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TAMELA BAKER

REGISTER OF DEEDS

BY: CHASE DELLINGER

DEPUTY

BK: RE 447

PG: 796-810

AMENDED AND RESTATED

BY-LAWS

OF

ELK RIVER PROPERTY OWNERS'

ASSOCIATION, INC.

AMENDED AND RESTATED
BYLAWS
OF
ELK RIVER PROPERTY OWNERS' ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION

Section 1. Name. The name of the corporation is ELK RIVER PROPERTY OWNERS' ASSOCIATION, INC., hereinafter referred to as the " Association."

Section 2. Location. The principal office of the corporation shall be located in Avery County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to ELK RIVER PROPERTY OWNERS' ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Common Area" shall mean all property described as "Common Area" in the Declaration.

Section 3. "Condominiums" shall mean and refer to those certain condominiums which are located upon the Properties.

Section 4. "Condominium Associations"" shall mean and refer to those certain associations of Unit Owners, which were created pursuant to the provisions of the Condominium Declarations.

Section 5. "Condominium Declarations" shall mean and refer to those certain instruments recorded in the Avery County Register of Deeds, as amended or revised, which create the Condominiums.

Section 6. "Declaration" shall mean and refer to the Declaration of Covenants and Restrictions applicable to the properties recorded in the Office of the Register of Deeds for Avery County, North Carolina.

Section 7. "Developer" shall mean and refer to Elk River Development Corporation.

Section 8. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on any recorded sub-division map of the Properties with the exception of the Common Area and land dedicated to the Condominiums.

Section 9. "Member" shall mean and refer to all Lot Owners and Unit Owners.

Section 10. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or any Unit, except persons holding an interest merely as security for the performance of an obligation in which case the equitable owners will be considered an Owner.

Section 11. "Properties" shall mean and refer to those properties, which are subject to the Declaration and brought within the jurisdiction of the Association.

Section 12. "Unit" shall mean and refer to those enclosed spaces within a Condominium capable of individual fee ownership as more particularly described in the Condominium Declarations.

Section 13. "ARC" shall mean and refer to an Architectural Review Committee - A committee appointed by the Board of Directors to carry out the function set forth in Article III of the Declaration and subject to guidelines established from time to time by the Board of Directors.

ARTICLE III

MEETING OF MEMBERS AND VOTING RIGHTS

Section 1. Annual Meetings. The annual meetings of Members of the Association shall be held at least once a year. The annual meeting of Members shall be held at such date and time as may be determined on an annual basis by the Board of Directors and stated in the notice of such Members' meeting. The annual meeting of Members shall be held for the purpose of electing directors of the Association, and for such other purposes as may be included in the notice of such meeting.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by (a) the President, or (b) the Board of Directors of the Association, and (c) shall be called by the Secretary of the Association within thirty (30) days upon receipt of a written request signed, dated, and delivered to the Secretary by the holders of at least ten percent (10%) of all the votes entitled to be cast on any issue proposed in such request to be considered at the meeting. The signatures on a petition requesting a special meeting shall be valid for a period of ninety (90) days after the date of the first signature. The Member petition for a special meeting shall: (1) specify the purposes for which the meeting is to be held; and (2) be delivered to the Secretary in writing.

Section 3. Place of Meetings. All meetings of the Members shall be held at such place, within Avery County, North Carolina, as shall be determined by the Board of Directors of the Association.

Section 4. Notice of Meetings. Notice of meetings of Members shall be given by the President, Secretary, or other person calling the meeting by any means that is fair and reasonable, and for this purpose, written or printed notice stating the time, place, and date of the meeting shall be (a) delivered by hand delivery, (b) by United States mail (postage prepaid) not less than ten (10) nor more than sixty (60) days before the date thereof, or (c) not less than thirty (30) nor

more than sixty (60) days before the date thereof, if such notice is mailed by other than first class, registered, or certified mail, to each Member of record entitled to vote at such meeting, unless the North Carolina Nonprofit Corporation Act or the Association's Articles of Incorporation require that such notice be given to all Members with respect to such meeting. If mailed, such notice shall be deemed to be effective when deposited in the United States mail, correctly addressed to the Member at the Member's address as it appears on the current record of Members of the Association. For this purpose, a Member's address shall be the mailing address designated in writing by the Member to the Secretary of the Association.

