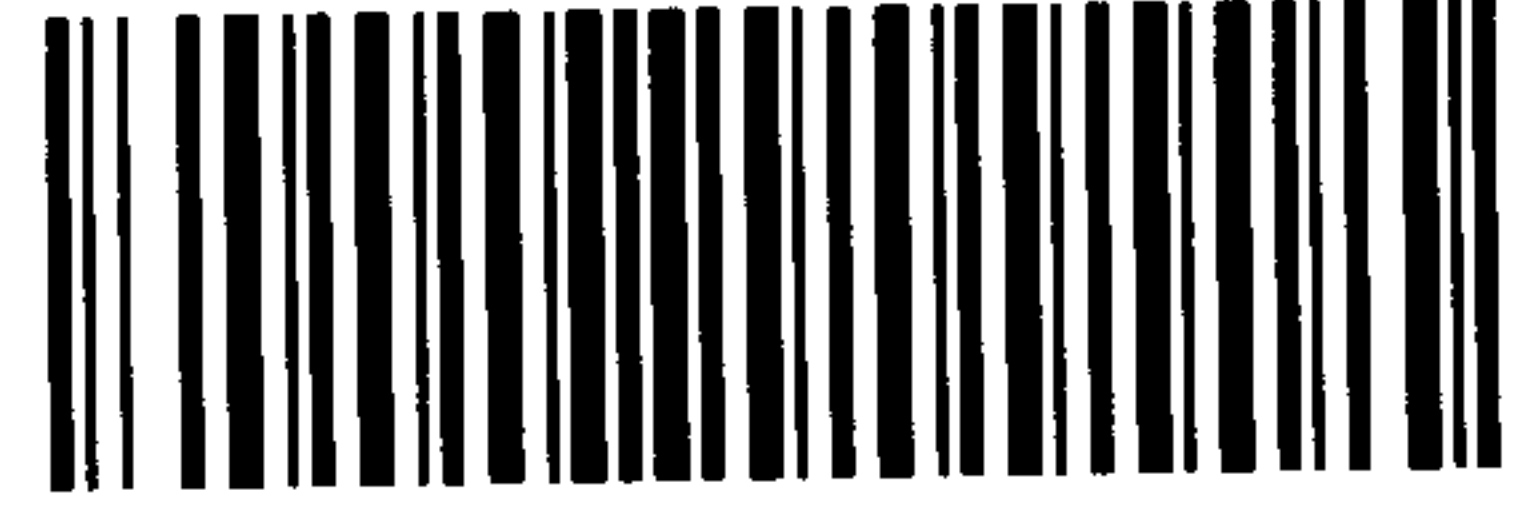


INSTRUMENT # 2017020471



INSTRUMENT # 2017020471

COVER SHEET FOR RECORDING

PREPARED

BY Benjamin Vanhook

RETURN TO BFH Partners

TYPE OF DOCUMENT Covenants

DATE OF DOCUMENT 9/28/18

GRANTOR: BFH Partners, LLC

GRANTEE The Enclave at Lake James

After recording please return to:

200 N. Harbor Pl.
Suite D
Davidson, NC 28036

STATE OF NORTH CAROLINA

[Space above this line for Recording Information]

COUNTY OF BURKE

**DECLARATION OF COVENANTS, RESTRICTIONS, PROPERTY OWNERS
ASSOCIATION AND LIMITATIONS RUNNING WITH THE LAND
FOR THE ENCLAVE AT LAKE JAMES SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, PROPERTY OWNERS ASSOCIATION AND LIMITATIONS FOR ENCLAVE SUBDIVISION, made and published this 28th day of September, 2018, by BFH PARTNERS LLC (hereinafter, "Declarant"), hereafter referred to together with its successors-in-title who come to stand in the same relation to the property as its predecessor did as "Declarant".

