

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ELK RIVER

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Prepared by **Ward and Smith, P.A.**, University Corporate Center, 127 Racine Drive, Post
Office Box 7068, Wilmington, NC 28406-7068

Please return to **WARD AND SMITH, P.A.**, University Corporate Center, 127 Racine Drive,
Post Office Box 7068, Wilmington, NC 28406-7068
Attention: Adam M. Beaudoin

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EXHIBIT A - Property

EXHIBIT B - Use Restrictions

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR ELK RIVER

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR ELK RIVER** ("Declaration") is made this 16th
day of May, 2023, by ELK RIVER PROPERTY OWNERS ASSOCIATION, INC., a North
Carolina non-profit corporation (the "Association").

WHEREAS, Elk River Development Corporation ("Declarant") caused to be
recorded the Elk River Declaration of Covenants and Restrictions of Elk River in Book 140,
at Page 1419 in the office of the Register of Deeds of Avery County, which Declaration was
amended and restated in its entirety by that certain Elk River Amended and Restated
Declaration of Covenants, Conditions and Restrictions in Book 447, at Page 776 in the office
of the Register of Deeds of Avery County (together, as amended and supplemented, the
"Original Declaration"), encumbering the Property, as defined herein; and,

WHEREAS, pursuant to Article X, Section 3 of the Original Declaration, the
Association may amend the Original Declaration by the affirmative vote of not less than sixty-
seven percent (67%) of the total votes of the Association; and,

WHEREAS, the Association desires to amend and restate the Original
Declaration as described herein and has obtained the affirmative vote of not less than sixty-
seven percent (67%) of the votes in the Association.

NOW, THEREFORE, the Association hereby covenants and declares on behalf of
itself and its successors and assigns that the Original Declaration is hereby amended and
restated in its entirety. The real estate previously made subject to the Original Declaration
from the date this Declaration is recorded in the office of the Register of Deeds of Avery
County shall be held, conveyed, acquired and encumbered subject to the terms and provisions
hereof, all of which shall run with the real estate and bind and inure to the benefit of all current
owners and perspective purchasers and parties who have or may acquire any right, title, estate
or interest in or to any of such real estate or who have or may acquire any right or occupancy
of or interest upon any portion thereof, all subject to the right of the Association to amend this
Declaration according to its terms.

The Original Declaration is hereby amended to delete and rescind the Original
Declaration as amended and supplemented in its entirety, subject to Article 2 herein, and the
Association adopts in its place instead this Declaration.

Article 1. Definitions.

The terms used in this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1 "Act": Chapter 47F of the General Statutes of North Carolina designated as the North Carolina Planned Community Act.

1.2 "Airport Lot Designee": A natural person designated to use the airport in accordance with Section 9.2.

1.3 "Articles": The Articles of Incorporation of Elk River Property Owners Association, Inc., as filed with the North Carolina Secretary of State.

1.4 "Assessment": Assessments levied on all Lots to fund the Common Expenses.

1.5 "Association": Elk River Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.6 "Association Documents": Collectively the Articles of Incorporation of the Association, the Bylaws of the Association, this Declaration, any Supplemental Declaration as may be applicable to the Property, the Rules and Regulations, and any resolutions adopted by the Board, all as may be amended, restated and revised from time to time. Any exhibit, schedule or amendment to an Association Document shall be considered a part of that document.

1.7 "Benefited Assessment": Assessments levied under Section 7.4.

1.8 "Board of Directors" or "Board": The body responsible for administration of The Association selected as provided in the Bylaws.

1.9 "Business and Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to a Person other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

1.10 "Bylaws": The Bylaws of the Association as they may be amended from time to time.

1.11 "Club": Elk River Club, a North Carolina nonprofit corporation, its successors and assigns.

1.12 "Common Elements": All real and personal property in which the Association now or hereafter owns, leases or otherwise holds possessory or use rights for the common use and enjoyment of the Owners, including easements held by the Association for those purposes and all property labeled as "Common Area" on the Map; provided, however, the

Buffer Strip shall not be considered Common Area. The terms shall include, without limitation, any recreational facilities and any drives, roads, cul-de-sacs, and buffers transferred by the Declarant to the Association. The term shall also include any and all permits and other such intangible property held by the Association for the common use and benefit of the Owners.

Notwithstanding this definition, Section 47F-3-112 of the Act, which requires certain membership approval and certain procedures to convey portions of common elements, shall apply only to those portions of the Common Elements included in real estate owned or leased by the Association other than Lots. For the purposes of the Declaration, the term "Buffer Strip" shall include all buffer strips depicted on Maps, as well as areas of land which run along the perimeter of the Properties.

1.13 "Common Expenses": Any and all expenditures made by or financial liabilities and obligations of the Association, together with any allocations to reserves.

1.14 "Community-Wide Standard": The standard of conduct, upkeep, or other activity generally prevailing throughout the Property. The standard shall be determined by the Board of Directors or ARC (as described in Article 8). The standard may contain both objective and subjective elements, and may evolve and change as development progresses and as the needs and desires within the Property change.

1.15 "Declaration": This Declaration, including any exhibit, schedule or amendment thereto, and any Supplemental Declaration, all as may be amended, restated and revised from time to time.

1.16 "Dwelling Unit": Any condominium unit located within a Sub-Association and any building or structure or portion of a building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family.

1.17 "Landscaping": Living plants, shrubs, trees, vegetation, ground coverings (including grass and sod) and appurtenant live/growing vegetative materials, straw, mulches, composting materials, pools (other than swimming pools), ornamental ponds, ornamental structures and any other living or non-living material or structure reasonably constituting a part of any or all of the foregoing installed upon a Lot.

1.18 "Limited Common Elements": A portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one (1) or more but fewer than all of the Lots, if any. Limited Common Elements may also be shown on any Recorded Plat.

1.19 "Lot": Any plot of real property, with delineated boundary lines, shown on any recorded plat of the Property, with the exception of any Common Area owned in fee by the Association and any public street rights-of-way shown on such recorded plat and real property owned in fee by a Sub-Association. Lot shall also mean and include any townhome lot or condominium unit within the Properties. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of new subdivision plats, any newly-platted Lot shall thereafter constitute a Lot. The term "Improved Lot" shall mean any Lot upon which has been constructed any single-family dwelling. The term "Unimproved Lot" shall refer to any Lot which is not an Improved Lot.

1.20 "Maps": The maps of the Properties as recorded (either now or hereinafter in the Register of Deeds.

1.21 "Member": A Person having membership in the Association consistent with Section 3.2 of this Declaration.

1.22 "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security deed encumbering a Lot.

1.23 "Mortgagee": A beneficiary or holder of a Mortgage.

1.24 "Owner": One or more Persons who hold the record title to any Lot, except Persons holding an interest merely as security for the performance of an obligation in which case the equitable owner will be considered the Owner.