Notwithstanding the foregoing, if the notice provided for the above clearly would not be fair and reasonable under the circumstances then existing, then notice appropriate for the circumstances shall be given; PROVIDED, HOWEVER, THAT notice of a meeting where any of the following matters are to be voted on in all events shall be given as provided in the first paragraph of this Section: (i) director conflict of interest or indemnification, (ii) amendment to the Association's Articles of Incorporation, Bylaws, or Declaration, PROVIDED, HOWEVER, THAT the Declaration shall only be amended pursuant to the Declaration, (iii) plan of merger or dissolution, or (iv) a sale of assets other than in the regular course of the Association's activities; and PROVIDED, FURTHER HOWEVER, THAT any special notice procedure set forth in the Declaration for any of the foregoing or any other matter shall be followed in addition to the notice provisions set forth herein.

The notice of any meeting shall state the items on the agenda, including a summary or copy of any proposed amendment to the Declaration, the Bylaws or Articles of Incorporation, any budget changes, and any proposal to remove a director or officer, and shall include any other matters and a copy or summary of any proposed action that expressly is required by the provisions of the North Carolina Nonprofit Corporation Act or the North Carolina Planned Community Act. Only those matters which are stated in the notice may be acted upon at the meeting of the Members.

Also, notice of an annual, regular, or special meeting of Members shall give notice of any matter a Member intends to raise at the meeting if the Association receives a written request of any matter a Member intends to raise by the Members entitled to call a special meeting pursuant to Article III, Section 2 ("Special Meetings") of this Article, and such written request is received by the Secretary or President of the Association at least ten (10) days before the Association gives notice of such meeting.

In the event business cannot be conducted at any meeting of Members because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. If any meeting of Members is adjourned by the vote of a majority of votes cast on the motion to adjourn to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment and if a new record date is not fixed for the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed pursuant to North Carolina law, notice of the adjourned meeting must be given as provided in this Section to the Members of record entitled to vote at the meeting as of the new record date. As is provided in the North Carolina Planned Community Act, the quorum requirement at the next meeting of Members, in the event of an adjournment because a quorum is not present, shall be one-half of the quorum

requirement applicable to the meeting adjourned for lack of a quorum. This provision will continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 5. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty percent (50%) of the votes appurtenant to the Lots and Units shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 6. Voting. Each Member shall be entitled to one (1) vote per Lot or Unit owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot or Unit, all such persons shall be Members and the voting rights appurtenant to said Lot or Unit shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot or Unit.

Section 7. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot or Unit.

Section 8. Waiver of Notice. Any Member may, at anytime, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 9. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 10. Notice of Membership. Membership in the Association is mandatory. Upon acquiring title to a Lot or Unit, each new Owner immediately shall give written notice to the Secretary of the Association stating the name and address of such new Owner and the Lot or Unit acquired by such new Owner. If the new Owner fails to give the Secretary such notice within thirty (30) days of acquiring title to such Lot or Unit, then the costs of locating such new Owner and reasonable record keeping costs incurred by the Association may be assessed against such Owner as is set forth in the Declaration. If the Member is not a natural person, the Member must identify a natural person who will serve as the Member's designated agent for the purpose of communicating with the Association. Such natural person must be named and a voting certificate signed by an authorized officer, partner, member, or trustee of such Person and filed with the Secretary of the Association authorizing the natural person to communicate with the

Association on the Member's behalf and vote in accordance with Article III, Section 12. Such certificate shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary.

