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AVERY COUNTY NC FEE $26.00
PRESENTED & RECORDED
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RENEE DELLINGER
REGISTER OF DEEDS
BY: CHERYL GARLAND
DEPUTY

BK: RE 511
PG: 1859 - 1871

STATE OF NORTH CAROLINA
AVERY COUNTY

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM Of RIVER CLUB CABIMINIUMS

THIS AMENDED AND RESTATED DECLARATION is made and entered into on the day and date subscribed below by **ENBE, LLC**, a Delaware limited licensed company authorized to do business in the State of North Carolina (herein "Declarant");

WHEREAS, Declarant has heretofore executed and recorded that certain Declaration recorded in Deed Book 485 at Page 387 of the Avery County Registry (the "Declaration", or the "Original Declaration"); and,

WHEREAS, under the provisions of Article XII and Article XIV of the Declaration, the declarant is authorized to amend the Declaration; and,

WHEREAS, under the provisions of Article IX of the Amended and Restated Declaration of Covenants Reservations and Restrictions of Eagles Nest Development, as recorded in Deed Book 474 at Page 2179, Declarant therein (being the same as Declarant herein) is entitled to annex additional property into the Eagles Nest Development; and,

WHEREAS, for the purpose of providing access to the Lodges at Eagles Nest amenities by owners of Units within the River Club, and in order to identify the River Club as an extension of the Lodges at Eagles Nest and thereby maintain and increase the value of the River Club Cabiminium Units, the Declarant deems it desirable that the River Club Cabiminium Association, Inc. as created by the Declaration, be incorporated into the Lodges at Eagles Nest Property Owners Association, and that the River Club Units be incorporated as a discreet section of the Lodges at Eagles Nest; and,

WHEREAS, the Declarant hereby also amends the description of the Property as set out herein in order to depict the present layout of the Units within the River Club, and to add additional Units as shown and depicted on the Plat.

THEREFORE, the Declaration of Condominium as recorded in Deed Book 485 at Page 387 is hereby amended and restated in its entirety as set out below, substituting this Declaration in lieu of the Declaration recorded in Deed Book 485 at Page 387 of the Avery County Registry, provided however, this restatement and substitution in lieu of the referenced Declaration, and this paragraph, expressly does not in any way include any release of any kind

Submitted electronically by "Hugh Franklin, Attorney at Law"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Avery County Register of Deeds.

of right, claim, lien or obligation concerning (a) any Unit Owner's obligation to pay assessments or other charges to the Association under the Original Declaration, (b) any easement rights created or reserved in the Original Declaration. Accordingly, all easements created and described in the Original Declaration and encumbering any of the Property included within the Property as shown in Exhibit A, 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 Declarant, the Association and the Lot Owners, and their respective heirs, successors, personal representatives or assigns.

ARTICLE I
DECLARATION OF CONDOMINIUM

The Declarant hereby submits the Property designated herein to the provisions of the North Carolina Condominium Act, (the "Act") except to the extent the terms of such Act are varied herein with respect to the Property herein submitted. The effective date of the Condominium is the date when the Original Declaration recorded in the Office of the Register of Deeds for Avery County. From and after said date, the Condominium property shall be and shall continue to be subject to each and all the terms hereof until terminated or abandoned in accordance with the provisions of the Condominium Act and of this Declaration.

ARTICLE II
THE PROPERTY

The Property is that certain plot, piece, or parcel of land situate, lying, and being in the County of Avery and State of North Carolina, more particularly bounded and described as indicated on the Plat, comprised of numbered Residential Units situated on a planned unit development shown on plat recorded in Plat Book 43 at Page 368 of the Avery County Registry, including all units shown thereon, any additional Units that may be added by amended plat, and specifically including the two units shown as "proposed cabins" which lie within the .83 acre tract labeled "to be added to the River Club". All of the property shown and designated as the River Club on Plat Book 43 at Page 368, with reference to Plat Book 43 at Page 70-74 exclusive of the Units, is herein defined as non-exclusive "Common Area", or interchangeably, "Common Elements".