1.25 "Person": A natural person, corporation, limited liability company, partnership, trust, or any other legal entity.

1.26 "Property": The real property described in Exhibit A.

1.27 "Recorded Plat": Any and all maps and plats recorded in the Register of Deeds depicting portions of the Property subject to this Declaration.

1.28 "Register of Deeds": The office of the Register of Deeds of Avery County, North Carolina.

1.29 "Sub-Association" shall mean sub-associations pertinent to distinct neighborhoods, condominiums, or sections of the Property. Owners of Lots subject to the jurisdiction of a Sub-Association within the Property shall also be Members of the Association and shall be entitled to all rights and subject to all obligations granted and created pursuant to the Association.

1.30 "Upkeep": Care, inspection, maintenance, operation, repair, repainting, remodeling, restoration, improvement, renovation, alteration, replacement and reconstruction.

1.31 "Use Restrictions": The rules and use restrictions are more fully defined as set forth in Article 9.

1.32 "Utility Company": A public or private company or entity duly licensed and authorized by the North Carolina Utilities Commission to provide utility services within a specified franchise area, any entity providing utility services on behalf of a body politic, municipality or other governmental body or entity and any entity that provides utility services to any of the Property.

Article 2. Property Rights.

2.1 Easements in Original Declaration. Notwithstanding the replacement of the Original Declaration with this Declaration, all easements created and described in the Original Declaration shall be easements appurtenant to, and shall run with, the land by whomsoever owned, whether or not the same shall be contained or referred to in any future deed or conveyance, and shall at all times inure to the benefit and be binding upon the Association and the Owners, all their grantees and their respective heirs, successors, personal representatives or assigns.

2.2 Common Areas: Every Owner shall have a right and nonexclusive easement, in common with all other Owners, of use, access, and enjoyment in and to the Common Areas, subject to:

- (a) The Association Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) All applicable provisions of the Act;
- (d) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Areas as described in Section 9.2 herein, including rules restricting use of the Common Areas to Owners, their families, lessees and guests, and rules limiting the number of Owners, occupants and guests who may use the Common Areas;
- (e) The right of the Association to dedicate or transfer all or any part of the Common Areas to governmental entities pursuant to Section 4.3;
- (f) The right of the Association to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any improvements situated upon the Common Areas;
- (g) The right of the Association to permit use of any improvements situated on the Common Areas by Persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;
- (h) The right of the Association to suspend the privilege of an Owner to use improvements within the Common Areas;
- (i) The right of the Association to rent or lease recreational facilities within the Common Areas (if any are constructed) on a short-term basis to any Owner for the exclusive use of such Owner and such Owner's family and guests; and
- (j) The right of the Association to create, enter agreements with, grant easements to and transfer portions of the Common Areas to tax-exempt organizations under Section 4.3.

Article 3. The Association Function, Membership and Voting Rights.

3.1 Function of the Association. The Association shall be the entity responsible for management, Upkeep, operation and control of the Common Areas. The Association shall be the primary entity responsible for enforcement of the Association Documents. The Association shall perform its functions in accordance with the Association Documents and North Carolina law. The Association shall have all powers reasonably necessary to perform its functions and obligations described in the Association Documents including, but not limited to, all powers set forth in N.C. Gen. Stat. Chapter 55A and the Act.

3.2 Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person, all co-Owners shall be Members and share the privileges of such membership, subject to reasonable Board regulation, and the restrictions on voting set forth in Section 3.3 and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is a corporation, limited liability company, partnership or other legal entity may be exercised by any officer, director, manager, partner, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3 Voting. All Owners shall have one (1) equal vote for each Lot in which they hold the interest required for membership under Section 3.2, provided, there shall be only one (1) vote per Lot. Except as otherwise specified in this Declaration or the Bylaws or as required by law, the vote for each Lot shall be exercised by the Owner. In any situation in which there is more than one Owner of a particular Lot, the vote for such Lot shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. Absent such notice to the Association, the Lot vote shall be suspended if more than one Person seeks to exercise it. If the co-Owners are unable to agree on how the vote should be cast, it will be disregarded.

3.4 Sub-Associations. Owners of Lots subject to the jurisdiction of any Sub-Association within the Property shall be Members of both the Association and the Sub-Association and shall be entitled to all rights and subject to all obligations granted and created pursuant to both the Association and Sub-Association.

Article 4. The Association Rights, Obligations and Services.

4.1 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

4.2 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Association Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. Except as otherwise specifically provided in the Association Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.3 Dedication of Common Areas. The Association may dedicate or grant easements over portions of the Common Areas to any local, state, or federal governmental entity or any Utility Company.

4.4 Disclaimer of Liability. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to promote the health, safety and welfare of Owners and occupants of any Lot.

(a) Notwithstanding anything contained herein or in the Association Documents or the Act, neither the Association, the Board, nor the management company of the Association shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any Lot or any tenant, guest or invitee of any Owner or occupant or for any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Property, including all Recreational Facilities.

(b) Neither the Association, the Board, nor the management company of the Association shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Property. Each Owner and occupant of a Lot and each family member, tenant, guest, and invitee of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, or the management company of the Association have made no representations or warranties, nor has any Owner or occupant, or any family member, tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

(c) No provision of the Association Documents shall be interpreted as creating a duty of the Association, the Board, or the management company of the Association to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the management company of the Association, if any, their directors, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.5 Safety. The Association may maintain or support certain activities within the Property designed to provide a greater level of safety than exists within the Property.

(a) Neither the Association, any management company of the Association shall in any way be considered insurers or guarantors of safety within the Property. Neither the Association nor any management company of the Association shall be held liable for any loss or damage for failure to provide adequate safety or ineffectiveness of safety measures undertaken.

(b) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge that the Association, its Board of

Directors, and Association committees, the management company of the Association, and the Architectural Review Committee (as defined in Article 8 hereof) do not represent or warrant that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any safety system that may be designated by or installed according to guidelines established by the Architectural Review Committee may not be compromised or circumvented; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will prevent loss by burglary, theft, hold-up, or otherwise; nor that any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems will in all cases provide the detection or protection for which the system is designed or intended.

(c) All Owners and occupants of any Lot, and all family members, tenants, guests, and invitees of any Owner, acknowledge and understand that the Association, its Board and committees, and the management company of the Association are not insurers of safety within the Property. Each Owner acknowledges, understands and shall be responsible for informing its tenants and all occupants of its Lot that the Association, and its Board and committees, are not guarantors of security or safety and that each person using Property within the Project assumes all risks of personal injury and loss or damage to property including Lots, improvements thereon and the contents thereof, resulting from acts of third parties.

(d) All Owners and occupants of any Lot and all family members, tenants, guests, and invitees of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, and the management company of the Association, have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner relied upon any representations or warranties, expressed or implied, relative to any entry gate, patrolling of the Property, neighborhood watch group or volunteer safety patrol, or any security systems recommended or installed or any safety measures undertaken within the Property.

