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HB: S. Groce
Prepared by: John M. Logsdon, McElwee Firm, PLLC

NORTH CAROLINA

AMENDED AND RESTATED
DECLARATION OF COVENANTS AND CONDITIONS
FOR DANCY MOUNTAIN

WILKES COUNTY

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND CONDITIONS FOR DANCY MOUNTAIN (hereinafter referred to as the "Covenants") is made on this 27th day of June, 2018 by DANCY MOUNTAIN OWNERS ASSOCIATION, a North Carolina non-profit corporation (the "Association").

WITNESSETH:

THAT, WHEREAS, Cold River Properties, a North Carolina corporation ("Original Declarant"), originally declared and established for itself and its successors and assigns certain covenants, restrictions and easements in that instrument entitled "Dancy Mountain Owners Association Declaration of Covenants, Conditions, and Restrictions" recorded in Book 815, Page 174, as amended in Book 926, Page 61, and further amended in Book 1249, Page 129, of the Wilkes County Registry (collectively, the "Original Covenants"), with respect to certain real property located in Mulberry Township, Wilkes County, North Carolina, more particularly described and defined in the attached **Exhibit A**, together with the buildings and all improvements constructed or located thereon, and all rights, privileges, easements, and appurtenances belonging to or in any way pertaining to said real property (hereinafter the "Property" or "Dancy Mountain"); and

WHEREAS, Dancy Mountain is a planned community subject to the provisions of the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "Act")

WHEREAS, Section 47F-2-117 of the Act provides that the Original Covenants may be amended by the vote of sixty-seven percent (67%) of total voting rights; and

WHEREAS, the Association, by the affirmative vote of at least sixty-seven percent (67%) of the total voting rights of Owners as shown on the attached **Exhibit B**, hereby desire to amend the Original Covenants to revise certain provisions thereof and restate the Covenants in their entirety, to

the end that the Original Covenants are hereby superseded and replaced with the following Covenants, and to subject the Property to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth and to the guidelines, policies, procedures, rules and regulations adopted by the Association;

NOW, THEREFORE, in consideration of the premises, the Association hereby declares that all of the Property now and hereafter made subject to the Covenants shall be owned, held, transferred, sold, conveyed, used and occupied subject to the conditions, restrictions, easements, charges and liens set forth in these Covenants, all of which shall run with the land and be binding on all parties owning any right, title or interest in the Property or any part thereof, their heirs, personal representatives and administrators, successors and assigns, and shall inure to the benefit of each Owner thereof. Accordingly, the undersigned parties amend and restate the Original Covenants to read as follows:

ARTICLE I DEFINITIONS

1. "Association" shall mean and refer to the Dancy Mountain Owners Association an organization organized and existing under the laws of the State of North Carolina, its successors and assigns.
2. "Board of Directors" or "Board" means the Board of Directors of the Association, which is the governing body of the Association.
3. "Dancy Mountain" or "Property" shall mean that property described in Exhibit A, together with the buildings and all improvements constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.
4. "Bylaws" means the Bylaws of the Association which govern the administration and operation of the Association, as the same may be amended from time to time.
5. "Common Area" means all real and personal Property, including easements, the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.
6. "Common Expenses" means all expenditures lawfully made or incurred by or on behalf of the Association, including but not limited to (a) maintenance and repair of Common Areas, (b) insurance, including liability and directors' and officers' insurance, (c) management costs, including equipment, supplies, and postage, (d) meeting expenses, (e) professional services including the reasonable fees of attorneys and accountants, (f) costs for collection of unpaid assessments, and (g) the creation and maintenance of adequate financial reserves.
7. "Dwelling" means a residential structure for which either a building permit has been issued by appropriate authorities of Wilkes County, North Carolina, a residential structure for which an

Building Application has been approved under Article VI of these covenants, or an unpermitted residential structure for which construction has been commenced. In event of a conflict concerning the definition of a Dwelling, the Building Committee shall determine if the improvement located on any Tract is a Dwelling.