Section 11. Multiple-Person Owners. In the event that any Lot or Unit is owned by more than one Person, and if only one of such Persons is present at a meeting of the Association, that Person so present shall be entitled to cast the vote for that Lot or Unit. If more than one of such Persons is present, the vote appurtenant to that Lot or Unit shall be cast only in accordance with unanimous agreement of such Persons who are present at the meeting, and such agreement shall be conclusively presumed if any of such Persons purports to cast the vote appurtenant to that Lot or Unit without protests being made forthwith to the individual presiding over the meeting by any of the other Persons having an ownership interest in the Lot or Unit.

Section 12. Voting Certificate. If a Member is not a natural person, the vote by such Member may be cast by any natural person authorized by such Member. Such natural person must be named and a certificate signed by an authorized officer, partner, member, or trustee of such Person and filed with the Secretary; provided, however, that any vote cast by a natural person on behalf of such Member shall be deemed valid unless successfully challenged prior to the adjournment of the meeting at which the vote is cast. Such certificate shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary. Whenever the approval or disapproval of a Member is required by the Association's Articles of Incorporation, Bylaws, or Declaration, such approval or disapproval may be made by any person who would be entitled to cast the vote of such Member at any meeting of the Association.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Number of Directors. The number of directors of the Association shall be not less than five (5) and no greater than eleven (11), as from time to time may be fixed or changed within said minimum and maximum by the members of the Board of Directors. The entire Board of Directors shall be elected solely by the Members of the Association voting in person, by proxy, or by written ballot.

Section 2. Terms of Directors. Except for directors elected to fill a vacancy (who shall hold the directorship until the expiration of the term of the person they are replacing), all directors shall hold office for a term of three (3) years. No director shall serve more than two (2) consecutive terms.

Section 3. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nomination Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting till the close of the next annual and such appointment shall be announced at each annual meeting. The Nominating Committee shall make

as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4. Election. Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise consistent with Article VII of the Declaration and these Bylaws. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 5. Removal or Resignation of Directors and Filling of Vacancies.

(a) Any director may be removed from office at any time with or without cause by at least a majority vote of all Members present and entitled to vote at any meeting of Members at which a quorum is present. A director may not be removed by the Members at a meeting unless the notice of the meeting states that the purpose or one of the purposes, of the meeting is the removal of the director so removed. If any directors are so removed, new directors may be elected at the same meeting. In addition, any director not in attendance at three (3) consecutive regular meetings of the Board of Directors may be removed by majority vote of the Board.

(b) A vacancy in the Board of Directors caused by a removal of a director by the Members shall be filled by a vote of the Members. A vacancy among the directors of the Board of Directors caused by any reason other than the removal of a director by the Members shall be filled by the remaining directors at a meeting of the Board of Directors held for such purpose promptly after the occurrence of such vacancy. If the directors remaining in office do not constitute a quorum of the Board of Directors, the directors may fill the vacancy by the affirmative vote of a majority of the remaining directors, or by the sole remaining director, as the case may be. The term of a director elected to fill a vacancy in a directorship elected by Members expires at the end of the unexpired term that such director is replacing.

(c) A director may resign at any time by giving notice to the Board of Directors, the President, or the Secretary. Unless otherwise specified, such resignation shall take effect upon the receipt thereof and the acceptance of such resignation shall not be necessary to make it effective. A director shall be deemed conclusively to have resigned upon disposition by the Owner of the Lot or Unit which made such individual eligible to be a director or upon any other event of disqualification set forth in these Bylaws.

Section 6. Compensation. No director shall receive compensation for any service he/she may render to the Association. However, any director may be reimbursed for his/her actual expenses incurred in the performance of his/her duties.