4.6 Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Members of the Association, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein can be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. This paragraph shall be specifically construed to allow the Association to enter into a contract for the overall management of the Association with any individual or corporation. The Association or its managing agent shall also be permitted to provide services to any Sub-Association or Owners where it deems it to be in the interest of the Association to do so.

4.7 Change of Use of Common Areas. Upon adoption of a resolution by the Board stating that, in the Board's opinion, a service provided by the Association pursuant to Section 4.6 or the then present use of a designated part of the Common Areas is no longer in the

best interest of the Owners or is no longer necessary or appropriate for the purposes intended, the Board shall have the power and right to terminate such service or change the use of any Common Areas (and, in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided that any such new use (i) shall be for the benefit of the Owners, and (ii) shall be consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas.

4.8 View Impairment. The Association does not guarantee or represent that any view over and across any property, including any Lot, from adjacent Lots will be preserved without impairment. The Association shall not have the obligation to prune or thin Landscaping except as set forth in Article 5. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.9 Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Areas to, or transfer portions of the Common Areas to non-profit, tax-exempt organizations, including but not limited to organizations that provide facilities or services designed to meet the physical or social needs of a particular group or class of persons, for the benefit of the Property, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

Article 5. Maintenance/Repair and Reconstruction.

5.1 The Association's Responsibility.

(a) The Common Areas. The Association shall provide Upkeep for the Common Areas, which may include without limitation:

(i) all the Common Areas, all improvements upon the
Common Areas;

(ii) all Landscaping, parks, signage, structures, and
improvements situated upon the Common Areas;

(iii) all private roads and streets including any asphalt repairs
thereto, situated upon the Common Areas which are not subject to the jurisdiction of any
Sub-Association;

(v) Landscaping, sidewalks, street lights, irrigation systems,
and signage within public streets or other rights-of-way abutting the Property;

(vi) Landscaping within any public utility easements and scenic or access easements within the Common Areas (subject to the terms of any easement agreement relating thereto) which are not subject to the jurisdiction of any Sub-Association.

(b) The Association may also maintain and improve other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for Upkeep of the Common Areas shall be a Common Expense allocated among all Lots as part of an Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for, such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

Any portion of the Property for which insurance is required pursuant to this Article which is damaged or destroyed shall be repaired or replaced by the Association, in a time and manner as determined in the sole discretion of the Board.

5.2 Owner's Maintenance Responsibility. Each Owner shall provide for the Upkeep of his or her Lot (with the exception of those areas designated as common maintenance responsibility on the recorded maps) and Dwelling Unit, and all other structures, parking areas, Landscaping, and other improvements upon the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such responsibility for Upkeep is otherwise assumed by or assigned to the Association or a Sub-Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her Upkeep responsibility, the Association may perform such work for Upkeep and assess all costs incurred by the Association against the Lot and the Owner in accordance with Section 7.4. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3 Standard of Performance. All Upkeep shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board. Upkeep may include irrigation as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard.

Portions of the Property are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Property. The Board may establish a higher Community-Wide Standard for such areas and require additional Upkeep for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4 Restraint on Transfer of Lots as Time Shares. No Owner shall transfer any portion of or all of his interest in a Lot for a time share as defined in N.C. Gen. Stat. § 93A-41 (9), fractional interest sharing or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years. Notwithstanding the above, nothing herein shall be construed on preventing the ownerships in a Lot by more than one person as tenants in common, joint tenants or tenants by the entirety.

Article 6. Insurance and Casualty Losses.

6.1 Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect if reasonably available the following types of insurance:

(a) Blanket property insurance covering risks of physical loss on an "all-risk" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Areas to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at a reasonable cost, then "broad form named perils" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full insurable replacement cost of the insured property. This provision for Blanket property insurance shall not be construed to require the Association to obtain coverage for any structure owned by any party other than the Association. The Association may elect to provide insurance for said structures with the approval of a majority of the Owners or if such individual coverage is not available;

(b) Commercial general liability insurance on the Common Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf and including coverage for non-owned automobile liability. If generally available at reasonable cost, the commercial general liability insurance shall have a limit of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Workers compensation insurance and employers liability insurance if and to the extent required by law;

(d) Directors and officers' liability insurance or equivalent association liability insurance;

(e) Commercial crime insurance, including employee fidelity insurance, in an amount determined by its best business judgment which shall not be less than one-sixth (1/6) of the annual Assessments on all Lots plus reserves on hand for employee fidelity insurance. Such commercial crime insurance shall cover funds held by the Association's management company, unless such management company's insurance insures the Association against crimes committed by or against such management company. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation;

(f) Such additional insurance, including but not limited to flood, earthquake and hurricane insurance, as the Board in its best business judgment determines advisable; and

(g) The Association shall have no insurance responsibility for any portion of any Lot except as stated in paragraph 6.1(a).

If the insurance described in subsection (a) of this Section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners.

6.2 Association Policy Requirements. Prior to the renewal of any insurance policy, the Association shall arrange for a review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be familiar with insurable replacement costs in the New Hanover County, North Carolina, area.

Premiums for all insurance on the Common Areas shall be Common Expenses and shall be included in an Assessment. In the event that insurance costs increase during the fiscal year, the Board may levy an Assessment for the increased costs pursuant to Section 7.2 herein, and such Assessments shall become effective upon approval by the Board.

The policies may contain a reasonable deductible as determined by the Board and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful conduct of one or more Owners, their family members, guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots in accordance with Section 7.4.

- (a) All insurance coverage obtained by the Board shall
- (i) Be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board requires;
 - (ii) Be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
 - (iii) Not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees;
 - (iv) Include an agreed amount endorsement if the policy contains a co-insurance clause;
 - (v) Contain replacement cost coverage;

- (vi) Contain a waiver of subrogation as to any claims against the Association's Board, officers, committees, employees, and its manager and the Owners;
- (vii) Make the Lot Owners additional insureds under the policy;
- (viii) Contain an endorsement preventing the Association's insurance carrier from invoking its "other insurance" clause to obtain any contribution from any insurance maintained by individual Owners;
- (ix) Provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and
- (x) Provide that if, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides the primary insurance coverage.

(b) In addition, the Board shall secure, if reasonably available and as applicable, insurance policies providing the following:

- (i) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (ii) An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (iii) A cross liability provision; and
- (iv) A provision vesting the Board with exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

6.3 Owner's Insurance. By virtue of owning a Dwelling Unit upon a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance covering risks of physical loss for both the Dwelling Unit and any other insurable improvements on the Lot for the full insurable replacement cost thereof, less a reasonable deductible, unless any Sub-Association having jurisdiction of such Owner's Dwelling Unit and Lot carries such insurance pursuant to any Supplemental Declaration or otherwise. Such property insurance shall include windstorm and hail coverage, and, if full insurable replacement cost is not reasonably available for such coverage, actual cash value may be substituted. Each Owner shall, upon request from the Association, provide evidence of insurance coverage to the Association.