WHEREAS, Declarant is the fee simple owner of all the tract or parcel of land lying and being in Linville Township, Burke County, North Carolina, and being 202.17 acres, as shown on a Plat of survey as recorded in Plat Book 49, Pages 43-, (hereinafter called "Plat") Burke County, North Carolina and being more particularly described on the Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, it is the intent of Declarant to establish a general plan and uniform scheme of development and improvement of the upon referenced property; and

WHEREAS, the Declarant is the owner of the real property (hereinafter called "Property") described in this Declaration of Covenants, Conditions and Restrictions (hereinafter called the "Covenants") and is desirous of subjecting the Property to the protective covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property, for the benefit of the parcels or tracts located thereon (hereinafter called the "Tracts"), and for the benefit of each owner of the parcels or tracts which are now already subdivided and platted within the Property (hereinafter called the "Property Owners) and shall apply to and bind the owners thereof, their heirs, successors and assigns thereafter running with the land; and

WHEREAS, the Property is subjected to these Covenants in order to insure the best use and the most appropriate development and improvement of the Property and the tracts located therein; to protect the owners thereof against such improper use of surrounding tracts as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to encourage and insure the highest and best development of the Property; to encourage and secure the building of attractive homes thereon, with appropriate locations thereof on the Property; to prevent haphazard and inharmonious improvement of the Property; to secure and maintain an aesthetically pleasing quality of development and improvement of the property, and thereby to enhance the values of the Property.

NOW, THEREFORE, Declarant, for itself, its successor and assigns, hereby declares that the Property is and shall be held, transferred, sold, devised, assigned, conveyed, given, Purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and run with the land and any estates in the land herein referred to as the Property and these Covenants are intended to be Covenants and servitudes burdening and benefitting all persons now or hereafter deriving a real property estate in the Property, whether by assignment, succession or inheritance or other method of conveyance.

1. The property shall be used for single-family residential use only. No lot or tract shall be subdivided, nor shall more than one (1) primary residence to be constructed on any lot. Building setbacks shall be as follows: Front 30', Side 15', Rear 35', Rear at Lake James 125' from 1200' contour. There shall be undisturbed 100' buffers along the edge of Lake James. All construction shall adhere to state and local laws and ordinances.

2. All residences constructed within the development shall have a minimum square footage requirement of 1,800 square feet of heated floor space on Lakefront Lots and 1,400 square feet of heated floor space on Non Lakefront Lots. Accessory dwellings shall be limited to one such structure per lot. House plans must first be approved by Burke County Planning and Zoning, Declarant and the property owner's association when the same is formed prior to the commencement of any construction. Lot owners may have one outbuilding or storage shed per lot.

3. No building shall be erected upon the granted premises which has cinder blocks or concrete blocks visible from the exterior of such building nor shall any building be erected thereon with exterior asphalt or asbestos siding or cobble or creek stone. Primary residences and accessory dwellings shall be site-built homes. No vinyl siding shall be used and hardy plank or better shall be utilized for the façade. No mobile or modular structures shall be allowed. Boat Storage on Lots is permitted provided it is out of sight from roads.

4. No mobile homes, house trailers, or junk or inoperable motor vehicles shall be allowed upon any granted lot or tract, if the same is visible from any street right of way within said development. No building of a temporary character shall be erected or allowed to remain on said property for a continuous period in excess of three (3) months unless approved by the Declarant or by Enclave at Lake James Property Owners' Association when the same is formed.

5. When the construction of a building is commenced by the owner of any lot or tract in said development, the exterior construction of said building shall be completed within twelve (12) months from the date construction is stated.

6. The owners of any granted lot or lots agree that they will maintain their respective premises in a neat, presentable and attractive condition, including, but not limited to, the keeping of garbage in closed containers, the cutting of grass and weeds, and the removal from the premises of trash and debris; and said property owners further agree that when deemed necessary by the Declarant, or the Enclave on Lake James Property Owners Association, Inc, or its successors and assigns, that the Declarant, or the Enclave on Lake James Property Owners Association, Inc may perform or cause to be performed the maintenance work, and the owners agree to reimburse the

Declarant, or the Enclave on Lake James Property Owners Association, Inc for all expense incurred in the performance of the maintenance work on their individual premises.

7. No part of said premises shall be used or occupied injuriously as to affect the use, occupation or value of the adjoining or adjacent premises for residence purposes, or the neighborhood whereto the premises are situated. Farm animals, including, but not limited to, cattle, livestock, chickens and swine, are prohibited. Households pets, properly maintained, are allowed. A lot owner may have one (1) horse per fenced acre as long as the horse or horses are properly maintained on the property.

