest(s) receive a warning for a parking violation, the warning also serves as notice that if your vehicle(s); or that of your guest(s); is/are noticed to be in violation of the Covenants parking restrictions at any time in the future, the

POA has the authority to remove the subject vehicle(s) WITHOUT NOTICE from the Community at the expense of the vehicle owner.

**Article XII,** The current Article XII is amended by designating it as Section 1 and by adding to Article XII new Sections 2 and 3 as follows:

**Section 2. Fining Powers.** Pursuant to Sections 47F-3-102(a)(11) and 47F-3-107.1 of the Planned Community Act, after notice and an opportunity to be heard, the Board shall have the power to impose fines in an amount not to exceed One Hundred Dollars (\$100.00) per violation, such amount to be assessed per day for a continuing violation, for any violation of any duty imposed under the Planned Community Act, the Declaration, ByLaws, or Rules and Regulations duly adopted pursuant thereto against Owners or occupants, which fine(s) shall constitute an assessment against the Lot in accordance with **Article VI** hereof, and become a personal obligation of the Lot owner, and a lien upon the property; to suspend an Owner's or occupant's right to use common elements; and to suspend an Owner's right to vote. In the event that any occupant of a Resident Lot violates the Planned Community Act, Declaration, ByLaws, or the Rules and Regulations and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Resident Lot Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Planned Community Act, Declaration, ByLaws, or Rules and Regulations, shall not be deemed a waiver of the right of the Board to do so thereafter. Additionally, Lot Owners waive and release any defense that enforcement is or may be selective. Charges for late payments of assessments under Article VI of the Declaration are not to be regarded as fines that warrant a hearing under this section.

**Abatement and Enjoinment of Violations.** In addition to any other remedies provided for herein, the Association through the Board shall have the power to enter upon a Lot or any portion of the common elements to abate or remove, using such force as may be reasonably necessary, any erection, thing, or Rules Making Authority. Starview Heights Community shall be used only for those uses and purposes set out in the Declaration and ByLaws. After the Declarant period Article XII-3, the Board shall have the authority to make, modify, repeal, and to enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of Lots and the common elements, so long as copies, of all such Rules and Regulations are furnished to all Owners: provided, however, any Rule or Regulation may be repealed by the affirmative vote or written agreement of a majority (50% plus 1) of the total vote by eligible Association members voting in person or by proxy at an annual or special meeting. No rule or regulations shall be in conflict with either the Declaration or the condition which violates the Declaration,



ByLaws, or Rules and Regulations. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise such abatement and an opportunity to be heard. All costs of abatement, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

Additionally, the Association through the Board shall have the power to enjoin or remedy by appropriate legal proceeding, either at law or in equity, the continuance of any violation of the Declaration, ByLaws, or Rules and Regulations. All costs of any such legal action, including reasonable attorney's fees actually incurred, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

## **Article XII**

**Section 3. Enforcement Procedures**-In accordance with Section 47F-3-107.1 of the Planned Community Act, the Board of Directors shall not impose a fine or charge for damages against a Lot Owner or suspend a Lot Owner's planned community privileges or services unless and until the following procedure is followed:

**A. Notice.** If it appears that a lot owner is in violation of the Declaration, ByLaws, or Rules and Regulations, the Board shall give the violator written notice of the alleged violation. This notice shall state: (i) the nature of the alleged violation; (ii) the date, time and location that the violator will have the opportunity to be heard to explain why the lot owner is not in violation of the Declaration, ByLaws, or Rules and Regulations; (iii) that any statements, evidence and witness may be produced by the violator at the hearing; and (iv) that the Lot Owner has the right to be represented by an attorney at the hearing.

**B. Hearing.** The hearing shall be held before the Board of Directors and the violator shall be given reasonable opportunity to be heard. If it is decided that a fine should be imposed, a fine not to exceed one hundred dollars (\$100.00) may be imposed for the violation and without further hearing, for each day more than five days after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-116. If it is decided that a suspension of Starview Heights Community privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured. The Board shall render its Final Decision to Lot Owner regarding imposition of the fine or suspension of Starview Heights Community privileges or services. Charges for late payments under Article VI of the Declaration are not to be regarded as fines that warrant a hearing under this section.