The River Club Units shall hereafter be held, developed and conveyed subject to the Amended and Restated Declaration of Covenants Reservations and Restrictions of Eagles Nest Development, as recorded in Deed Book 474 at Page 2179, as the same is modified and supplemented by the terms of Deed Book 511 at Page 451, by this Amended and Restated Declaration of Condominium, and by future amendments to either such Declaration according to the terms thereof all of which shall run with the real estate and bind the owners of any Unit and their heirs successors or assigns, and shall 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 or the Declarant to amend this Declaration according to its terms.

ARTICLE III
NAME OF CONDOMINIUM

The Condominium shall be known as The River Club Cabiminiums. Whenever the term Condominium shall be used herein it shall refer to the Property as a whole as subjected to the Act and not to any individual Unit, which shall be referred to interchangeably as "Cabiminiums" or "Units" or "Cabiminium Units". The name "Cabiminium" is a registered trade mark used by Declarant by permission.

ARTICLE IV
THE UNITS

(a) The recorded Plat referenced above is incorporated herein by reference, and sets forth the designation number for each Unit.

(b) Each Unit consists of an entire residential structure which has been or will be constructed according to a common plan of construction within a numbered building envelope shown on the Plat, including fee simple title to all the real property within the building envelope as designated and located thereon. All of the remaining land and improvements shown on the Plat are common area. The Units are conveyed together with certain common areas and limited common areas as are designated in the deed, on the Plat or herein for parking, storage, and utility maintenance and other stated purposes. No structure shall be constructed, nor shall any construction activity of any sort be undertaken without the express written approval of Declarant or, after the termination of the Declarant Control Period, by the Association. The Declarant shall have exclusive authority to approve the design, materials, method of construction, colors, and every other aspect of the Cabiminiums constructed on the Units.

(c) Each Unit includes, and the respective Unit Owner shall be responsible for: (i) the interior and exterior walls, roof and foundation of each Cabiminium; (ii) all windows (including, without limitation, their panes, casements, and frames) located within or opening from such Units; (iii) all equipment, fixtures, and appliances (including, without limitation, lighting and electrical fixtures, heating and cooling equipment, plumbing facilities, sinks, bathtubs, sewer lines and systems, refrigerators, ovens, ranges, dishwashers, and any other appliances) affixed, attached, or located within such Units; and (iv) all other Facilities affixed, attached, or located upon such Unit and benefiting only such Unit.

(d) Notwithstanding anything contained herein to the contrary, each Unit Owner shall have the right, exercisable at any time and from time to time, to install, at such Unit Owner's sole cost and expense, such decorations, fixtures, and coverings (including, without limitation, painting, finishing, wall papering, carpeting, pictures, mirrors, shelving, and lighting fixtures) on the surfaces of the walls, ceilings, and floors that face the interior of such Unit Owner's Unit, and to alter or remove interior walls, in whole or in part, in order to change such Units layout, or to improve the Unit, provided that no such installation, alteration, removal, or change shall impair the structural integrity of such Unit, shall change the outside appearance of the Unit or shall violate Law.

(e) The exterior of all Cabiminium Units shall be subject to the regulation of the Association, and shall not be modified without consent of the Association in accordance with a set of one or more home design plans and specifications and attendant regulations which the Board of such Association may enact or amend from time to time according to the provisions of this Declaration and the By Laws. (the "Design Plan"). Neither the color, the materials, the general construction and design, nor any attached or non-attached appurtenance such as porches, walls, fixtures, chimneys or roofs may be altered or modified except with express written approval of the Association.

ARTICLE V
THE COMMON ELEMENTS

The "Common Elements" consist of the Property described as the Common Area referenced in ARTICLE II, exclusive of the Units themselves, and include, but are not limited to, the following:

(a) The remaining land that comprises the Property, including buildings, and improvements located thereon and not included within any Unit;

(b) The landscaped and planted areas, natural areas, walks, driveways, parking areas, roadways, and other facilities used in common;

(c) Central installations now existing or hereinafter installed for common services such as electricity, telephone, water, sewage, internet, garbage collection, and in general, all apparatus and installations existing for common use. Such utility installations and apparatus shall be considered common elements up to the point where such lines, pipes or apparatus connect to the meter or other main connection point installed on or contained within the Units.