8. It is the purpose and intent of these covenants that the subject property be preserved in its current rural character and that the existing serene peaceful atmosphere and setting of the area be maintained. No lot may be used for any illegal activities.

9. There shall be no commercial activities on any tract, specifically including, but not limited to, the operation of garages, car repair shops, machine shops, offices or business complexes, sawmills or logging facilities.

10. No signs of any type shall be displayed to public view on any portion of said property without written Declarant approval. Once written approval is obtained, one sign of not more than 24 inches by 24 inches advertising property for sale or a temporary builder's sign, or such permits as required by law. All said signs shall be professionally lettered and neatly installed. Declarant reserves the right to erect entrance signs and remove any signs on future event sale dates.

11. All parcel or Lot Owners become members of the Enclave on Lake James Property Owners Association, Inc. (hereinafter Association) at time of closing and shall be subject to all assessments and rules and regulations as may be adopted by the property owner's association. Each parcel or Lot shall enjoy one (1) vote only regardless of whether the parcel or Lot is owned by multiple titleholders owning jointly. The Declarant and its successors are all members of the Association until all lots are sold. The Association, acting through its Board of Directors shall have the rights and authority as set forth in the Declaration and in the By-Laws, to be adopted by the Declarant or the Association as set forth herein.

12. ASSESSMENTS. The initial assessments shall be \$500.00 per lot per year, except no assessment is due on any Lot owned by BFH PARTNERS LLC until it sells said Lot. Said assessments shall be used for the maintenance and upkeep of roads and common areas within the development. The assessment shall be payable to the Enclave on Lake James Property Owners Association, Inc. Any owner of up to 3 Lots will pay only one set of assessments.

(a) The Owners of each parcel or Lot owned within the Property by acceptance of a deed therefore, hereby covenants, whether or not it shall be so expressed in such deed and is deemed to covenant and agree to pay the Association annual assessments and special assessments subject to the terms of this paragraph. Any expenses incurred by the Association to enforce the covenants, restrictions and limitations described herein, or as amended, against an Owner(s) shall immediately accrue as an assessment to said Owner(s) in question. These additional accrued assessments may include, but are not limited to, any expenses incurred by the Association as a result of an Owner's failure to adequately maintain their Lot as required herein such as landscaping, mowing or weed eating.

(b) Declarant and later the Association shall keep this money in an escrow account and keep an accurate accounting of how this money was used. Any money in this escrow account upon Declarant relinquishing this responsibility to the Association shall be turned over to the Association.

(c) The annual and special assessments, together with interest costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who is the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall also pass to his successors in title, provided the Association has caused a claim of lien to be recorded in the Public Records of Burke County giving notice to all persons that the Association is asserting a claim of lien upon the parcel or Lot prior to the conveyance of title to the parcel or Lot. Said claim of lien shall state the description of the residence, the name of the record Owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by an officer of the Association or by a managing agent of the Association. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien. Liens for assessment may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. In such foreclosure, the Owner of a residence shall be required to pay a reasonable rental for the residence and the Association shall be entitled as a matter of law, to the appointment of a receiver to collect the same.

(d) The streets in this subdivision are private streets and are neither maintained by Burke County nor considered part of the road system of Burke County. The responsibility for the upkeep and maintenance of the streets shown hereon lies with the property owners as further specified in the private road maintenance agreement, and not Burke County.

13. PURPOSE OF ASSESSMENTS.

Section 1. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of all owners and residents in Enclave and in particular for the acquisition, improvement, replacement, maintenance, use and operation of the Common Property including but not limited to roadways, Marina, Marina Lease, Common Piers and security gates, and to pay for the services which the Association is authorized to provide, including, but not limited to, the maintenance of roadways including reasonable reserves therefore, erection and maintenance of security gates, the payment of taxes and insurance on Common Property, construction of repairs, replacement and additions to Common Property payment of the costs of labor, employees, agents, accountants, attorneys, equipment, material, management and supervision necessary to carry out its authorized function including reasonable reserves for replacement of all capital improvements. These expenses shall be and designated respectively as "Common Expenses".