Each Owner further covenants and agrees that in the event of damage to or destruction of the Dwelling Unit or any other structures on or comprising his or her Lot, he or she shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 8 of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

6.4 Loss Adjustment, Repair and Proceeds. With respect to any loss covered by the policy (or policies) of the Association, it shall be adjusted by the Association and matters pertaining to the disbursement of proceeds of such insurance and the repair or replacement, including termination of the Project, shall be governed by the provisions of Chapter 47F-3-113(d) and (g) of the Act.

Article 7. Assessments.

7.1 Creation of Assessments. Subject to the limitations described in Sections 7.2 and 7.3, the Association shall levy assessments against each Lot for Common Expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments for the Association expenses: (a) Annual Assessments; (b) Special Assessments as described in Section 7.3, and (c) Benefited Assessments as described in Section 7.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot within any portion of the Property is deemed to covenant and agree to pay those assessments.

(a) All assessments, together with interest from the due date of such assessment at a rate determined by the Association (not to exceed the highest rate allowed by North Carolina law), late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is levied until paid, as more particularly provided in Section 7.8. Each such assessment, together with interest, late charges, costs, including lien fees and administrative costs, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment was levied. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance.

(b) All assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, an Assessment for each Lot shall be due and payable in advance each year on the first day of the fiscal year of the Association.

(c) The Association shall, upon request by an Owner, furnish to any Owner a certificate in writing signed by an officer of the Association setting forth whether assessments for such Owner's Lot have been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(d) No Owner may exempt himself or herself from liability for assessments, by non-use of the Common Areas, abandonment of his or her Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be

claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it or for inconvenience or discomfort arising from repairs or improvements or other action taken by it.

7.2 Computation of Annual Assessment. Not less than sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. In determining the budget, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The rate of Annual Assessments must be uniform for all Unimproved Lots and at a uniform rate for all Improved Lots.

Within thirty (30) days after adoption of any proposed budget by the Board, the Board shall provide to all Owners a summary of the budget and notice of a meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary of the budget and notice of the meeting. There shall be no requirement that a quorum be present at the meeting. The budget shall be deemed ratified unless, at that meeting, a majority of all the Owners in the Association rejects 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.

The Assessment for the fiscal year shall be determined based upon the budget adopted by the Board and ratified by the Owners.

7.3 Special Assessment In addition to the Annual Assessment authorized by this Article Seven, the Board may levy a Special Assessment against all Lots from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the cost of any repair, replacement or repaving of capital improvements, including the roads. Such Special Assessments shall be approved at a meeting of the Board and shall become effective upon approval by the Board; provided that any Special Assessment levied to fund the acquisition or construction of additional capital improvements must be approved by the affirmative vote of Owners of Lots to which at least 51% of the total votes in the Association are allocated. The due date of any Special Assessment under this Article shall be established by the Board. The amount of any and all Special Assessments shall be levied equally at the same rate among all Improved Lots and at a uniform rate amount all Unimproved Lots.

7.4 Benefited Assessments. The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by The Association, as follows:

(a) to cover costs incurred in bringing the Lot into compliance with the terms of the Association Documents and the Act or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their family members, tenants, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this Section;

(b) As provided in the Association Documents; and

(c) For a violation of the Association Documents by an Owner and the cost of enforcement of the same.

7.5 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following (a) the date the Lot is made subject to this Declaration, or (b) the date the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Assessments against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

7.6 Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Lot against which they are levied, as provided in N.C. Gen. Stat. § 47F-3-116, as amended, until paid unless otherwise specifically precluded in this Declaration. The lien shall also secure payment of interest (subject to the limitations of North Carolina law), late charges, and costs of collection (including attorneys' fees, lien fees and administrative costs). Such lien shall be superior to all other liens, except (a) those superior by law, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. The Association may enforce such lien, when any assessment or other charge is delinquent, by suit, judgment, and foreclosure.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 7.5, including such acquirer, its successors and assigns.

7.7 Acceleration. In any case where an assessment or other charge is payable in installments, upon a default by such Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessment or other charge may be accelerated, at the option of the Board, and the entire balance of the assessment or other charge may be declared due and payable in full by the service of such notice to such effect upon the defaulting Owner.

7.8 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

7.9 Exempt Property. The following property shall be exempt from payment of Assessments:

- (a) all of the Common Areas; and

(b) all property dedicated to and accepted by any governmental authority or Utility Company.

In addition, the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

Article 8. Architectural and Design Standards.

8.1 General. No improvements (including staking, clearing, excavation, grading and other site work), exterior alteration of existing improvements (including painting), placement or posting of any object or thing on the exterior of any Lot, Dwelling Unit, other structure or the Common Areas (e.g., signs, antennae, clotheslines, playground equipment, temporarily or permanently installed basketball goals, pools, propane tanks, lighting, temporary structures, and artificial vegetation), planting or removal of Landscaping, or installation or removal of an irrigation system shall take place except in compliance with this Article, this Declaration, including the Use Restrictions, and the Design Guidelines and with the approval of the appropriate committee under Section 8.2.

Any Owner may remodel, paint or redecorate the interior of structures, including the Dwelling Unit on his or her Lot, without approval. However, modification of the exterior and modifications to the interior of screened porches, patios, and similar portions of a Lot visible from other Lots, Dwelling Units, the Common Areas or streets (public or private) within the Property shall be subject to this Article and approval as set forth below.

This Article shall not apply to improvements to the Common Areas by or on behalf of the Association.

8.2 Architectural and Design Review.

(a) New Construction. The Board may, at its option, create and appoint an Architectural Review Committee ("ARC") or act as the ARC. The ARC, if established, shall consist of at least three (3), but not more than five (5), Persons who shall serve and may be removed in the Board's discretion. (For purposes of this Article, "Reviewing Body" shall refer to either the Board or the ARC, as appropriate under the circumstances.)

(b) Fees. The Reviewing Body may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(c) Security. The Reviewing Body may also require posting of security by any Owner, or such Owner's contractor or builder to be utilized for the payment of any fines and cost of any enforcement in accordance with Section 8.8 herein, or the repair of any damage to any of the Common Areas or providing Upkeep of such the Common Areas in excess

of normal Upkeep as may occur during the construction of any permitted improvements within The Property. The amount and type of security, as required by the Reviewing Body, may be changed from time to time and does not necessarily have to be consistent as to all Owners, contractors or builders.

8.3 Guidelines and Procedures. The ARC shall have the authority to amend the Design Guidelines.

The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon the location, unique characteristics, intended use, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the Reviewing Body and compliance with the Design Guidelines does not guarantee approval of any application.

Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARC is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Association shall make the Design Guidelines available to Owners (including builders) and contractors who seek to engage in development or construction within the Property and all such Persons shall conduct their activities in accordance with such Design Guidelines. In the Board's discretion, such Design Guidelines may be recorded in the Avery County Register of Deeds, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Reviewing Body, unless the Reviewing Body has granted a variance in writing pursuant to Section 8.6. So long as the Reviewing Body has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

8.4 Submission of Plans and Specifications.

(a) No activities within the scope of Section 8.1 shall commence on any Lot until an application for approval of the proposed work has been submitted to and approved by the Reviewing Body. Such application shall be in the form required by the Reviewing Body and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefore and other features of proposed construction, as applicable. The Reviewing Body may set forth the procedure and any additional information for submission of the Plans.

(b) In reviewing each submission, the Reviewing Body may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. The Reviewing Body may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

The Reviewing Body shall, within a reasonable period of time, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be unacceptable, or inconsistent or not in conformity with this Declaration, the reasons for such finding, and suggestions for the curing of such objections. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

(c) If construction does not commence on a project for which Plans have been approved within sixty (60) days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the Reviewing Body for reconsideration provided that the Reviewing Body may grant a longer time period for expiration of the approval at the time the approval is granted.

8.5 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Reviewing Body will change from time to time and that approvals, and interpretation, application and enforcement of the Architectural Restrictions included in this Declaration may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

8.6 Variances. The Reviewing Body may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations; (b) when unique circumstances dictate such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations; and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and

compatible with existing and anticipated uses of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance.

8.7 Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Association, the Board, or the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board, the ARC, or any member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot. In all matters, the ARC and their members shall be defended and indemnified by the Association as provided in the Bylaws.

8.8 Enforcement. Any construction, alteration or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or ARC, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article may be excluded from the Property, subject to the notice and hearing procedures contained in the Declaration. In such event, neither the Association, its officers, or directors shall not be held liable to any Person for exercising the rights granted by this section.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the Reviewing Body.

8.9 Tree Removal. Notwithstanding anything to the contrary that may be contained elsewhere in this Declaration, each Owner acknowledges and agrees that no Owner shall cut down or otherwise cause to be removed from the front yard of their Lot or the Common Areas any tree having a diameter of three inches (3") or greater when measured at a point up the

trunk of such tree thirty six inches (36") from ground level at the base of such tree without the prior written approval of the Board, the ARC. For the purpose of this Section 8.9, the term "front yard" shall mean any area around or adjacent to a Dwelling Unit other than the area enclosed by a fence.

8.10 Height Restriction. If an existing Dwelling Unit is damaged to the point that it needs to be rebuilt, such Dwelling Unit shall be constructed consistent with the current Design Guidelines in place at such time.

8.11 Building Setback. In addition to the terms of the Design Guidelines and this Declaration, Owners must comply with any requirements established by Avery County, including without limitation, the requirements that all Dwelling Units or structures be constructed at least five (5) feet from the Lot boundary line and that no Dwelling Unit or structure may be located closer than ten (10) feet from any Dwelling Unit or structure on an adjacent Lot. Owners must obtain a building permit and any other necessary permits and approvals from Avery County and all other applicable municipalities and government agencies prior to commencing construction of a Dwelling Unit or other structure on their Lot.

Article 9. Plan of Development and Use Restrictions.

9.1 Plan of Development: Applicability: Effect.

(a) All provisions of this Declaration and any rules shall apply to all other Owners, their family members, occupants, tenants, guests and invitees of any Lot.

(b) The Property may be subject to restrictions governing land development, architectural and design control, individual conduct and uses of or actions upon the Property. This Declaration, including the Use Restrictions attached hereto as Exhibit B, and the rules and resolutions adopted by the Board or the Members establish affirmative and negative covenants, easements, and restrictions on the Property.

9.2 Authority to Promulgate Rules.

(a) Subject to the terms of this Article and in accordance with its duties of care and undivided loyalty to the Association and its Members, the Board may adopt rules not inconsistent with the Use Restrictions set forth in Section 9.4 hereof, and other such rules and regulations permitted by, and not inconsistent with, the Act, including, but not limited to, rules and regulations relating to the number of Owners per Lot who can use an amenity at any given time, and parking and traffic, on public and private streets located within the Property. Said rules and regulations shall be applicable to all Owners.

(b) Each Lot shall be entitled to designate one (1) Airport Lot Designee to use the airport. Only the Airport Lot Designee shall be entitled to use the airport. The Airport Lot Designee must be approved by the Board along with payment of all applicable fees. Each Lot may only change their Airport Lot Designee once per year and the Board, in its sole discretion, may charge a change of Airport Lot Designee fee at the time of the requested change. The proposed Airport Lot Designee must complete and submit an application and must be approved by the Board along with payment of all applicable fees.

(c) The Board shall send a copy of the rule to each Owner specifying the effective date of such rule within a reasonable period of time, as determined by the Board, prior to the effective date of the rule. The Association shall provide, without cost, a copy of the rules then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board to modify, repeal or expand the Declaration, the Bylaws, the Articles, or the Design Guidelines. Such documents may be amended as provided therein.

9.3 Owners' Acknowledgment. All Owners are subject to this Declaration and are given notice that: (a) their ability to use their privately owned property is limited thereby; and (b) the Board may adopt, delete, modify, create exceptions to, or amend the rules.

Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time.

9.4 Use Restrictions. The Property is subject to the Use Restrictions described on Exhibit B.

Furthermore, the Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices of the Association consistent with this Declaration), subject to applicable laws. The Association shall have standing and the power to enforce such standards and restrictions.

9.5 Rights of Owners. Except as may be specifically set forth in the Use Restrictions, including the Initial use Restrictions, neither the Board nor the Owners may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Flags/Speech. The rights of Owners and occupants to display on their Lots flags, political signs, signs and symbols of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods in individually owned property shall not be abridged; provided, however, the Board may adopt reasonable time, place, size and manner of display restrictions regulating flags, political signs, signs and symbols which are visible from outside the Lots. Notwithstanding any provision of this Declaration, including without limitation the provisions of this Article 9, no rule or regulation adopted by the Board of Directors or the Association, nor any amendment to the Declaration adopted by the Association shall regulate or prohibit the display of the flag of the United States of America and/or the flag of the State of North Carolina, of a size no greater than four (4) feet by six (6) feet, which is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. §§ 5-10, as amended.

(c) Religious and Holiday Displays. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in residential neighborhoods shall not be

abridged, except that the Association may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the Lot.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Dwelling Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Areas.

(e) Activities Within Dwelling Units. No rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Dwelling Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. The initial allocation of financial burdens and rights to use Common Areas among the various Lots shall not be changed to the detriment of any particular Owner. Nothing in this provision shall prevent the Association from changing the use of the Common Areas as provided in Section 4.7, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Areas, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Section 7.1.