8. "Member" shall mean and refer to the Owner of a Tract within the Property who holds membership in the Association; provided, however, there shall be no more than one Member for each tract. Only an Owner may be a Member.
9. "Original Covenants" mean the Declaration of Covenant and Conditions recorded in Book 815, Page 0174, in the Wilkes County Public registry, as amended.
10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any tract as herein defined, excluding however, those parties having such interest merely as a security interest for the performance of any obligation.
11. "Plat" shall mean one or more plats described in "Exhibit A" attached hereto and filed in the Office of The Register of Deeds for Wilkes County, North Carolina.
12. "Supplemental Declaration" means any amendment to these Covenants filed in the Office of the Register of Deeds for Wilkes County, North Carolina, which makes any changes hereto.
13. "Tract" means a portion of the Property, whether improved or unimproved, which may be independently owned and conveyed. "Tract" shall be deemed to include the benefits and burdens applicable or appurtenant to a Tract, such as easements or maintenance obligations of the Owner. The term "Tract" does not include the Common Areas.
14. The definitions appearing in Section 47F-1-103 of the Act are incorporated herein.

ARTICLE II

PROPERTY SUBJECT TO THESE COVENANTS AND ADDITIONS THERETO

1. Existing Property. The real property that is and shall be held, transferred, sold, conveyed, and occupied subject to these Covenants is located in Wilkes County, North Carolina, and is more particularly described and defined in Exhibit "A" attached hereto and made part hereof, together with the buildings and all improvements constructed or located thereon, and rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.
2. Additional Property. The Association reserves the absolute right, exercisable in its sole discretion from time to time to include additional property by filing of record supplemental Declaration extending the operation and effect of these Covenants to the additional Property to

be annexed, which Supplemental Declaration shall contain a description of such additional Property to be annexed. Notwithstanding the foregoing, no additional property shall be added to the Covenants as provided in this Section without the affirmative vote of at least sixty-seven percent (67%) of the votes in the Association.

ARTICLE III
PROPERTY RIGHTS

1. Private Roads. Each of the roads in Dancy Mountain hereafter designated on any recorded or unrecorded map or plat, is a private road, and neither the execution nor recording of any plat nor any other act of the Original Declarant, the Association or Association's successor is, or is intended to be, or shall be construed as, a dedication to the public of any roads, except those that hereafter may be dedicated by a specific written and recorded deed or agreement of dedication.
2. Reservation of Easement. The Association reserves for itself and for its successors and assigns for the benefit of all Owners a non-exclusive easement over, on and across each of the roads in Dancy Mountain now or hereafter constructed or designated on any recorded or unrecorded map for ingress or egress through the Property. The Association also reserves for itself, its successors and assigns, the right to grant and reserve easements and right-of-ways through, under, over and across the roads in Dancy Mountain, for the installation, maintenance and inspection of lines and appurtenances for public or private water, drainage, electricity, telephone, and other utilities.

ARTICLE IV
OWNERS ASSOCIATION

1. Administration of Common Areas and Roads. The administration of the Common Areas and roads, including maintenance, repair, and upkeep of the private roads, including the acts required by the Covenants and the Bylaws, shall be performed by the Association. The Association shall be required to maintain those roads and easements shown on the plats of the Property.
2. Rules and Regulations. The Association may also adopt and enforce rules and regulations not inconsistent with these Covenants or the Bylaws of the Association for the operation and administration of its Common Areas and roads.
3. Authority. The Association or any lot owner may enforce these Covenants by any proceedings at law or in equity. Provided, however, that the Association shall not be required to bring any enforcement action, and any decision to bring an enforcement action shall be in the sole discretion of the Board of Directors of the Association
4. Membership and Voting Rights. Every Owner shall be a Member of the Association. Subject

to the provisions of Article V, Section 3, for each Tract containing a permanent habitable dwelling, four (4) votes are allocated; for each Tract that does not contain a dwelling, one (1) vote is allocated. If more than one person or entity has an ownership interest in any Tract, all such persons shall designate one person for purposes of exercising the voting rights under these Covenants. The Association may assume that the person exercising voting rights has the authority to do so on behalf of all the Owners of such Tract. Membership shall be appurtenant to and may not be separated from ownership of any Tract, and shall be transferred automatically when the Owner conveys, devises, gives or otherwise transfers his Tract, even though such conveyance, devises or gift does not make mention of the membership rights of the Association.