(d) Easements for access, maintenance, repair, reconstruction, or replacements of the foregoing structural members, equipment, installations, and appurtenances, and for all other services necessary or convenient to the existence, maintenance, safety, and use of the property.

(e) The Common Elements shall remain undivided, and no Unit Owner or any other Person shall bring, or shall have the right to bring, any action for partition or division thereof except as is expressly permitted pursuant to the terms of hereof and the By-Laws.

(f) The Common Elements are owned by the Declarant and by the current owners of Units within the River Club, as shown by each of said deeds, and include and are subject to appurtenant and associated easements for access to and use of the Elk River. The 8.13 acre tract described on Plat recorded in Deed Book 43 at Page 70 is specifically subject to the terms and conditions of a non-exclusive lease between the Declarant and the Eagles Nest River Club. Each owner of one or more Units shall be a member of Eagles Nest River Club, and shall have the right in common with all other members to use and enjoy the amenities thereon, including without limitation the ponds, the river, the trails, the barn and any other amenities associated therewith.

(g) Each Unit Owner, and their heirs, successors and assignees shall be a member of the Lodges at Eagles Nest Property Owners Association, Inc, and shall have the right in common with all other members, and according to the regulations governing the same, to use and enjoy the amenities lying within the Eagles Nest Development.

(h) Each Unit Owner, successor, lessee, occupant, mortgagee, or assignee shall be required by the terms of any such authorization, conveyance or assignment to observe all of the

provisions of this Declaration, the By-Laws, Rules and Regulations, Design Plan, and applicable laws and ordinances regulating the use and occupancy of the Condominium.

(i) The Residential Units shall be used as a residence only, and may be occupied by one family only. Members of the family as used herein shall be deemed to mean spouse, partner, parents, parents-in-law, brothers, sisters, children, and grandchildren. The unit may be rented or leased by the Owner as a whole, in accordance with the By-Laws and the Rules and Regulations, but no transient tenants or joint occupancy may be accommodated. Units may not be subdivided without prior written approval of the Condominium Board;

(j) The Unit shall not be used or permitted to be used for immoral, improper, offensive, or unlawful purposes;

(k) No nuisance shall be committed or allowed and the Unit shall not be used in any such manner as to be a source of annoyance or in any way interfere with the quiet and peaceful possession, enjoyment, and proper use of the property by other occupants;

(l) The Common Elements shall be used for the purposes, services and facilities for which they are reasonably intended and which are incident to the use and occupancy of the Units. No Unit owner or occupant shall block, impair or impede the reasonable use of any common element by any other person entitled to the use thereof.

(m) Notwithstanding the foregoing or anything contained in the By-Laws or the Rules and Regulations to the contrary, Declarant may, without the consent of the Condominium Board or other Unit Owners: (i) grant permission for the use of the Common Elements by any person for any use that does not unreasonably interfere with the free use thereof by Owners (ii) use any Unsold Residential Units as model units and offices for the selling, renting, management, operation, and promotion of the Unsold Residential Units or for any other purpose, subject only to compliance with Law, and (iii) modify, improve, remove, increase, decrease or otherwise change the layout, size, design, or planned use of the Common Area so long as reasonable access to the Elk River and to other existing or replacement amenities are not impaired.

ARTICLE VI

THE ASSOCIATION

Every owner of a Unit is by their ownership a member of the Lodges at Eagles Nest Property Owners Association, Inc. which shall serve as the sole governing Owners Association for the River Club Cabinimums. Membership in the Association shall be appurtenant to, and may not be separated from the ownership of a Unit within the Property. Upon termination of ownership of a Unit, an Owner's membership shall automatically terminate and be transferred to the new Owner of the Unit. When more than one person owns an interest (other than a leasehold or security interest) in any Unit, all such persons shall collectively be considered one (1) Owner.