(g) Abridging Existing Rights. Any rule which would require Owners to dispose of personal property being kept on the Property shall apply prospectively only and shall not require the removal of any property which was being kept on the Property prior to the adoption of such rule and which was in compliance with all rules in force at such time unless otherwise required to be removed by law.

Article 10. Easements.

10.1 Easements of Encroachment. In the event that a Dwelling Unit erected on one (1) Lot encroaches on to an adjoining Lot or on to the Common Areas, an easement appurtenant to the encroaching Lot hereby is granted over the Lot or portion of the Common Areas encroached upon for the natural duration of the encroachment. The intent and purpose of this Section is to prevent hardship and expense incurred in removing any Dwelling Unit mistakenly constructed by the Declarant or another Owner on property belonging to another and which does not have a material adverse effect thereon. Nothing herein shall grant any easement for any encroachment unless the encroachment either: (i) is a part of the original construction by the Declarant or another Owner, or (ii) is thereafter constructed in good faith and according to plans and specifications approved by the Board or ARC.

10.2 Easements for Cross-Drainage. Every Lot and the Common Areas shall be burdened with perpetual easements for natural drainage of stormwater runoff from other portions of the Property; provided, no Person shall alter the natural drainage on any Lot to

increase materially the drainage of stormwater onto adjacent portions of the Property without the consent of the Owner(s) of the affected property and the Board.

10.3 Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, their Board, officers or committees, and by all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

10.4 Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot to (a) perform its Upkeep responsibilities under 5.1, and (b) make inspections to ensure compliance with the Association Documents. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense.

The Association also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the Bylaws, the Design Guidelines, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

The Property is hereby burdened with perpetual, non-exclusive easements in favor of the Association for overspray of water from any irrigation system serving the Common Areas. The Association may use treated water from a water treatment plant for the irrigation of any of the Common Areas. Under no circumstances shall the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

Article 11. Mortgage Provisions.

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Property. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

11.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of ninety (90) days, or any other violation of the Declaration or Bylaws relating to such Lot or the Owner or Occupant which is not cured within ninety (90) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice from the Association upon request of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws which is not cured within ninety (90) days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

11.2 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

11.3 Notice to the Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Article 12. Compliance and Enforcement.

12.1 General Remedies. Every Owner and occupant of any Lot shall comply with the Association Documents, including without limitation the provisions of this Declaration, and the Act. Failure to comply shall be grounds for an action by the Association to recover sums due, for damages, injunctive relief or any other remedy available at law and equity or under the Act.

12.2 Enforcement/Sanctions. The Board or such other agent of the Association with the Board's approval, may impose sanctions for violations of Association Documents after notice and a hearing in accordance with the procedures set forth in the Declaration. Such sanctions may include, without limitation:

(a) Imposing reasonable monetary fines which shall constitute a lien upon the Lot of the violator;

(b) Suspending an Owner's right to vote;

(c) Suspending any Person's right to use any the Common Areas; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from the Lot;

(d) Suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(e) Levying Benefited Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 7.4(a).

12.3 Self-Help Remedies. The Board or such other the Association agent with the Board's approval, may elect to enforce any provision of the Association Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance(s) of Avery County, North Carolina) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in Section 12.7 or in the Bylaws.

12.4 Cumulative Remedies/Attorneys' Fees. The Association shall have all powers and remedies under the Act and the Association Documents which shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Association Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

12.5 The Association's Right Not to Take Action. The Association shall not be obligated to pursue enforcement action in any particular case, such decisions to be within the discretion of the Board, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing, the Board may determine that, under the circumstances of a particular case: (a) the Association's position is not strong enough to justify taking any or further action; or (b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or (c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or justify expending the Association funds; or, (d) it is not in the best interest of the Association, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such covenant, restriction, rule or provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, rule or provision, nor shall it preclude any Owner from taking action at law or in equity to enforce the Association Documents.

12.6 Enforcement by Owner. Nothing set forth in this Article 12 shall prevent any aggrieved Owner from instituting any available remedy in law or in equity for a violation of the Association Documents.

12.7 Hearing Procedures. Except as may be otherwise specifically authorized by the Association Documents, and permitted by the Association Documents, the Board shall not (i) impose a fine or penalty, (ii) undertake permitted remedial action, or (iii) suspend voting or infringe upon other rights of a Member or other occupant of a Lot or Dwelling Unit for violations of the Association Documents, or for assessments or other amounts due and owing to the Association remaining unpaid for a period of thirty (30) days, or longer, unless and until the following procedure is completed:

(a) Written Demand. Written demand to cease and desist from an alleged violation shall be served upon the Responsible Person specifying (i) the alleged

violation; (ii) the action required to abate the violation; and (iii) a time period, not less than five (5) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(b) Notice. At any time within twelve (12) months following receipt of notice of the alleged violation, the Board, or an adjudicatory panel appointed by the Board, shall serve the Responsible Person (for purposes of this Section 12.7, the "Responsible Person" shall be any Member, Owner, or occupant of a Lot or Dwelling Unit) with a written notice of a hearing to be held by the Board of the Association in executive session or an adjudicatory panel appointed by the Board; provided, however, any adjudicatory panel appointed by the Board shall be composed of members of the Association who are not officers of the Association or members of the Board. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on his or her behalf; and (iv) the possible sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by an officer, director or agent of the Association to the Responsible Person or to any person who may be served on the Responsible Person's behalf as provided in said Rule 4.

(c) Hearing. The hearing shall be held in executive session of the Board or an adjudicatory panel appointed by the Board pursuant to the notice affording the member a reasonable opportunity to be heard. Any adjudicatory panel appointed by the Board shall be composed of Members who are not officers of the Association or members of the Board. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the Responsible Person appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. In addition, a written statement of the results of the hearing and the sanction, if any, imposed shall be mailed by the United States mail, postage prepaid, by the Association to the violator.

(d) Appeal. If the hearing is held before an adjudicatory panel, following such hearing and notice of a decision adverse to the violator, the Responsible Person shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the managing agent of the Association, President or Secretary of The Association within fifteen (15) days after the date of the decision, said written notice to contain information by which the Board may notify the Responsible Person of the date of the appeal hearing. If no adjudicatory panel is appointed by the Board, no right of appeal shall exist.

(e) Sanction as Assessment. Pursuant to the provisions of this Section, a fine may be imposed by the Association is an amount not exceeding One Hundred and No/100 Dollars (\$100.00) (or any greater amount as may be provided otherwise by law or the Act) per violation of the Association Documents and without further hearing, for each day after five (5) days after the decision to impose such fine that the violation occurs. Any such fine shall be an assessment as set forth in this Declaration and the Act. If it is decided pursuant to the provisions

of this Section that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

Article 13. General Provisions.

13.1 Term. This Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding each extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified therein.