Persons or entities who hold an interest in any Tract solely as security for performance of an obligation to pay money, e.g., mortgages or deeds of trust shall not be Members; however, if such secured party should realize upon his security and become an Owner, then he and his assigns will then be subject to all the requirements and limitations imposed upon Members, including those provisions with respect to payment of annual charges. The Board of Directors may include reasonable rules relating to the proof of ownership of a Tract.

The rights and obligations of Members are set forth in the Bylaws of the Association.

ARTICLE V
COVENANTS FOR MAINTENANCE ASSESSMENTS

1. Creation of Lien and Personal Obligations for Assessments. The Owner of each Tract in Dancy Mountain is deemed to covenant and agree to pay to the Association: (a) annual assessments, and (b) special assessments. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall constitute a continuing lien upon the Tract against which each assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the Owner at the time when the assessment came due and the Association shall be entitled to institute collection actions for unpaid assessments against any Owner. Provided, however, the personal obligation for delinquent assessments shall not pass to an Owner's successors in title.
2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of Dancy Mountain, including the payment of Common Expenses.
3. Determination of Assessment Amount. Notwithstanding the provisions of Article III, Section 4, if, on the date of the recording of this Amended and Restated Declaration, an Owner owns more than one Tract, but not more than two adjoining tracts, with only one residence located on such adjoining Tracts, then such Owner may elect to forego voting rights allocated on the second Tract and pay one assessment on the adjoining Tracts. Owners with more than two adjoining Tracts must pay full assessments for each additional Tract. Provided, however, that

if, after the date of the recording of this Amended and Restated Declaration, one of the adjoining Tracts is transferred in any manner or if a second dwelling is constructed or exists on the adjoining Tracts, then the Owner shall be required to pay assessments for each Tract and such Owner shall have voting rights for each Tract.

Prior to the annual meeting of the membership, the Board of Directors shall prepare a budget for the following year based upon the anticipated expenses and the Board shall recommend to the membership an amount to be assessed to each Tract to which a vote is allocated. At its annual meeting the Members shall vote on and approve the amount of the annual assessments.

Payment of assessments shall be made annually to the Association or its designee, on or before the due date established by the Board; however, the Board may elect to receive payments on a quarterly or monthly basis. Each Member shall be advised of the amount of the annual assessment at least thirty (30) days before the due date, by written notice of the charge.

4. Special Assessments. In addition to the annual assessment authorized above, the association may levy, in any assessment year, a special assessment applicable the that year only for the purpose of defraying, in whole or part, the cost of any repair or replacement. Any special assessment must have the prior favorable vote of owners representing two-thirds (2/3) or more of the eligible votes cast in person or by proxy at a meeting of the Association called to consider such assessment at which a quorum was present.
5. Exempt Property. All Common Areas and such portions of Property owned by the Association shall be exempt from the assessments.
6. Lien for Assessments.
 - a. The assessments and charges created herein shall constitute a continuing lien upon all Tracts in Dancy Mountain and no Owner may waive or in any way reduce his liability for the assessment by non-use of Common Areas or abandonment of his Tract.
 - b. In accordance with the provisions of the Act, the Association shall have a lien against each Tract to secure payment for assessments which are not paid within thirty (30) days of their due date, together with any fees, fines, interest, late charges and other lawful charges, and costs of collection (including attorneys' fees) upon the filing by the Association of a claim of lien in the office of the Clerk of the Superior Court of Wilkes County. Subject to the limitations of North Carolina law, that lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments and other levies which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages made in good faith and for value).
 - c. The Association may foreclose its lien through judicial, or, to the extent allowed by

law, non-judicial foreclosure proceedings, except any lien securing only fines and/or service or collection fees which may be foreclosed by judicial foreclosure.