ARTICLE V

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors; provided, however, such meetings shall be held at least quarterly during each fiscal year. At regular intervals, the Board of Directors shall provide the Owners an opportunity to attend a

portion of a Board meeting and to address the Board at such meeting. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak. The President or presiding officer may call the Board of Directors into executive session on sensitive matters such as personnel, litigation strategy, or hearings with respect to violations of the Declaration or rules and regulations. Any final action taken by the Board of Directors in executive session shall be recorded in the minutes. Any one or more directors or members of a committee may participate in a meeting of the Board of Directors by means of a telephone conference call (or similar communication device) which allows all persons participating in the meeting to hear simultaneously each other. Such participation in a meeting shall be deemed "present" in person at such meeting.

Section 2. Special Meeting. Special meetings of the Board of Directors shall be held when called by the President of the Association. Any two directors or a director who chairs a committee may request a special meeting through the President of the Association. Any one or more directors or members of a committee may participate in a meeting of the Board of Directors by means of a conference telephone call (or similar communication device) which allows all persons participating in the meeting to hear each other. Such participation in a meeting shall be deemed "present" in person at such meeting.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal action by 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.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the Office of the Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 6. Limitation on Personal Liability. To the fullest extent provided by law, no director of the Association shall be personally liable for monetary damages arising out of an action, whether by or in the right of Association or otherwise, for any duty as a director.

Section 7. Notice. Regular meetings of the Board of Directors may be held without notice. The Chairperson, if any, the President, or any two (2) directors may call and give notice of a meeting of the Board of Directors. The person or persons calling a special meeting of the Board of Directors, at least two (2) days before the meeting, shall give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called. Any duly convened regular or special meeting may be adjourned by the directors to a later time without further notice.

ARTICLE VI

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The business and affairs of the Association shall be managed and directed by the Board of Directors. Except as provided below, the Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, including, but not by way of limitation, all powers as set forth in Article 3 of Chapter 55A of the North Carolina General Statutes (North Carolina Nonprofit Corporation Act) and Section 47F-3-102 of the North Carolina Planned Community Act but may not do any such acts and things which are required by the Declaration, the Bylaws, or the Articles to be exercised and done by the Members; provided, however, that all such powers, duties, acts, and things shall be exercised consistent with the provisions of the Declaration, the Bylaws, and the Articles of Incorporation. The Board of Directors may delegate to one of its members or to a Person employed for such purpose the authority to act on behalf of the Board of Directors on such matters relating to the duties of the managing agent, if any, which may arise between the meetings of the Board of Directors as the Board of Directors deems appropriate. In addition to the duties imposed by any other provision of the Declaration or by any resolution of the Association that hereafter may be adopted, the Board of Directors shall perform the following duties and take the following actions on behalf of the Association, subject to any voting rights of the Members provided by the Declaration, these Bylaws, and the Articles, or by law:

- (a) Provide goods and services to the Members in accordance with the Declaration.
- (b) Designate, hire, dismiss, and where appropriate, compensate the personnel necessary to provide goods and services to the Owners, as provided for in the Declaration, as well as purchase equipment, supplies and materials to be used by such personnel in the performance of their duties.
- (c) Collect the assessments specified in the Declaration, deposit the proceeds thereof in depositories designated by the Board of Directors and use the proceeds to carry out the purposes of the Association, as provided in the Declaration.
- (d) Adopt, amend, and repeal any reasonable rules and regulations not inconsistent with the Declaration and these Bylaws.
- (e) Open bank accounts on behalf of the Association and designate the signatories thereon.
- (f) Enforce by legal means the provisions of the Association Documents as are in effect from time to time.
- (g) Act with respect to all matters arising out of any eminent domain proceeding affecting the Common Areas and the Property of the Association.
- (h) Obtain and carry insurance pursuant to applicable provisions of the Declaration and pay the premiums therefor and adjust and settle any claims thereunder.

(i) Pay the cost of all authorized goods and services rendered to the Association and not billed to Owners of Lots or Units or otherwise provided for in the Declaration.

(j) Charge reasonable fees for the use of the Common Areas and for services.