The Lodges at Eagles Nest Property Owners Association, Inc. (the "Association") is Authorized to conduct such activities, and bear the responsibilities as are set forth herein.

(a) Maintenance. The Association, in conjunction with others obligated to do so, shall maintain and repair the Common Area, including but not limited to any streets located thereon.

(b) Enforcement of Governing Documents. The Association, or any non-breaching Owner, shall have the right, but not the obligation to proceed at law or in equity to compel compliance with the provisions of the Declaration, including this Amended Declaration, the By-Laws or any Regulation promulgated thereunder, or to prevent the anticipated violation of the terms of provisions of such by any Owner. In addition to seeking remedies at law, the Association, or any non-breaching Owner, or any of them jointly or severally, shall have the right to proceed in equity, including making application to the appropriate court of competent jurisdiction for immediate injunctive relief in order to compel specific performance of the terms herein or to prevent the violation or breach of such terms by any Owner or other person. In the discretion of the Court, the prevailing party or parties shall be entitled to recover from the losing party or parties the costs and expenses of any action at law or equity, including reasonable attorneys' fees.

(c) Immediate Correction. In addition to the foregoing, whenever any facility, structure, attachment, decoration, coloring or other appurtenance whatsoever has been placed or is being placed on or about, or attached to any Unit which is in violation of this Declaration or which has not received the prior approval of the Association, the Association shall have the right, but not the obligation, to enter upon such Unit and correct or remove such violating structure at the expense of the Owner. Any such entry and abatement or removal shall not be deemed a trespass.

(d) Non-Waiver. The failure to enforce any such right, reservation, restriction, or condition herein shall not be deemed a waiver of the right to do so thereafter as to the same or another breach, and shall not bar or affect such later enforcement.

(e) Insurance. The Association shall maintain such casualty, liability and other insurance as the Association shall determine to be necessary and appropriate in accordance with the By-Laws.

ARTICLE VII
ASSESSMENTS FOR COMMON EXPENSES

Article III of the Amended and Restated Declaration of Covenants, Reservations and Restrictions of Eales Nest Development are incorporated herein by reference as if set out here in its entirety

ARTICLE VIII
EASEMENTS FOR THE COMMON ELEMENTS

1. Subject to the terms of the By-Laws and the Rules and Regulations of the Association, Declarant, the Unit Owners, all other permitted tenants and occupants of the Condominium, the Managing Agent, the Neighborhood Association, and all officers, partners, employees, agents, guests, invitees, and licensees of the foregoing, including each of the members of the Eagles Nest River Club shall have, in common with all of the others so entitled, an easement for ingress and egress through, as well as for the use and enjoyment of all of the Common Elements, and the Common Elements shall be subject to such easement. Notwithstanding the foregoing, no person shall use or enjoy the Common Elements except in accordance with the reasonable regulations promulgated by the Eagles Nest River Club, and without encroaching upon the rights of other persons. The Neighborhood Association is authorized, not inconsistent with such regulations, to promulgate additional rules and regulations concerning the use of the Common Elements having particular application to the Cabiminiums.

2. Each Unit has a proportionate undivided interest in the Common Elements which is permanent in character and which may not be altered except by amendment to this Declaration by a unanimous vote of all Unit Owners. This proportionate undivided interest may not be separated from the Unit to which it appertains. This undivided interest shall be the fraction or percentage which results by dividing one by the total number of Units existing from time to time, and specifically upon the termination of the condominium if such shall ever occur.

3. Subject to the terms of the By-Laws and to the Rules and Regulations, each Unit Owner shall have, in common with all other Unit Owners, and in common with all others having rights to use and enjoy the same, an easement to use any of the Common Elements, and all pipes, wires, ducts, cables, conduits, public utility lines, and all other utility distribution systems, whether or not Common Elements, located in, over, under, through, adjacent to, or upon any other Unit or the Common Elements to the extent that such Common Element and utility distribution system serves, or is necessary to the service of, his Unit, and each Unit and all of the Common Elements shall be subject to such easement. In addition, the Condominium Board shall have an easement and a right of access to each Unit and to the Common Elements to inspect the same, to remove violations therefrom and to install, operate, maintain, repair, alter, rebuild, restore, and replace any of the Common Elements located in, over, under, through, adjacent to, or upon the same, and each Unit and the Common Elements shall be subject to such easement and right of access.