- d. The Association may sue any Owner for unpaid assessments and for other charges authorized hereunder without foreclosing or waiving the lien securing those assessments or charges, in addition to pursuing any and all remedies allowed by law to enforce the lien.
 - e. Sale or transfer of the Tract shall not affect the assessment lien or relieve the Tract from the lien for any subsequent assessments. However, the sale or transfer of any tract pursuant to foreclosure of a prior deed of trust shall extinguish the lien as to any installments of such assessments due prior to the mortgagee's foreclosure. The subsequent owner of the foreclosed Tract shall not be personally liable for assessments on the Tract due prior to the acquisition of title.
7. Certificate of Payment. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified Tract have been paid or that certain charges against said Tract remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. The Treasurer of the Association shall be responsible for issuing a certificate of assessments owed, and shall issue such certificates within a reasonable time, not to exceed five business days after receipt of a request for a certificate.

ARTICLE VI ARCHITECTURAL CONTROL

1. To protect the value of all real Property subject to these Covenants and to promote the interest, welfare, and rights of all Owners, the Board of Directors shall have the right to enforce the provisions of this Article VI and may designate a Building Committee (the "Committee") delegating such responsibilities to the Committee. In the event the Board of Directors does not designate a separate Committee, then the Board shall serve as the Committee. The Committee shall be comprised of at least two Members of the Association. The following provisions regarding architectural review shall apply to each and every Tract now and hereafter subject to these Covenants.
- a. No construction, reconstruction, remodeling, alteration, or addition to a dwelling of any kind, upon any Tract in Dancy Mountain, requiring a Wilkes County Building permit, shall be commenced without prior written approval of the Committee of the proposed site location, plans and specifications. Prior to construction or relocation, proposed driveways shall be reviewed by the Building Committee to assure safety of vehicular traffic and to minimize the impact on road drainage and maintenance costs.
 - b. The Owner shall submit to the Committee two (2) complete sets of the final plans and

specifications for any and all such proposed driveways or improvements, the erection or alteration of which is desired, and no structures or improvements of any kind shall be erected, altered, placed, or maintained upon any Tract unless the final plans, elevations, and specifications therefore have received such written approval as herein provided.

- c. Prior to beginning construction, the Owner shall pay to the Association an impact fee equal to the amount of annual dues to offset the ordinary and anticipated road damage associated with heavy construction traffic. Provided, however, that in the event construction vehicles causes unusual or substantial damage to the roadways or Common Areas, the Owner shall be responsible for all costs to repair such damage.
2. The Committee shall approve or disapprove plans, specifications, and details within thirty (30) days from the receipt thereof. In the event the Committee fails to approve or disapprove such plans and specifications within thirty (30) days, approval will not be required and the requirements of this Section will be deemed to be fulfilled. One (1) set of said plans and specifications and details with approval or disapproval endorsed thereon, shall be returned to the persons submitting them and the other copy thereof shall be retained by the Committee for its permanent files. The Committee shall have the right to charge a reasonable fee for reviewing each application for approval of plans and specifications, which fee amount may be varied by the Committee based on the type of application submitted but under no circumstances shall such fee exceed the current permit fee schedule of the Wilkes County Inspections Department for residential structures. The application shall not be considered as being submitted until all required application fees have been paid in full, all dues assessed on the property have been paid up to the date of the application, and the application is complete in all respects.
3. The Committee shall establish written building criteria to be used in reviewing all plans, specifications, and details; provided, however, that the building criteria and any amendments thereto shall be approved by the Board of Directors and by the Members at an annual meeting prior to becoming effective. No amendment or change in the building criteria shall have retroactive application.
4. Any decision by the Committee may be appealed to the Board of Directors, which shall consider the appeal within 20 days after receiving written notice of appeal. Any Owner shall have the right to appeal an adverse decision by the Board of Directors to a court of competent jurisdiction.