Section 2. Due Date of Annual Assessments. The annual assessments shall be fixed on a calendar year basis, provided however, that liability for payment of the initial annual assessment shall accrue on the initial purchase of any Lot by an Owner and shall be prorated on a daily basis according to the number of days remaining in the year (365 days) of purchase. Thereafter, payment

of subsequent annual assessments shall be due on the first day of each calendar year or on such other dates as from time to time may be established. The Association may provide for monthly, quarterly or semi-annual payment due dates for the annual assessment in lieu of an annual payment date, provided the Property Owners are given thirty (30) days prior to notice of any change. Payment of the assessment shall be delinquent thirty (30) days after any due date or billing date. The due date of any special assessment shall be fixed in the resolution authorizing such assessment.

Section 3. Uniform Rate of Assessment and Share of Common Expenses. The amount of any annual or special assessment and share of Common Expenses shall be the same for all owners except as herein after set out.

Section 4. Determination of Assessments.

- (a) General Assessments: The Board of Directors has the power to and shall fix and determine, from time to time, the sum or sums necessary and adequate for the general expenses of the Corporation. The purposes and the basis of general assessments are set forth in Section 1 above.

General assessments are necessarily made upon projections and estimates of the Board of Directors and may be in excess or less than the sums required to meet the cash requirements of the Corporation in which event the Board of Directors may increase or decrease the amount of such assessment and make such adjustments in cash or otherwise as they shall deem proper, including the assessment of each member for his pro rata share of any deficits. Notice of all changes in assessments shall be given to all members. When the Board of Directors has determined the amount of any general assessment, the Secretary shall submit a statement of such assessment to each member. Such notice shall state the date when said assessment is due, and thereafter said assessment shall bear interest at the rate of ten percent (10%) per annum simple interest until paid. General assessments shall be paid by the members in advance on a monthly, quarterly, semi-annual, or annual basis, as the Board of Directors shall, from time, direct. General assessments shall be payable at the office of the Corporation.

- (b) Special Assessments: The Board of Directors has the power to fix and determine special assessments from time to time. The purposes and basis of special assessments are set forth herein as Common Expenses. Any special assessments must be approved by a majority vote of the Board at a meeting duly called for this purpose, written notice of which shall be sent to all members of the Board at least Ten (10) days in advance and shall set forth the purpose of the meeting. Special assessment shall be levied by the Board of Directors in the same manner as the Board of Directors shall determine.

Special assessments, when authorized and approved, may be made upon projections and estimates of the Board of Directors and may be in excess or less than the sums required to meet the cash requirements of the Corporation, in which event the Board of Directors may increase or decrease the amount of assessments and make such adjustment in cash or otherwise as they shall deem proper, including the assessment of each member for his pro rata share

of any deficits. Notices of all changes in special assessments shall be given to all members. When the Board of Directors has determined the amount of any special assessment, the Secretary shall submit a statement of special assessment due thereafter said assessment shall bear interest at the rate of ten percent (10%) per annum simple interest until paid. Special assessments shall be payable at the office of the Corporation.

- (c) Individual Assessments: Pursuant to the Corporation's power and authority to enforce the covenants, protections, rules and regulations as set forth in the Declaration of Protective Covenants, Easements and Protections for Enclave, the Board of Directors has the power to separately assess individual members of the Corporation. When the Board of Directors has determined the amount of any individual assessment, the Secretary shall submit a statement of such assessment to the member involved and assessment shall be due and payable upon thirty (30) days after receipt of the statement and thereafter said assessment shall bear interest at the rate of ten percent (10%) per annum simple interest until paid. Individual assessments are payable at the office of the Corporation.
- (d) Budget: The Board of Directors shall adopt a budget for each fiscal year that shall include the estimated funds required to defray anticipated expenses and to provide and maintain funds to cover current expenses, including a reasonable allowance for contingencies, betterments, which shall include the funds to be used for capital expenditures for additional property that will be a part of the Corporation property, and operations, the amount of which may be to provide working funds or to meet losses.
- (e) Co-Mingling of Funds. All sums collected by the Corporation from assessments may be co-mingled in a single fund or divided into more than one fund, as determined by the Board of Directors.

Section 5. Acceleration of Assessment Installments Upon Default. The Board of Directors shall have the power to collect assessments in monthly, quarterly, or semi-annual installments. If a member shall be in default in the payment of an installment upon any assessment, the Board of Directors may accelerate the remaining installments for the fiscal year upon notice thereof to the member and thereupon the unpaid balance of the assessment shall become due upon the date stated in the notice.