4. Declarant, for so long as it shall own any Unsold Residential Unit(s), and the Condominium Board, on behalf of all Unit Owners, shall have the right to grant such additional electric, gas, steam, cable television, telephone, water, storm drainage sewer, and other utility easements in, or to relocate any existing utility easements to, any portion of the Property as Declarant or the Condominium Board, as the case may be, shall deem necessary or desirable for the proper operation and maintenance of the Cabiminiums or any portion thereof or for the general health or welfare of the owners, tenants, and occupants of the appropriate Units.

5. Each Unit and the Common Elements shall have easements of subjacent supports and necessity, and the same shall be subject to such easements in favor of all of the other Units and the Common Elements.

6. If (i) any portion of the Common Elements now encroaches upon any Unit or upon any other portion of the Common Elements, (ii) any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or (iii) any such encroachment shall hereafter occur as a result of the settling or shifting of the ground, the action of the wind or any weather related event, or any repair or alteration made to the Common Elements in accordance with the terms of this Declaration and the By-Laws by, or with the consent of the Condominium Board, or by Declarant, or on account of any repair or restoration made to any Unit or to the Common Elements or any portion thereof in accordance with the terms of this Declaration and the By-Laws after damage by fire or other casualty or after any taking by condemnation or eminent domain proceedings, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same for so long as necessary for the restoration, or repair of any such encroachment.

7. The Property and every portion thereof shall be subject to all easements and rights of access prescribed in the Condominium Act, or in any agreements made with the County of Avery, with any adjacent owner, or with any utility companies in effect prior to the recording of this Declaration.

8. The Property shall be subject to the right of the Eagles Nest River Club, acting by and through its sponsor, to grant continuing licenses for Members in the Lodges at Eagles Nest Property Owners Association ("EN Members") and their invitees to use and enjoy the Barn shown on the Plat, the parking areas (not to include the specific parking spaces located adjacent to and for the exclusive use of persons occupying the units), the open spaces, and such utilities and common easements as are reasonably necessary for the use, maintenance and enjoyment of all amenities included within the River Club.

ARTICLE IX
POWER OF ATTORNEY TO DECLARANT AND NEIGHBORHOOD ASSOCIATION

Each Unit Owner, by acceptance of a deed or otherwise succeeding to title to a Unit, shall be deemed to have irrevocably nominated, constituted, and appointed Declarant as such Unit owners attorney in fact, coupled with an interest and with power of substitution, to amend the Condominium Documents pursuant to the terms hereof, and to:

(a) acquire or lease any Unit, together with its Appurtenant Interests whose owner desires to sell, convey, transfer, assign, lease, or surrender the same or acquire any Unit, together with its Appurtenant Interest that becomes the subject of a foreclosure or other similar sale, in the name of the Lodges at Eagles Nest Property Owners Association, Inc. or its designee, corporate or otherwise, on behalf of all Unit Owners;

(b) convey, sell, lease, mortgage, or otherwise deal with (but not to vote the Common Interest appurtenant to) any Unit so acquired or to sublease any Unit so leased; and

(c) not inconsistent with the terms of the By-Laws or the Declaration; execute, acknowledge, and deliver (1) any declaration or other instrument affecting the Condominium that the Neighborhood Association deems necessary or appropriate to comply with any Law applicable to the maintenance, demolition, construction, alteration, repair, or restoration of the Condominium or (2) any consent, covenant, restriction, easement, or declaration, or any amendment thereto, affecting the Condominium or the Common Elements that the Neighborhood Association deems necessary or appropriate.