ARTICLE VII RESTRICTIONS AND REQUIREMENTS

1. Residential Use. No tract shall be occupied or used except for residential purposes. No structure shall be erected or permitted to remain on any Tract other than one single-family residence dwelling and such outbuildings as are usually accessory to a single-family dwelling,

including a private detached garage or barn facility.

2. Other Requirements.

- a. All structures constructed or placed on any Tract shall be built of substantially new materials, or reclaimed materials approved by the Committee, and no used structures shall be relocated or placed on any such Tract, without approval of the Committee.
- b. Any modular or prefabricated structures brought to the site on wheels will require a road inspection before and after delivery. Owners will be responsible for any repairs necessary to safely transport modular or prefabricated structures over Common Areas. Any such structures must be permanently affixed to the ground once delivered to the site.
- c. Any dwelling or outbuilding on any Tract which may be destroyed in whole or part must be rebuilt or all debris must be removed and the Tract restored to a slightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than three (3) months.

3. Prohibitions.

- a. No mobile homes shall be permitted on any Tract. For purposes of this section, the term "mobile home" shall have the same meaning as contained in the Wilkes County Mobile Home Park Ordinance effective at the time the Owner makes application to the Building Committee.
- b. No camping trailers, RV's, tents or out buildings can be used as a permanent residence. Pleasure vehicles and camping equipment are acceptable on a temporary basis (not to exceed 90 days per year) provided they are not permanently attached to septic systems, electrical supply source or permanently affixed to the ground. Campers and RV's must be road worthy with valid tags, licensing and inspections, which includes the ability to be moved.
- c. No stripped, partially wrecked, or junk motor vehicle, or part thereof, shall be permitted to be parked or kept on any road or Tract.
- d. No tract shall be used or maintained in an unsightly manner or as a dumping ground for rubbish, trash, or debris. Rubbish, trash, debris, garbage, or other waste shall be kept only in closed containers. Owners given notice of a violation have two weeks to clean up the Tract or fines may be imposed by the Board of Directors or the Board may elect to have it removed and charge the Owner for removal costs.
- e. Any dwelling on a Tract must have Wilkes County approved septic system, electricity,

and certificate of occupancy issued by the Wilkes County Building Inspector.

4. Access.

Access to each Tract shall be exclusively over Common Areas, except with the written permission of the Board of Directors of the Association. No Tract may be used to access real property that is not a part of Dancy Mountain and subject to these Covenants.

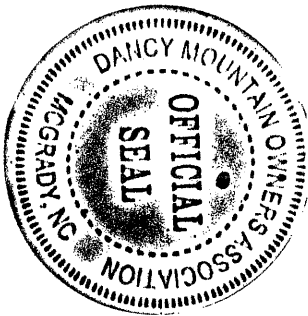
ARTICLE VIII
GENERAL PROVISIONS

1. Enforcement. The Association shall have the right, but not the obligation, to enforce, by any proceeding at law or in equity, all conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of these Covenants. Each Owner shall have the right to enforce these Covenants against any other Owner. Failure by the Associations or by any Owner to enforce any covenant herein contained shall in no event be deemed a waiver or the right to do so thereafter.
2. Term. The Covenants shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them, unless terminated or altered in accordance with the provisions of the Act.
3. Amendment. These Covenants may be amended in accordance with the Act, by affirmative votes or written agreement signed by Owners of Tracts to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Any Amendment must be properly recorded in the Wilkes County Registry and shall take effect upon recording.
4. Mutuality of Benefit and Obligation. The Covenants and agreements set forth herein are for the mutual and reciprocal benefit of each and every Tract in this Association and are intended to create mutual, equitable servitudes upon each Tract in favor of each and all of the other Tracts therein; to create a privity of contract and estate between the grantees of said Tracts, their heirs, successors and assigns, and to the Association, and shall, as to the Owner of each Tract, his heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other Tracts in Dancy Mountain, and their respective Owners.
5. Severability. Every part of these Covenants are hereby declared to be independent of, and severable from the rest of the Covenants and of and from every other one of the Covenants and of and from every combination of the covenants. Therefore, if any of the Covenants shall be held to be invalid or to be unenforceable or lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability, or "running" quality of any other one of the Covenants.

