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AVERY COUNTY NC FEE $26.00
PRESENTED & RECORDED
02/20/2017 10:20:29 AM

RENEE DELLINGER
REGISTER OF DEEDS
BY: CHERYL GARLAND
DEPUTY

BK: RE 507
PG: 490 - 500

LODGES AT EAGLES NEST DEVELOPMENT

THE VILLAGE AT EAGLES NEST

AMENDMENT AND RESTATEMENT
Of the
SUPPLEMENTARY DECLARATION
Recorded in
Deed Book 498 at Page 1636

February 20, 2017

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

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.

THIS AMENDMENT made this 20th day of February, 2017 by Eagles Nest Holdings, LLC, a North Carolina limited liability company having its principal offices at 19421 Liverpool Parkway, Cornelius, NC 28031; and ENBE, LLC a Delaware limited liability company with its principal offices at 821 5th Avenue South, Naples, Florida 34102

WITNESSETH:

WHEREAS, Eagles Nest Holdings, LLC is the Declarant with respect to the Village at Eagles Nest Section of the Lodges at Eagles Nest Development by virtue of the terms of the Supplementary Declaration recorded in Deed Book 498 at Page 1636 of the Avery County Registry, (the "Supplementary Declaration") as shown on plat recorded on Plat Book 43, Pages 269-270 of the Avery County Registry and titled "The Village at Eagles Nest". (the "Plat") ; and

WHEREAS, by this Amendment and Eagles Nest Holdings, LLC , with the consent of ENBE, LLC, intends to reconstitute and to bring within the Supplementary Declaration for the Village at Eagles Nest, Lot C-38-B as previously shown on Plat Book 43 at Page 144, and to include the said lot in the Exhibit description of the Property as defined in the Supplementary Declaration as the same is modified by this Amendment, and to reconstitute said lot with respect to any conflicting provisions of the Declaration of Covenants Reservations and Restrictions recorded in Deed Book 474 at Page 2179 of the Avery County Registry (the "Declaration") so that such lot shall be divided and developed as Lots 49 and 50 within the Village at Eagles Nest Sectio0n of the Lodges at Eagles Nest; and,

WHEREAS by this Amendment Eagles Nest Holdings, LLC, as Declarant, does hereby exercise it's right to amend the Supplementary Declaration by virtue of the fact that the Declarant Control Period has not expired, and the Declarant is the record title owner of more than eighty percent of the Lots described in such Supplementary Declaration.

NOW, THEREFORE, Eagles Nest Holdings, LLC hereby declares, by and with the consent of ENBE, LLC, that Lot C-38-B, shall hereafter be held, developed and sold in accordance with the provisions of the Declaration, as the same has been previously amended and supplemented, and in particular, in accordance with the Supplementary Declaration as the same is herein amended and restated. All such provisions shall hereafter bind all of the Property as an encumbrance running with title to Lots 49 and 50 of the Village at Eagles Nest as shown on Plat recorded in Plat Book 43 at Page 398 through Plat Book 44 at Page 001 of the Avery County Registry, and shall further bind any person hereafter holding an interest in any portion of the Property, and their heirs, successors and assigns.

Further, Eagles Nest Holdings, LLC exercises its authority under Article VIII of the Supplementary Declaration to amend the same for the purposes herein stated and to restated the said Declaration in its entirety by substituting the following in lieu thereof, so that the original Supplementary Declaration shall be replaced and superseded entirely by the provisions hereof as follows:

ARTICLE I
THE DECLARANT

For purposes of the development, marketing, construction, administration and control of the Village at Eagles Nest during the entire Declarant Period as set forth in the Declaration, ENBE LLC has heretofore assigned, and does hereby ratify its assignment to Eagles Nest Holdings, LLC, of all Declarant Rights or Development Rights as set forth in the Declaration, which Declarant Rights shall be exercised solely by Eagles Nest Holdings, LLC with respect to the Property within the Village at Eagles Nest. Hereinafter, unless stated otherwise, when this Amended and Restated Supplementary Declaration refers to the "Declarant" the reference is to Eagles Nest Holdings, LLC as assignee of the Declarant Rights with respect to the Village at Eagles Nest.

