



TOWN OF BLACK MOUNTAIN

160 Midland Avenue
Black Mountain, NC 28711

RESOLUTION # R-13-04

Resolution Regarding The Settings Water System

WHEREAS, The Settings of Black Mountain (“The Settings”) was developed by The Settings of Black Mountain, LLC, a Georgia Limited Liability Company, (the “Developer” or the “Declarant”) and was subdivided by the Developer into various phases;

WHEREAS, by Ordinance O-05-05, dated May 9, 2005, The Town of Black Mountain (the “Town”) annexed Phase One of The Settings into the corporate limits of the Town;

WHEREAS, by Ordinance O-06-01, dated January 9, 2006, the Town annexed Phase Two of The Settings into the corporate limits of the Town;

WHEREAS, by Ordinance O-06-06, dated May 8, 2006, the Town annexed Phase 2A of The Settings into the corporate limits of the Town;

WHEREAS, by Ordinance O-07-01, dated February 12, 2007, the Town annexed Phase Three of The Settings into the corporate limits of the Town;

WHEREAS, by Ordinance O-07-11, dated August 13, 2007, the Town annexed Phase 3A of The Settings into the corporate limits of the Town;

WHEREAS, the water system for The Settings (“The Setting Water System” or the SWS”) consists of the water lines, tanks, pumps, control systems for the tanks and pumps, the communication facilities appurtenant to the tanks and pumps, and the water meters and the hydrants, all as now or hereafter installed in each of the foregoing Phases except for that portion of Phases 3 that does not contain Guastavino Road and the Lots adjacent thereto;

WHEREAS, said Ordinances (collectively, the “Annexation Ordinances”) provide, with respect to The Settings Water System, as it was being constructed by the Developer at the time of the adoption of the Annexation Ordinances:

- That the Developer will have designed and will construct at its own expense a water system to provide water to the all parcels in all phases of the development, and that such system shall meet all state requirements for such system, especially including all the design requirements of the North Carolina Fire Code and fire hydrant location and distribution as referenced in Table C105.1 of the North Carolina Fire Code, and shall be further approved by the Town acting through its Public Works Director and its Director of Public Safety. Developer will warrant all parts of the installed water system for one year, or will require that the contractor employed to construct the system provides a full one year written warranty as to the quality of materials and workmanship with such warranty specifically given for the benefit of both the developer and the Town of Black Mountain.



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- That the Town will provide water for use in the Settings.
- That each property in The Settings will have access to water from the system to be constructed by the Developer.
- That the water system, in addition to the necessary pumps, pipes and storage tanks, shall include sufficient room and power in the upper pump house for a 55 gallon drum or container and a chlorinator pump.
- That the water system constructed by the Developer will be designed to provide no less than 20 pounds of pressure at the meter for each developed lot in all phases of the development.
- That the Town shall not be under any obligation to modify or improve the system so as to provide any more than 20 pounds of water pressure at the meter for any lot or parcel. The Town will have no obligation to change or upgrade the water system if the Developer or any homeowner or the homeowners' association builds a structure with requirements which exceed the original design flows. The Developer, when designing and constructing the water system, will plan and provide for any such structures which are contained in its development plans.
- That each developed lot shall have its own water meter installed at the edge of the road easement.
- That the meters will be monitored and read by the Town and the Town will bill each water user separately. Except for any commonly owned and operated facilities, such as a clubhouse and any appurtenant facilities, each developed lot or parcel shall be separately metered.
- That after the water system is constructed and in operation, the Town shall monitor and maintain the system, but all repair costs of pumps and tanks within the water system shall be paid for by the Developer, or by the homeowners' association after the Developer has relinquished control of the development in accordance with any restrictive covenants or other recorded development documents prepared by the Developer. Such costs shall be invoiced to the Developer or the homeowners' association. The homeowners' association shall be required to maintain a cash reserve sufficient to promptly reimburse the Town for such costs. The amount of such reserve will be determined by the Town based on its experience with maintenance and repair costs for similar systems and the cost of replacement of critical parts of the system, such as the pumps and storage tank or tanks.
- That each applicant for water service shall be required to pay the usual and customary tap fee and impact fees as the same may be in effect at the time of the application. All



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other Town requirements for the provision of water and obtaining an account for the provision of water shall apply.