6. Captions. The captions preceding the various paragraphs and subparagraphs of these Covenants are for convenience or reference only, and none of them shall be used as an aid to construction of any provision of these Covenants. Wherever and whenever applicable, the singular form of any word shall be taken to mean to apply to the plural, and the masculine form shall be taken to mean and apply to the feminine or neuter. Any and all reference herein to any statutes, codes or other North Carolina laws shall include any amendments to the same.

7. Right of Association to Amend to Achieve Tax-Exempt Status. The Board of Directors of the Association may amend these Covenants as necessary, in its opinion, and without consent of any Owner, in order to qualify the Association for tax-exempt status. Such amendment shall become effective upon the date of the recordation in the Wilkes County Registry.

IN TESTIMONY WHEREOF, the Association has caused this instrument to be signed in its name pursuant to authority duly given, on this, the 27 day of JUNE, 2018.



Dancy Mountain Owners Association

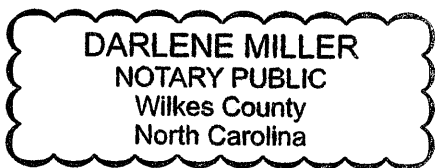
By: [Signature]
Thomas Schardt, President

Attest: [Signature]
Jennie Schardt, Secretary

NORTH CAROLINA, WILKES COUNTY

I, Darlene Miller, a Notary Public of the County and State aforesaid, do hereby certify that Jennie Schardt personally came before me this day and acknowledged that she is the Secretary of Dancy Mountain Owners Association, a corporation, and that by authority duly given and as the act of the corporation the forgoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and official seal this 27th day of June, 2018.



[Signature]
Notary Public

Darlene Miller
Printed name

My Commission expires: 10/1/2019

[Notarial Seal]

EXHIBIT B

NORTH CAROLINA

CERTIFICATION OF SECRETARY

WILKES COUNTY

I, Jennie Schardt, the undersigned Secretary of Dancy Mountain Owners Association, after being duly sworn, do certify as follows:

1. Dancy Mountain Property Owners Association, (the "Association") is a non-profit corporation organized and existing under the laws of the State of North Carolina.

2. The following are the current, duly elected Officers of the Association:

President Thomas Schardt
Vice President Ray Cellemme
Treasurer Paula Jameson
Secretary Jennie Schardt

3. Ballots were mailed to each of the Lot Owners within the Dancy Mountain Subdivision. Lot Owners in the subdivision were asked to APPROVE or REJECT the following proposal:

The original covenants and conditions of Dancy Mountain as recorded in Book 815, Page 174, as amended in Book 926, Page 61, and further amended in Book 1249, Page 129, of the Wilkes County Registry, should be amended and restated as appears in the attached "Amended and Restated Declaration of Covenants and Conditions for Dancy Mountain."

4. There are 33 Owners entitled to vote within the Association. Owners of Tracts containing a permanent habitable dwelling are allocated four votes, whereas Owners of Tracts without a dwelling are allocated one vote, for a total of 84 votes entitled to be cast. The Board received written responses from 26 Owners: Owners representing 65 votes approved the proposal, Owners representing 9 votes rejected the proposal, and Owners representing 10 votes did not respond. The specific responses are shown on the attached sheet.

5. The number of votes approving the amendment represent 77% of all of the votes entitled to be cast.

6. As the number of votes approving the amendment exceeded the number necessary for approval, the Amended and Restated Declaration of Covenants and Conditions for Dancy Mountain are adopted and will be recorded in the Wilkes County Registry.

This the 27th day of June, 2018.

Jennie Schardt [SEAL]
Jennie Schardt, Secretary

Sworn to and subscribed before me
this 27th day of June, 2018

Darlene Miller

Notary Public

My Commission expires: 10/1/2019