Section 6. Lien. Each of the parcels, lots, or units within Enclave is automatically made subject to a lien and permanent charge in favor of the Corporation for general assessments special assessments and individual assessments. Any and all of the assessments together with interest thereon, if any, shall constitute a permanent charge upon and a continuing lien on the parcel, lot dwelling unit to which such assessments relate and such permanent charge and lien shall bind such parcel, lot, or dwelling unit in the hands of any and all persons. In the event that any assessment shall not have been paid within thirty (30) days of the due date, the Secretary of the Corporation shall send a delinquency notice by certified mail to the delinquent member. In the event that any assessment shall not have been paid within thirty (30) days of receipt of said delinquency notice, the Treasurer shall certify to the Board of Directors the name and address, as well as the amount in arrears, of the member. The Board of Directors shall then cause to be prepared, for execution by the President of the

Corporation, a Notice of Lien to be filed with the Clerk of the Superior Court of Burke County, North Carolina. When necessary, on receipt of payment of a delinquent assessment, a satisfaction of lien shall be executed by the President and recorded. In the event that any assessment continues to remain in default, the Corporation may pursue its remedies at law or in equity.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment. In the event of foreclosure upon said mortgage or mortgages such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a foreclosure of the mortgage. Such sale or transfer shall not relieve such property from liability for any assessment thereafter becoming due nor from the lien of any subsequent assessment.

Section 8. Creation of Lien. Each Owner by acceptance of a deed conveying ownership of a lot or dwelling unit in Enclave is deemed to be subject to the Protective Covenants and agrees to abide by the terms and requirements of these By-Laws and assumes the obligation to pay to the Corporation annual, individual and special assessments provided for herein. Such annual, individual and special assessments together with interest thereon and costs of collection thereon hereinafter provided, shall be a charge and continued lien on the lot, against which each assessment is made, and shall also be the personal obligation of the person who is the Owner of such real property at the time when the assessment first becomes due and payable. If required to employ an attorney to collect any assessments, the Association shall be entitled to recover all costs of collection including reasonable attorney's fees.

Section 9. Duties of the Board of Directors. The Board of Directors of the Association shall have such powers and duties as prescribed in the Association's Articles and Bylaws, as amended from time to time, and by law, which shall include the following duties: to fix the amount and due date of all special, annual or other periodically payable assessments; to provide for interest to accrue on unpaid assessments after the due date thereof at the rate of ten (10%) percent per annum or at such other rate as the Board deems appropriate; to provide for the charging of a late fee and the payment of costs of collection, including reasonable attorney's fees, incident to the collection of delinquent assessments and the enforcement and foreclosure of the association's assessment lien and charge as provided for herein; to cause written notice of every assessment to be sent to the Owner subject to such assessment at least thirty (30) days prior to the due date thereof; upon demand at any time to cause to any person legitimately interested, a statement in writing signed by the President, the Treasurer, or other appropriate officer of the Association setting forth the amount of any unpaid assessments with respect to a Lot or Dwelling Unit subject to assessment by the Association or stating that all assessments with respect to the Lot or Dwelling Unit which is the subject of the statement have been paid, as the case may be.

Section 10. Subordination of Charges and Liens to Security Deeds. The lien and permanent charge of any assessment (together with any interest accruing thereon, late charges and costs of collection) pertaining to any Lot or Dwelling Unit is and shall be subordinate to lien of any security deed placed on such Lot or Dwelling Unit by the Owner. This shall not apply to all such assessments having a due date prior to the date such security deed is filed for record. Such subordination shall not relieve the Owner of the encumbered property of his personal obligation to pay all assessments coming due at a time when he is Owner; shall not relieve such property from the lien and permanent charge provided herein; and no sale or transfer of such property to the security deed grantee or to any other person pursuant to foreclosure, or pursuant to any other proceeding in lieu of foreclosure, or

pursuant to a sale under power, shall relieve any Owner of any personal obligation, or relieve the Lot or Dwelling Unit or the then and subsequent Owners from liability for any assessment coming due after such sale or transfer. Notwithstanding the foregoing, the Association may at any time, either before or after any security deeds are placed on such property, waive, relinquish or quit claim in whole or in part the right of the Association to collect the assessments with respect to such Property coming due during the period while such Property is or may be held by a security deed grantee pursuant to such sale or transfer.