(k) Levy fines to and suspend the right of any Owner or other user of a Lot or Unit, and the right of such Person's household, guests, employees, customers, tenants, agents and invitees to use the airport and any recreational facilities including, but not limited to, areas or amenities located in the Common Areas, subject to the hearing procedures provided for in N.C. Gen. Stat. § 47F-3-107.1.

(l) For each fiscal year, the Board of Directors shall cause to be prepared and adopt a proposed budget in compliance with the Declaration, including therein estimates of the amount considered necessary to pay the expenses of the Association, together with amounts considered necessary by the Board of Directors for reserves. Within thirty (30) days after the adoption of any proposed budget for the Association, the Board of Directors shall provide a copy or summary of the budget to all Owners, and shall set a date and give notice for a meeting of the Owners to consider ratification of the budget, with such notice to include a statement that the budget may be ratified without a quorum. The date of the meeting of Owners to consider ratification of the budget shall be not less than ten (10) nor more than sixty (60) days after the mailing of the copy or summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at the meeting a majority of all the Owners of the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board of Directors.

(m) Adopt an annual budget and make assessments (general or special) (subject to any applicable voting rights of Members provided in the Declaration) against the Lots and Units to defray the Common Expenses of the Association, establish the means and methods of collecting such assessments from the Owners and establish the period of the installment payment, if any, of the assessments for Common Expenses of the Association, and establish appropriate reserve funds for the Association, all as provided in the Declaration.

(n) Borrow money on behalf of the Association when required for any valid purpose.

(o) Grant easements, rights-of-ways or licenses over and through the Common Areas pursuant to North Carolina General Statute Section 47F-3-102(9).

(p) Enter into contracts to carry out the business and activities of the Association.

ARTICLE VII

OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Association shall be a President and Vice-President, who shall at all times be a member of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officer. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. Any officer may hold more than one position; provided, however, that the offices of President, Vice President, and Secretary shall be held by three different individuals.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting as such, unless a paid employee of the Association (example - General Manager) has been elected as an officer.

Section 9. Duties. The duties of the officers are as follows:

President

(a) The President shall be the principal executive officer of the Association and subject to the control of the Board. The President shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments including, but not limited to, promissory notes. In addition, the President shall prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

Vice-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board. The Board may delegate some or all of the duties of the Secretary to the General Manager.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members. The Board may delegate some or all of the duties of Treasurer to the General Manager.

ARTICLE VIII

COMMITTEES

The Association shall appoint an Architectural Review Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose. The function and duties of Committees are subject to the oversight and approval of the Board of Directors. Committee appointments are made by the President of the Association for one-year terms.

ARTICLE IX

BOOKS AND RECORDS

The books and records of the Association shall be available for inspection during regular business hours by the Members, Owners and their attorneys and accountants pursuant to the terms and conditions of Article 16 of the North Carolina Nonprofit Act and Article 3 of The North Carolina Planned Community Act.

ARTICLE X

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a lien upon the property against which the assessment is made. Any assessments, which are not paid when due, shall be delinquent. If the assessment is not paid within thirty (30) days after the due date the assessment shall bear interest from the date of delinquency at the rate of sixteen percent (16%) per annum, plus such late charge as may be established by the Board of Directors, and the Association may bring an action at law against the Member or Unit Owner personally obligated to pay the same or foreclose the lien against the property described in the Declaration. Interest, costs, and attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot or Unit.

ARTICLE XI

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: ELK RIVER PROPERTY OWNERS' ASSOCIATION, NORTH CAROLINA, 1983.

ARTICLE XII

AMENDMENTS

These Bylaws may be amended and repealed and new Bylaws may be altered, amended, or repealed at any time by the Members and the Board of Directors pursuant to Section 55A-10-21 of the North Carolina Nonprofit Corporation Act.