- That the Developer will provide and grant to the Town sufficient easements for maintenance of, and for access to, all waterlines, pumps, tanks and facilities. Upon completion of the construction of the water system, the waterlines and any installed meters will become the property of the Town of Black Mountain, but the pumps and storage tanks will remain the property of the Developer until transferred to the homeowners association. The Town will have full authority to make repairs and maintain the facilities subject to the requirement that all costs of repair and maintenance of the tanks and pumps be reimbursed by the Developer or the homeowners' association.
- That the Developer will specifically reserve and grant to the Town utility easements ten feet in width between Lots 76 and 72 as shown on the site plan by Land Design dated 7 February 2005 and between Lot 233 and the unplatted area next to Highway 9 on that site plan, the location of the second described easement to be more particularly located when the water system for the development is installed and constructed. Such easements shall be for the installation of water lines to a fire hydrant at the end of each line and not for extension of the water system to areas adjacent to The Settings.

WHEREAS, subsequent to the adoption of the Annexation Ordinances the Developer encountered financial difficulties; the principals of the Developer declared personal bankruptcy; the Developer terminated Declarant Rights under The Settings Declaration in October 2011; the Developer deeded the Common Areas in The Settings to The Settings of Black Mountain Association, Inc. (the "Association"); the Board of Directors of the Association became a board elected by the property owners in The Settings; and the responsibility for the operation of the SWS and compliance with the Annexation Ordinances fell to the Association;

WHEREAS, the Association has devoted the time since October 2011 to the current date, as well as considerable resources, to getting control of the affairs of the Association but is now ready to begin the process of conveying elements of the SWS to the Town, transferring responsibility for the operation of the SWS to the Town and otherwise demonstrating compliance with the applicable terms of the Annexation Ordinances;

WHEREAS, the period from the date of this Resolution (April 8, 2013) until April 8, 2014 shall be a test period (the "Test Period") during which compliance with the terms of this Resolution and the applicable terms of the Annexation Ordinances shall be monitored and tested by the Town;

WHEREAS, the Association has given a Warranty for the benefit of the Town, effective April 8, 2013, as to the quality of materials and workmanship of The Settings Water System during the Test Period. An executed copy of the Warranty is Exhibit No. 1 to this Resolution;



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WHEREAS, Landworks Engineering Inc., the engineering firm that designed the SWS, has given a certification for the benefit of the Association and the Town, effective April 8, 2013, that the Engineering Plans and Specifications contemporaneously furnished to the Town for The Settings Water System and signed by Martin Kocot PE as the Professional Engineer for the SWS substantially represent the present construction of the SWS and substantially comply with applicable statutory and regulatory requirements of the State of North Carolina. An executed copy of the Landworks Certification is Exhibit No. 2 to this Resolution;

WHEREAS, T&K Utilities Inc., the construction firm that installed the SWS, has executed a certification, effective April 8, 2013, for the benefit of the Association and the Town that the SWS has been constructed and installed in accordance with the Engineering Plans and Specifications of Landworks Engineering referred to the immediately preceding clause. An executed copy of the T&K certification is Exhibit No. 3 to this Resolution.

WHEREAS, the Association has executed a certification for the benefit of the Town, effective April 8, 2013, containing all necessary representations concerning ownership of the SWS and cooperation with the Town during the Test Period and containing the Association's undertaking to convey the necessary elements of the SWS to the Town on April 8, 2014. An executed copy of the Association's certification is Exhibit No. 4 to this Resolution;

WHEREAS, Landworks Engineering has provided an undertaking, with an Effective Date of April 8, 2013, for the benefit of the Association and the Town that it will provide a certification for the benefit of the Department of Environment and Natural Resources, with an Effective Date of April 8, 2014, that the Engineering Plans and Specifications for Settings Water System as they may be revised and updated during the Test Period and signed by Martin Kocot as the Professional Engineer for the SWS comply with applicable statutory and regulatory requirements of the State of North Carolina. An executed copy of the undertaking of Landworks Engineering is Exhibit No. 5 to this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen for the Town of Black Mountain, North Carolina,

1. That, subject to the property interests of the Association, responsibility for the operation of The Setting Water System (as defined herein) will be transferred by the Association to the Town, and ownership of the water lines of The Settings Water System will be conveyed by the Association to the Town, both effective April 8, 2014, assuming full compliance with the terms of this Resolution, with all undertakings referenced herein and otherwise with all applicable terms of the Annexation Ordinances.
2. That the appropriate staff of the Town is directed to monitor compliance with the certification and undertakings referenced herein and to report to the Board as they consider necessary or appropriate.
3. This Resolution shall become effective upon adoption.



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I move the adoption of the foregoing Resolution:

Daryl S. Green
Alderman

READ, APPROVED AND ADOPTED, this the 8th day of April 2013.

Carl R. Bartlett
Carl R. Bartlett, Mayor

ATTEST:

Darlene R. Whisenant
Darlene R. Whisenant, Town Clerk