ARTICLE II
THE PROPERTY

The Property is that certain 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 recorded in Plat Book 43 at Pages 269-270 of the Avery County Registry, (the "Plat") as the same has been modified by Plat recorded in Plat Book 43 at Page 398 through Plat Book 44 at Page 001 of the Avery County Registry (the "Amended Plat"), and known as the Village at Eagles Nest. Excepted however from the real estate included within the Village is that certain existing building shown on the Amended Plat and labeled "Double Eagle Lodge", which together with the attendant property lying within the interior of Double Eagle Loop, as shown on the reference plat, (and being subject to the rights of others in and to the wells shown thereon and the Drainfield for Lots 13 and 14) are to be developed separately from the Property and shall not be encumbered by or included within the terms of the Declaration or this Supplement. In accordance with the Declarant Rights reserved herein, the Plat may in the future be amended, to add additional area or Lots, to remove area or Lots, or for any other purpose not incompatible with the general plan of development.

ARTICLE III
THE LOTS

1. The recorded Plat referenced above, and/or and amendments or revisions thereto that may be recorded during the Declarant Control Period is incorporated herein by reference.

2. The Village at Eagles Nest is designed as a community of homes with similar design themes and construction materials that relate to each other so as to create a Village environment conducive to a relaxed neighborhood lifestyle. Accordingly the Declarant and the Association shall maintain strict controls over the construction and maintenance of the homes. Maintenance of the lots surrounding the homes, and basic landscaping shall be the responsibility of the Association, either directly, or acting through a neighborhood committee.

3. The Lots may be conveyed together with certain easements over other lots, common areas, or limited common areas as are referenced in the deed, shown on the Plat, on a revised Plat showing only the subject Lot, or herein, for driveways, parking, storage, utility maintenance or other stated purposes.

4. 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 size, siting, design, materials, method of construction, colors, and every other aspect of the residential or non-residential structures constructed on the Lots and the maintenance and use of the surrounding real estate. No contractors shall perform any building services within the Village unless such Contractor has been approved by the Declarant or the Association,. The purchaser of any Lot agrees and covenants to commence construction on a residence by and with an approved contractor within eighteen months after closing, and to complete the same within one year after commencement.

5. The exterior of all homes shall be subject to the regulation of the Declarant, and shall not be modified without consent of the Declarant in accordance with a set of one or more home design plans and specifications and attendant regulations which the Declarant may enact or amend from time to time according to the provisions of this Declaration. (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. The Declarant, or after the Declarant Control Period is expired, the Association, may appoint an architectural review board to maintain the Design Plan and approve building and improvement applications, or may delegate such approvals to the existing architectural review board of the Lodges at Eagles Nest. Acceptance and approval of such applications shall be governed by the procedures set forth in the Declaration, as modified and supplemented herein.

6. The lots within the Village shall be used for residential purposes for a single family unit only, except for the exercise of special declarant rights. No Lot shall be used or permitted to be used for immoral, improper, offensive, or unlawful purposes. No nuisance shall be committed or allowed, and no Lot shall be used in any manner as to be a source of annoyance or in any way interfere with the quiet and peaceful possession, and enjoyment, of the property by occupants of other Lots, *provided however* this provision is not intended and shall not be used to impede any person's lifestyle or to regulate, harass or interfere with any person in the enjoyment of any legal activity, unless such activity creates excessive noise, a danger of injury, an impediment to access, or another similar actual interference with use of the property.

7. Each Lot Owner, successor, lessee, occupant, mortgagee, or assignee shall be required by the terms of any such authorization, conveyance, lease 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 Village at Eagles

Nest. There shall be no limitation on the duration of any leases of any home, but any lease of any home shall include the provision that the tenant is responsible for compliance with any and all rules or regulations pertaining to the use and occupancy of the home or the use of any common area or amenity within the Lodges at Eagles Nest. The owner of any such leased or rented home shall be liable to the Association for any damages occasioned by such tenant, which liability may be enforced by the imposition of a fine or penalty imposed by the Association as set forth in the Declaration, which fines or penalty shall constitute a lien upon the owner's property within the Lodges at Eagles Nest.