ARTICLE XIII

MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

ARTICLE XIV

INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS

The Association shall indemnify, to the fullest extent permitted by law and this Article, any person who is or was a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding (and any appeal therein), whether civil, criminal, administrative, arbitative, or investigative and whether or not brought by or on behalf of the Association, by reason of the fact that such person is or was a director or officer of the Association, or is or was serving at the request of the Association as a director, officer,

committee member, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise or as a trustee or administrator under an employee benefit plan, or arising out of such party's activities in any of the foregoing capacities, against all liability and litigation expense, including reasonable attorneys' fees; PROVIDED, HOWEVER, THAT the Association shall not indemnify any such person against liability or expense incurred on account of such person's activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of the Association or if such person received an improper personal benefit from such activities. The Association likewise shall indemnify any such person for all reasonable costs and expenses (including attorneys' fees) incurred by such person in connection with the enforcement of such person's right to indemnification granted herein.

The Association shall pay all expenses incurred by any claimant hereunder in defending a civil or criminal action, suit, or proceeding as set forth above in advance of the final disposition of such action, suit, or proceeding upon receipt of and undertaking by or on behalf of such claimant to repay such amount unless it ultimately shall be determined that such claimant is entitled to be indemnified by the Association against such expenses.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this Bylaw, including without limitation, (a) a determination by a majority vote of disinterested directors (i) that the activities giving rise to the liability or expense for which indemnification is requested were not, at the time taken, known or believed by the person requesting indemnification to be clearly in conflict with the best interests of the Association and (ii) that the person requesting indemnification did not receive an improper personal benefit from the activities giving rise to the liability or expense for which indemnification is requested, and (b) to the extent needed, giving notice to the Members of the Association.

Any person who at any time after the adoption of this Bylaw serves or has served in any of the aforesaid capacities for or on behalf of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provision of this Bylaw.

ARTICLE XV

PRIORITY

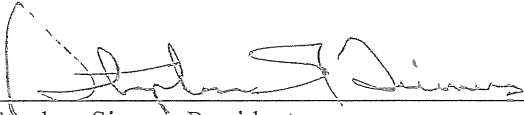
In the event that any of the provisions of these Bylaws conflict with the provisions of the North Carolina Nonprofit Corporation Act, the provisions of the North Carolina Nonprofit Corporation Act shall control. In the event of any inconsistency between the Bylaws and the Declaration, the Declaration shall control; in the event of any inconsistency between the Bylaws and the Articles of Incorporation, the Articles shall control.

[SIGNATURE PAGE FOLLOWS]

RE 447 810

IN TESTIMONY WHEREOF, the President of the Association hereby certifies that the foregoing Amended and Restated Bylaws of the Association were duly approved and adopted by the Board of Directors and Members of the Association, and the Association has caused these Amended and Restated Bylaws to be executed in such form as to be legal and binding, all by authority first duly given, effective the date and year above stated.

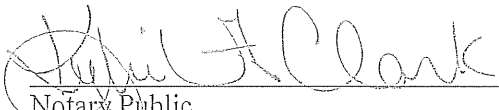
ELK RIVER PROPERTY OWNERS' ASSOCIATION, INC.

By: 
Stephen Simms, President

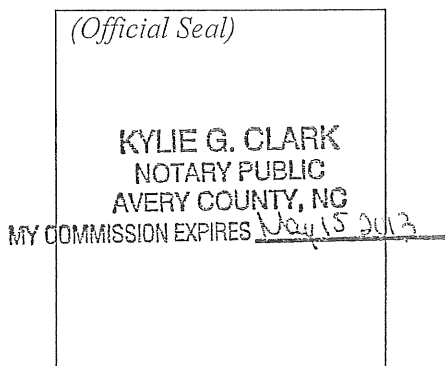
Avery COUNTY, NORTH CAROLINA

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein and, if other than in an individual capacity, in the capacity indicated having been first authorized to do so: Stephen Simms, President of Elk River Property Owners' Association, Inc.

Date May 14, 2010


Notary Public
My commission expires:

May 15, 2013



Notary seal or stamp must appear within this box.