Article IV, Section 15 Rentals is hereby amended by deleting 7 Avery Nicole Dr exemption and shall now read as follows:

Rentals are hereby modified and amended to provide the following:  
Starview Heights is a non-rental community and no dwelling unit shall be rented within Starview Heights: provided however that the following three dwelling units are temporarily exempt from this provision.

5 Gemini Heights, Weaverville, NC 28787  
9 Gemini Heights, Weaverville, NC 28787  
11 Avery Nicole Drive, Weaverville, NC 28787

Exemption of this section for the above referenced dwelling units will expire and said dwelling units will become subject to this section upon conveyance of each respective dwelling unit to a new owner. Upon conveyance of each dwelling unit to a new owner said dwelling unit will become subject to this section and be prohibited from being rented.

The sole exception to the prohibition on renting a dwelling unit is in the case of hardship, which shall be determined by the Board of Directors in its sole discretion. Any owner that seeks a hardship exemption must apply for such exemption to the Board of Directors in writing. If a hardship exemption is allowed, then the terms and conditions for the exemption will also be in the sole discretion of the Board of Directors.

For the purpose of this section the term "rented" shall mean any occupancy of a dwelling unit by any party other than the owner of record as shown with the Buncombe County Register of Deeds regardless of whether an owner of a dwelling unit receives profit for the occupancy in which a third party would have exclusive use and enjoyment of the dwelling unit.

All leases and lessees are subject to the provisions of the Declaration Of Covenants (Declaration), ByLaws, and Rules and Regulations. The Lot Owner must make available to the tenant copies of the Declaration, ByLaws, and Rules and Regulations. The Board of Directors (Board) shall not discriminate against any prospective tenant on the basis of race, religion, national origin, age, disability, familial status or for any other unlawful purpose.

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

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Any lease for a Resident in the Starview Heights Community shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not incorporated into a lease such covenants nevertheless apply to the Resident Lot through the existence of this covenant. Any lessee, by occupancy in a Resident Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

Compliance with Declaration, ByLaws, and Rules and Regulations. Lessee agrees to abide by and comply with all provisions of the Declaration, ByLaws, and Rules and Regulations adopted pursuant thereto. Owner agrees to cause all occupants of his or her Resident Lot to Comply with the Declaration, ByLaws, and the Rules and Regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupant of the Residence are fully liable and may be sanctioned for any violation of the Declaration, ByLaws, and Rules and Regulations adopted pursuant thereto. In the Event that the lessee, or person living with the lessee, violates the Declaration, ByLaws, or Regulations for which a fine is imposed, such fine shall be assessed against the lessee; provided however, if the fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines constitute a lien against the Lot in accordance with the Planned Community Act and Declaration. Any lessee charged with a violation of the Declaration or ByLaws, or Rules and Regulations adopted pursuant thereto, is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction as set forth in the ByLaws.

Any violation of the Declaration or ByLaws, or Rules and Regulations adopted pursuant thereto, is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with North Carolina law.

**In Witness Whereof**, the Successor Declarant with the joiner of the Association has caused this instrument to be executed as of the day and year first above written.

Successor Declarant: CPBI, LLC,  
A North Carolina limited liability company

By: [Signature]  
Joe. P. Calderwood, Declarant

Association: Starview Heights Property Owner's  
Association, Inc.,  
A North Carolina non-profit corporation

By: [Signature]  
Diane Bacher, President

State of North Carolina County of Buncombe

I certify that the following peron personally appeared before me this day each acknowledging to me signed the foregoing document for the purpose stated therein: Joe P. Calderwood as Manager of CPBI, LLC, a North Carolina limited liability company.

Date: 12-9-19

My commission expires:  
4-10-2021

[Signature]  
Notary Public

Printed Name of Notary Cynthia A Francis

(Notary Seal)