(d) In confirmation of the foregoing power of attorney, each Unit Owner, upon the request of either Declarant or the Condominium Board, shall duly execute, acknowledge, and deliver to the requesting party for recordation or authentication purposes, a Unit Owner's Power of Attorney in the form reasonably requested.

ARTICLE X
TERMINATION OF CONDOMINIUM

The Condominium shall continue until terminated by (i) condemnation, or eminent domain, as more particularly provided in the By-Laws, or (ii) withdrawal of the Property from the provisions of the Condominium Act by a vote of at least 90% of all Unit Owners, both in number and in aggregate Common Interests. In the event that said withdrawal is

authorized as aforesaid, but only in such event, the Property shall be subject to an action for partition by any Unit Owner or lienor as if owned in common, in which event the net proceeds of sale shall be divided among all Unit Owners in proportion to their respective Common Interests; provided, however, that no payment shall be made to a Unit Owner until there has first been paid, out of such Unit Owner's share of such net proceeds, all liens on the Unit Owner's Unit, in the order of priority of such liens.

ARTICLE XI
COVENANT OF FURTHER ASSURANCES

Any Person who is subject to the terms of this Declaration, whether such Person is a Unit Owner, a lessee or a sub lessee of a Unit Owner, an occupant of a Unit, a member of the Condominium Board, an officer of the Condominium, or otherwise, shall, at the expense of such other Person requesting the same, execute, acknowledge, and deliver to such other Person such instrument, in addition to those specifically provided for herein, and take such other action as such other Person may reasonably request to effectuate the provisions of this Declaration or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

If any Unit Owner or any other Person who is subject to the terms of this Declaration fails or refuses to execute, acknowledge, or deliver any instrument, or fails or refuses, within 10 days after request therefor, to take any action that such Unit Owner or Person is required to take pursuant to this Declaration, then the Condominium Board is hereby authorized as attorney-in-fact for such Unit Owner or other Person, which power shall be deemed to be coupled with an interest, to execute, acknowledge, and deliver such instrument, or to take such action, in the name of such Unit Owner or other Person, and such document or action shall be binding on such Unit Owner or other Person.

ARTICLE XII
AMENDMENT

Amendments to this Declaration shall be by vote of at least 75% in number and in Common Interest of all Unit Owners at a meeting duly held for such purpose, or by action without meeting. However, no amendment will affect or impair the validity or priority of the interests of the holders of recorded mortgages encumbering the Units. For as long as the Declarant remains the owner of one or more Units, this Declaration may be amended by Declarant without the joinder of any owner, and otherwise may not be amended without its consent. No such amendment shall be effective until recorded in the Office of the Register of Deeds of Avery County, North Carolina.

The Design Plan , including any regulation of the construction or design of the Units, or the occupancy or reasonable use of the common areas or limited common areas, may be amended unilaterally by the Declarant; or by the Community with the consent of at least Sixty Per Cent (60%) of the Unit Owners and of the Common Interest; however no such amendment shall substantially change the exterior design or structure of the individual Cabiminiums so as to require all Unit Owners to invest more than 5% of the present average fair market value of the individual Cabiminiums without the consent of Eighty per cent (80%) of all such Owners and Interests.

ARTICLE XIII
LIENS AND SUITS

A Unit Owner shall give written notice to the Association of all liens, suits, or other proceedings which may affect title to his Unit or any other part of the Condominium property within five days after he receives notice thereof.

ARTICLE XIV
PROVISIONS PERTAINING TO DECLARANT

Notwithstanding any other provisions herein contained, for so long as the Declarant continues to own any of the Units (the "Declarant Control Period"), the following provisions shall be deemed to be in full force and effect.

(a) The Declarant, its successors or assigns, reserves the unrestricted right to sell, assign, mortgage, or lease any Units which it continues to own after the recording of the Declaration and to post signs for such purposes on the Condominium property.

(b) The Declarant reserves unto itself and its successors and assigns each of the Development rights, and each of the Special Declarant rights as set forth in N.C.G.S 47C-1-103(11) and N.C.G.S. 47C-1-103(23), the provisions of which are incorporated herein by reference as if fully set out.