ARTICLE IV
THE LIMITED COMMON ELEMENTS

The "Common Elements" consist of all of the Property described in ARTICLE II, exclusive of the Lots themselves and the Lodge area which is specifically excepted from this Declaration. The Common Elements include, but are not limited to, the following:

1. The remaining land that comprises the Property, including improvements located thereon and not included within any Lot;
2. The landscaped and planted areas, natural areas, walks, driveways, parking areas, roadways, and other facilities used in common;
3. 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 Lots.
4. 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.
5. The Common Elements are owned by the Declarant, and are to be conveyed to the Eagles Nest Property Owners Association, Inc at the end of the Declarant Control Period to be held by such Association as Limited Common Area for the non-exclusive use and benefit of the owners of Lots at the Village at Eagles Nest.
6. 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 Lots. No Lot owner or occupant shall block, impair or impede the reasonable use of any common element by any other person entitled to the use thereof.
7. 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 Lot 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 Lots as model Lots and offices for the selling, renting, management, operation, and promotion of the Unsold Residential Lots 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 Lots and the existing or replacement amenities are not impaired.

ARTICLE V
THE ASSOCIATION
And the
VILLAGE NEIGHBORHOOD COMMITTEE

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

In addition, the Lodges at Eagles Nest Property Owners Association, acting through its Board shall be entitled to, but not required to appoint a neighborhood committee, which shall act under delegated authority of the Lodges at Eagles Nest Property Owners Association, Inc. The Village Neighborhood Committee (the "Committee") shall consist of one or more owners within the Village at Eagles Nest, and shall be delegated authority under Article VI Section 10 of the Declaration, to conduct such activities, and bear the responsibilities as are set forth herein, or as may be specifically included within such delegation. The Association, either directly or acting through the Committee shall:

(a) Arrange for the maintenance of all of the lots within the Village at Eagles Nest in accordance with a plan of maintenance and basic landscaping designed to maintain an overall attractive appearance that is consistent throughout the neighborhood and which helps to create a unified community atmosphere.

(b) Maintain the common areas, including but not limited to access roadways, street lighting, all utility services to the Lots, individually designated parking areas, and all common elements having specific purpose of serving the Lots;

(c) Provide garbage removal services for all Lots, should the Association elect to provide said service;

(d) To repair damage by any Owner: In the event that the need for maintenance or repairs is caused through the willful or negligent act of any Owner, his family, tenants, guests, invitees, or contract purchasers, the cost of such maintenance or repair shall be added to, and become part of, the Assessment to which the Lot is subject, or in the discretion of the Committee or the Association may be the subject of a special assessment due and payable immediately upon demand;

(e) To maintain any real or personal property, leased or licensed to the Association for the benefit of the Village at Eagles Nest;

(f) Delegation of Authority. By specific delegation, the Village Neighborhood Committee is authorized to manage any part of the Common Area, to enforce the provisions of this Declaration in the place and stead of the Association, or to exercise any other right or authority which otherwise might be performed or exercised by the Association.

ARTICLE VI
COMMON CHARGES AND ASSESSMENTS

1. Amount of Assessments, Special Assessments, and Collection of Charges. Regular Assessments for individual owners of the Village at Eagles Nest shall be the same as the amount set by the Lodges at Eagles Nest Property Owners Association, Inc. All provisions of Article VII of such Declaration shall apply equally to lots within the Village. The Association shall allocate to the Village Neighborhood Committee such funds as are necessary to reasonably maintain the lots in the stated manner. During the Declarant Control Period the Declarant reserves the absolute right to change the proportion reserved for use of the Committee.

ARTICLE VII
EASEMENT FOR THE COMMON ELEMENTS

1. Subject to the terms of the Rules and Regulations of the Association, the Lot Owners, all other permitted tenants and occupants of the Village at Eagles Nest, the Managing Agent, the Committee, and all officers, partners, employees, agents, guests, invitees, and licensees of the foregoing, including each of the members of the Lodges at Eagles Nest Property Owners Association shall have, in common with all of the others so entitled, an easement for ingress and egress through and over each of the lots within the Village for the use, maintenance, installation, repair and replacement of any utilities which easements constitute a part of the Common Elements. Notwithstanding the foregoing, no person shall use or enjoy the Common Elements except in accordance with the reasonable regulations promulgated by the Association, and without encroaching upon any improvements constructed prior to any such installation of utilities.

2. The Association is authorized, not inconsistent with this Supplementary Declaration, to promulgate additional rules and regulations concerning the use of the Common Elements having particular application to the Lots or, in cooperation with the owners of the Lodge, the use of the Lodge and it's amenities by the Village Lot owners.