13.2 Amendment.

(a) By Owners. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing sixty-seven percent (67%) of the total votes in the Association.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the Register of Deeds unless a later effective date is specified therein. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

13.3 Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of sixty-seven percent (67%) of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Association Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in 6.1; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

13.4 Termination. Elk River planned community may only be terminated in accordance with the provision of N.C. Gen. Stat. § 47F-2-118.

13.5 Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

13.6 Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Association Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefited Assessment with respect to the Lot(s) involved in the action.

13.7 Annexation. The oversight, supervision, management and administration of the Permit shall be the sole responsibility of the Association. The Association's duties with respect to the Permit shall be carried out in accordance with the terms and conditions of the Association Documents, and the Permit.

(a) The Association may subject any Contiguous Property, as defined herein, to the provisions of this Declaration with the consent of the owner of such property and affirmative vote of sixty-seven percent (67%) of the members of the Board of Directors of the Association then holding office. "Contiguous Property" shall mean any property of which a portion adjoins or borders the Properties or which is separated from the Properties only by roads, rights of way, waterways, or natural boundaries.

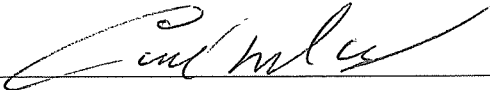
(b) Such annexation shall be accomplished by recording a supplemental declaration in the Register of Deeds describing the property to be annexed and specifically subject it to the terms of this Declaration. Any such supplemental declaration shall be signed by the President of the Association and by the owner of the annexed property. Any such annexation shall be effective upon the recording of the supplemental declaration unless otherwise provided therein

(c) Any property annexed into the Association by the provisions of this Declaration shall be subject to all conditions and privileges of the Declaration and owners of any such annexed property shall be members of the Association.

[The rest of this page intentionally is left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Declaration this 15th day of May, 2023.

ELK RIVER PROPERTY OWNERS ASSOCIATION,
INC.

By: 
Name: Carl Neun
Title: President

STATE OF NC
COUNTY OF Avery

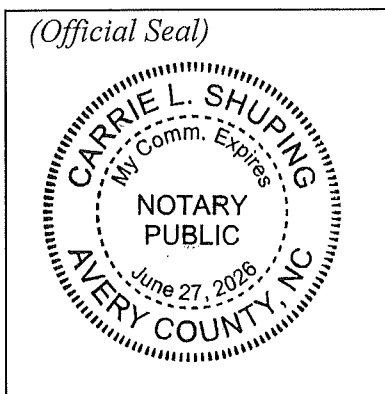
I certify that the following person personally appeared before me this day, acknowledging to me that he/she signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: Carl Neun, President of Elk River Property Owners Association, Inc.

Date: June 14, 2023


Signature of Notary Public

Carrie L. Shuping
Notary's printed or typed name

My commission expires: 6.27.26



Notary seal or stamp must appear within this box.

EXHIBIT A

Property

Being all of the property previously made subject to the Original Declaration, including without limitation the property described in the following Supplementary Declarations of Covenants and Restrictions, which Supplementary Declarations reference the following maps, all of which are recorded in the office of the Register of Deeds of Avery County:

Supplementary Declarations:

Book 150, Page 183

Book 154, Page 204

Book 159, Page 1182

Book 159, Page 1256

Book 168, Page 702

Book 178, Page 748

Book 178, Page 1704

Book 187, Page 259

Book 253, Page 74

Book 255, Page 792

Book 258, Page 766

Book 264, Page 55

Book 274, Page 799

Book 275, Page 319

Book 275, Page 566

Book 276, Page 139

Book 277, Page 807

Book 280, Page 979

Book 281, Page 1285

Book 285, Page 359

Book 285, Page 377
Book 286, Page 266
Book 289, Page 1460
Book 291, Page 345
Book 291, Page 949
Book 292, Page 439
Book 292, Page 472
Book 292, Page 916
Book 299, Page 362
Book 299, Page 1223
Book 300, Page 184
Book 300, Page 404
Book 301, Page 282
Book 301, Page 1555
Book 304, Page 1187
Book 323, Page 1269
Book 326, Page 1035
Book 328, Page 766
Book 328, Page 1301
Book 330, Page 651
Book 330, Page 735
Book 334, Page 1259
Book 334, Page 1265
Book 338, Page 140
Book 339, Page 826
Book 344, Page 1720

Book 345, Page 2364

Book 345, Page 2377

Book 348, Page 1761

Book 349, Page 857

Book 349, Page 2706

Book 349, Page 2725

Book 351, Page 1231

Book 351, Page 1234

Book 354, Page 1680

Book 358, Page 2369

Book 361, Page 2034

Book 361, Page 2926

Book 361, Page 2930

Book 362, Page 1717

Book 380, Page 1867

Book 400 Page 2456

Book 414, Page 726

Maps:

Map Book 18, Pages 121-132

Map Book 20, Pages 3-8

Map Book 19, Pages 84-94

Map Book 21, Page 76

Map Book 21, Pages 78-82

Map Book 22, Pages 86-89

Map Book 24, Pages 53-54

Map Book 24, Pages 79 and 81

Map Book 26, Page 2
Map Book 25, Page 116
Map Book 30, Page 91
Map Book 31, Page 68
Map Book 31, Page 12
Map Book 32, Page 14
Map Book 32, Page 20
Map Book 32, Page 47
Map Book 33, Page 27
Map Book 33, Page 43
Map Book 33, Page 65
Map Book 31, Page 78
Map Book 34, Page 14
Map Book 34, Page 16
Map Book 34, Page 17
Map Book 34, Page 22
Map Book 34, Page 37
Map Book 34, Page 55
Map Book 34, Page 58
Map Book 34, Page 61
Map Book 34, Page 62
Map Book 34, Page 66
Map Book 35, Page 48
Map Book 35, Page 62
Map Book 35, Page 63
Map Book 35, Page 76

Map Book 36, Page 6

Map Book 36, Page 7

Map Book 36, Page 8

Map Book 31 Page 78

Map Book 38 Page 71A

Map Book 38 Page 91A

Map Book 38 Page 98A

Map Book 38 Page 99A

Map Book 38 Page 120A

Map Book 36 Page 11

Map Book 37 Page 64

Map Book 38 Page 157A

Map Book 37 Page 39

Map Book 29 Page 14

Map Book 38 Page 260A

Map Book 38 Page 312A

Map Book 38 Page 255A

Map Book 38 Page 256A

Map Book 38 Page 326A

Map Book 38 Page 327A

Map Book 38 Page 356A

Map Book 38 Page 355

Map Book 38 Page 54B

Map Book 38 Page 94B

Map Book 38 Page 87B

Map Book 38 Page 86B

Map Book 38 Page 85B

Map Book 38 Page 319B

Map Book 38 Page 299B

EXHIBIT B

Use Restrictions

The following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited pursuant to the Declaration.