(c) The Declarant reserves unto itself the unrestricted right to amend or supplement this Declaration, including the Design Plan, provided any such amendment to the Design plan shall be subject to the second paragraph of Article XII herein. Declarant shall be entitled to perform each and all of the powers exercisable by the Board as set out herein or in the By Laws.

(d) The Declarant specifically disclaims any warranty or representation in connection with this Declaration, the organization of the Association, or the Property except as specifically set forth herein or made in writing to any Unit Owner. No person shall rely upon any warranty or representation not specifically made herein. The layouts and dimensions of Units and the estimates of Common Charges, and all other representations made herein either expressly or implied are deemed accurate, but no warranty or guaranty is made nor intended, nor may one be relied upon.

ARTICLE XV
COVENANTS RUNNING WITH THE LAND

All provisions of the Declaration, By-Laws, the Design Plan, and Rules and Regulations as they now exist, or are hereafter created, or may be amended from time to time, shall be perpetual and be construed to be covenants running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto; and every Unit Owner and claimant of the Property or any part thereof or interest therein, and his heirs, executors, administrators, successors, and assigns shall be bound by all of the provisions thereof. All present and future owners, tenants, and occupants of Units shall be

subject to, and shall comply with, the provisions of this Declaration, the By-Laws, the Design Plan, and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance, the entering into a lease, or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the By-Laws, the Design Plan and the Rules and Regulations are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having, at any time, any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease.

If any provision of this Declaration or of the By-Laws is invalid under, or would cause this Declaration or the By-Laws to be insufficient to submit the Property to the provisions of the Condominium Act, such provision shall be deemed deleted from this Declaration or the By-Laws as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act, but shall nevertheless be valid and binding upon and shall inure to the benefit of the owners of the Property and their heirs, executors, administrators, legal representatives, successors, and assigns, as covenants running with the Land and with every part thereof and interest therein under the other applicable Law to the extent permitted under such applicable Law with the same force and effect as if, immediately after the recording of this Declaration or the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land. If any provision that is necessary to cause this Declaration or the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from this Declaration or the By-Laws, then such provision shall be deemed included as a part of this Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act.

ARTICLE XVI
MISCELLANEOUS PROVISIONS

(a) Captions used in the Declaration and By-Laws are inserted solely as a manner of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text thereof.

(b) If any provision of this Declaration, or any section, sentence, clause, phrase, or word, or the application thereof in any circumstances, be judicially held in conflict with the laws of the State of North Carolina, then the said laws shall be deemed controlling and the validity of the remainder of this Declaration and the application of any such provision, section, sentence, clause, phrase, or word in other circumstances shall not be affected thereby.

(c) The terms, covenants, conditions, descriptions, and other information contained in (i) the By-Laws (ii) the recorded Plat referenced herein, (iii)the Design Plans as the same may be amended in the future and (iv) Condominium Regulations in effect from time to time are by this reference each incorporated herein and made a part of this Declaration as if the same were set forth at length in the text hereof.

(d) No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches that may occur.

(e)The rights and/or obligations of Declarant as set forth herein shall inure to the benefit of, and shall be binding upon, any successor or assignee of Declarant or, with consent of

Declarant, any transferee of all of the then Unsold Residential Units. Subject to the foregoing, Declarant shall have the right, at any time, in its sole discretion, to assign or otherwise transfer its interest therein, whether by merger, consolidation, lease, assignment, or otherwise.

WHEREFORE, the Declarant has hereunto caused this instrument to be executed by its duly authorized Manager on the day and year set out above.

ENBE, LLC
By: _____
William N. Adkins, Manager

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: William N. Adkins

JENNIFER L. SCHWARTZ
Notary Public
Lincoln
County
My Comm. Exp.
01-02-2022
NORTH CAROLINA

_____
Signature of Notary Public

Jennifer L. Schwartz
Notary's printed or typed name

My commission expires: 1-2-2022

Prepared by: Law Offices of Hugh Franklin
19421-A Liverpool Parkway
Cornelius, NC 28031