3. Subject to the terms of the By-Laws and to the Rules and Regulations, each Lot Owner shall have, in common with all other Lot 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 Lot or the Common Elements to the extent that such Common Element and utility distribution system serves, or is necessary to the service of, his Lot, and each Lot and all of the Common Elements shall be subject to such easement. In addition, the Association shall have an easement and a right of access to each Lot 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 Lot and the Common Elements shall be subject to such easement and right of access.

4. Declarant, during the Declarant Control Period, and the Association, on behalf of all Lot 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 Association, as the case may be, shall deem necessary or desirable for the proper operation and maintenance of the Lots or any portion thereof or for the general health or welfare of the owners, tenants, and occupants of the appropriate Lots.

5. Each Lot 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 Lots and the Common Elements.

6. If (i) any portion of the Common Elements now encroaches upon any Lot or upon any other portion of the Common Elements, (ii) any Lot now encroaches upon any other Lot 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 Committee, or by Declarant, or on account of any repair or restoration made to any Lot 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 shall be subject to the right of the Eagles Nest Holdings, LLC or any subsequent owner of the Double Eagle Lodge to grant continuing licenses for Members in the Lodges at Eagles Nest Property Owners Association ("EN Members") or for other members of the public and their invitees to use and enjoy the Lodge shown on the referenced Plat, the same being outside of but completely surrounded by the Village area, as well as the parking areas (not to include the specific parking spaces located adjacent to and for the exclusive use of persons occupying the Lots), the open spaces, and such utilities and common easements as are reasonably necessary for the use, maintenance and enjoyment of the Lodge.

ARTICLE VIII
Amendment

For as long as the Declarant remains the owner of one or more Lots, the terms of this Declaration having to do with design, development and construction of the Lots, installation of infrastructure, location of improvements, or any additions or deletions from the planned Lot development may be amended by Declarant without the joinder of any owner. Thereafter, amendments to this Declaration shall be by vote of at least 67% of all Lot Owners at a meeting duly called held for such purpose wherein the substance of the proposed amendment is published in the notice, or by action without meeting. 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 Lots, or the occupancy or reasonable use of the Lots, the common areas or limited common areas, may be amended unilaterally by the Declarant; or by the Committee with the consent of at least Sixty Per Cent (60%) of the Lot Owners; however no such amendment shall substantially change the exterior design or structure of the individual Lots so as to require all Lot Owners to invest more than 5% of the present average fair market value of the individual Lots without the consent of Eighty per cent (80%) of all such Owners.

ARTICLE IX
Provisions Pertaining to Declarant

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

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

2. The Declarant reserves unto itself and its successors and assigns each of the Development rights, and each of the Special Development rights as set forth in the Declaration the provisions of which are incorporated herein by reference as if fully set out.

3. 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 Committee as set out herein or in the By Laws.

4. The Declarant specifically disclaims any warranty or representation in connection with this Declaration, the organization of the Association, the Committee or the Property except as specifically set forth herein or made in writing to any Lot Owner. No person shall rely upon any warranty or representation not specifically made herein. The layouts and dimensions of Lots 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 X
Covenants running With the Land

All provisions of this Supplementary Declaration, the Design Plan, and Rules and Regulations as they now exist, 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 Lot and the appurtenances thereto; and every Lot 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 Lots shall be subject to, and shall comply with, the provisions of this Declaration, 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 Lot 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 Lot, as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease.

ARTICLE XI
MISCELLANEOUS PROVISIONS

1. 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.

2. 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.

3. The terms, covenants, conditions, descriptions, and other information contained the recorded Plat referenced herein, (iii) the Design Plans as the same may be amended in the future and (iv) Village at Eagles Nest 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.

4. 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.

5. 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 Lots. 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.

6. Except as modified herein, the terms of the Declaration shall be and remain in full force and effect as to the Property and as to each Lot within the Village at Eagles Nest.

IN WITNESS WHEREOF, the Declarant and Eagles Nest Holdings, LLC has executed this Declaration on the day and year first above written.

ENBE, LLC

By: _____
William N. Adkins, Manager

EAGLES NEST HOLDINGS, 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

_____
Signature of Notary Public

Ann Marie Wilson
Notary's printed or typed name

My commission expires: 7/28/17