1. Use. No Lot shall be used for any purpose other than as a single family residence. Except as otherwise provided herein, only one (1) single family dwelling designated for use as, and used as, a single family residential dwelling may be constructed, erected, used or allowed to remain on any Lot.

2. Restricted Activities. The following activities are prohibited within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Any activity which tends to cause an unclean, unhealthy or unsafe condition to exist outside of enclosed structures on the Lot;

(b) Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Dwelling Unit or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance;

(c) Any activity which violates local, state or federal laws or regulations;

(d) Outside burning of trash, leaves, debris or other materials;

(e) Outdoor storage of goods, materials, or equipment, except that outdoor storage of building materials shall be permitted during construction on the Lot on which such materials are being stored;

(f) Any activity which would constitute a public or private nuisance;

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Dwelling Units, except alarm devices used exclusively for security purposes;

(h) Use and discharge of firecrackers and other fireworks;

(i) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any storm sewer, drainage ditch, or other component of the storm drainage system serving the Property, any stream, pond, or lake, or elsewhere within the Property, except that fertilizers may be applied to landscaping on Dwelling Units provided care is taken to minimize runoff;

(j) Subdivision of a Lot into two or more Lots, or changing the boundary lines of any Lot after a subdivision plat including such Lot has been approved and recorded;

(k) Use of any Dwelling Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Dwelling Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(l) On-site storage of gasoline, heating, or other fuels on Lots, except that a reasonable amount of propane gas and other fuel may be stored on each Dwelling Unit for emergency purposes and operation of gas cooking grills, lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment.

(m) Use of any Dwelling Unit for a Business or Trade, garage sale, moving sale, rummage sale, or similar activity, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents of the Property; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is noticeably greater than that which is typical of Dwelling Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

Leasing of a Dwelling Unit shall not be considered Business and Trade.

(n) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Property or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(o) Vehicles and Parking. Vehicles, including without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, golf carts, ATVs, and recreational vehicles, shall only be permitted on the Property in accordance with rules and procedures determined by the Board;

(p) Any construction, erection, placement, or modification of anything, permanently or temporarily, upon a Lot or on the outside portions of the Dwelling Unit, whether such portion is improved or unimproved, except as specifically authorized in Paragraph 4(d) of this Exhibit or after approval of the thing by the Reviewing Body in writing, and otherwise in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, storage sheds, or fences of any kind;

(q) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporary or permanently. No trailer, mobile home, camper or like vehicle shall be allowed on the property at any time, or any other structure which is finished or partially finished at a manufacturing unit or plat and transported for quick assembly and which is designed to be disassembled and relocated

shall be allowed. It is specifically the intention and purpose of this covenant to prohibit the location of any manufactured home as defined in N.C. Gen. Stat. § 143-145 and any structure for which a "Label of Compliance" as defined in N.C. Gen. Stat. § 143-145 is issued, including but not limited to those structures which are generally referred to as mobile homes, trailers, relocatable houses, or similar type structures on the property;

(r) Removal, alteration, damage or change to any of the Stormwater Management Facilities.

(s) Placing or permitting to remain garbage or trash on any Lot excepting in covered containers of a type, size and style which are approved in accordance with Article 11 or as required by applicable governing authority. Except during construction activities upon the Lot, any such containers shall be kept inside garages or other structures on Lots except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection.

(t) Pets. The Association may adopt reasonable rules regarding household pets designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Areas. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No Owner shall be permitted to raise, breed or keep mammals, birds, fish, or reptiles of any kind for commercial purposes.

3. Prohibited Uses. In addition to uses which are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Property:

- (a) trailer courts, mobile home parks, and recreation vehicle campgrounds;
- (b) oil, gas or mineral exploration; drilling, boring, excavation, development, refining, quarrying, or mining operations, and all construction and equipment incident thereto; and oil or gas wells or related equipment or facilities;
- (c) commercial excavation of building or construction materials, except in the usual course of construction of improvements;
- (d) dumping, storage, disposal, incineration, treatment, processing or reduction of garbage, or refuse of any nature, except as is incidental to the use, operation and ownership of any property (or a portion thereof) in accordance with this Declaration and in a manner which is not unsightly and does not result in noxious odors emitting from the subject property.

4. Prohibited Conditions. The following shall be prohibited at the Property:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property;

(b) Structures, equipment or other items on the exterior portions of a Dwelling Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property, except the Association shall have the right to draw water from such sources and the Reviewing Body pursuant to Article 8 may, in its discretion, approve a private water well on certain Dwelling Units which the Reviewing Body determines to be of sufficient size to accommodate a well without adversely impacting neighboring property;

(d) Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Property. Notwithstanding the foregoing, (i) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (ii) antennae or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement; or (iii) antennae or satellite dishes designed to receive television broadcast signals which are less than one meter in diameter ("Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Lot in which an acceptable quality signal can be received and is screened from the view of adjacent Dwelling Units, streets and Common Areas in a manner consistent with the Community-Wide Standard and the Architectural Guidelines;

(e) Inoperable vehicles or vehicles without current registration and insurance.

5. Leasing of Dwelling Units. Nothing contained herein shall prohibit the leasing or subleasing of a Dwelling Unit; provided, however, that:

(a) No Dwelling Units shall be leased for a period of less than thirty (30) consecutive calendar days. Notwithstanding this restriction, Owners may lease and/or license their Units to other Owners, the Club, and immediate family members of any Owner for any period of time, including leases and/or licenses of less than thirty (30) consecutive days. For purposes of this section, the terms "lease" and "license" mean occupation of a Dwelling Unit by anyone other than the Owner or the Owner's immediate family members for which the Owner receives compensation or consideration, monetary or otherwise. For purposes of this section "immediate family members" shall mean: parents, grandparents, siblings, children, and grandchildren.

(b) All leases for any Dwelling Unit shall be in writing signed by the Owner and the tenant.

(c) All leases shall be in such form, and contain such provisions, as approved by the Board, including provisions (a) requiring the tenant to comply with the Association Documents, (b) providing that the failure of any tenant under a lease to comply with the Association Documents shall constitute an event of default under the lease, and (c) providing that the Board may exercise any and all remedies for a default under the Association Documents against the Owner and the tenant under the lease including, without limitation, the right to remove a tenant from possession of a Dwelling Unit by judicial process or otherwise.

(d) No structure on any Lot other than the Dwelling Unit may be leased or otherwise occupied, and no fraction or portion of any Dwelling Unit may be leased separately from any other portion of the Dwelling Unit.

(e) A true executed copy of any lease for a Dwelling Unit shall be provided to the Association prior to the occupancy by the tenant of such Dwelling Unit.

Beginning twelve (12) months from the date of this Declaration, the Board may also adopt reasonable rules and regulations regarding leasing which may include, but are not limited to, the imposition of a fee to the Owner leasing the Dwelling Unit equal to the costs of administration and ensuring compliance incurred by the Association with the restrictions and rules and regulations relating to leasing.