Section 11. Remedies of Association Upon Failure to Pay Assessments. If any assessments are not paid within ninety (90) days from the date due, the Association may bring an action at law against the delinquent Owner personally for payment of the assessment, interest and charges due hereunder, or in the alternative, may file an action to foreclose the lien of the Association against the Lot or Dwelling Unit of such Owner in the same manner in which actions are committed for the collection and foreclosure of mechanics and material men's liens against the property as permitted by the laws of the State of North Carolina.

Section 12. Exempt Property. Until conveyed to an Owner other than Declarant, or a builder under contract with Declarant each Lot or Dwelling Unit shall be exempt from the assessments, charges and liens created herein while owned by Company or by such builder. All Common Property, including any Lot or Dwelling Unit which may be designated for use as such by Declarant shall be exempt from the assessments, charges and liens created herein.

14. DELINQUENT ASSESSMENTS. If the annual or special assessments, or assessments for maintenance of limited common area, are not paid on or before fifteen (15) days after the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. If the Association files a claim, of lien on the public records of Burke County, against any parcel or Lot, a Seventy-Five Dollar (\$75.00) lien fee may be charged and shall be added to the unpaid assessment and secured by the lien hereby created.

(a) If the annual assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum, or the maximum allowed by law, whichever is less. The Association may bring an action of law against the Owner personally obligated to pay the same, or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest as provided herein together with the costs of the action and collection of the assessment, including a reasonable attorney's fee and costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought.

(b) In addition, if the annual assessment is not paid within thirty (30) days after the date when due, then the Owner shall lose right to use of the Common Property (excluding subdivision roads) until such time as assessments are paid in full.

(c) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payment which shall be due for such sale or

transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

15. ARCHITECTURAL REVIEW COMMITTEE. The Board of Directors is authorized to establish an Architectural Review Committee and to delegate to said Board the following powers:

- (a) to adopt, administer, and enforce uniform architectural and landscaping standards which conform to the architectural, landscaping and other protections in the Declaration of Protective Covenants, Easements and Protections recorded as to the property within the Development. Said standards shall be adopted with the goal of maintaining the beauty of the natural environment of the areas and the overall plan of development for the Development; and
- (b) to adopt, administer, and appoint review committees with the goal of fairly and impartially enforcing architectural and landscaping standards; and
- (c) to make special exceptions to any standards adopted by the Architectural Review Committee or any review committees, upon proper allocation to the Architectural Review Committee. The means and manner of such application shall be adopted by the Architectural Review Committee.

Said Architectural Review Committee shall consist of no fewer than Three (3) members, at least One (1) of whom shall be a member of the Corporation, and One (1) of said Three (3) shall be a member of the Board of Directors. However, until the annual meeting of the membership, (after control of the Association has been relinquished by the Developer, as provided in Paragraph 18 below) members of the Architectural Review Committee need not be members of the Corporation. The Board of Directors, may, in its sole discretion, appoint a professional architect, engineer, or land planner, who may or may not be a member of the Association serve on said Architectural Review Committee and may provide that said architect, engineer, or land planner be fairly compensated for services. The Board of Directors may approve the distribution of funds to meet the reasonable expenses of the Architectural Review Committee.

The Architectural Review Committee shall be responsible to the Board of Directors, which shall have a veto power over any decision made by the Architectural Review Committee. The veto power may be exercised by a majority of the Directors at any Board of Directors meeting, after application made by an aggrieved member or by any member of the Architectural Review Committee. However, no approval is needed for authorized action taken, if no application is made by an aggrieved member. The Architectural Review Committee shall promulgate from time to time such procedural rules and regulations as it deems necessary and proper, which shall include, but not necessarily be limited to the following:

- (1) Guidelines and procedure to be followed by an applicant seeking its approval.
- (2) Guidelines and procedure to be followed by an applicant seeking a special exception.
- (3) An adequate application form to be prepared and submitted by an applicant seeking its approval as a special exception.

- (4) A schedule of reasonable fees applicable for the processing of applications.
- (5) A procedure for calling a meeting of the Board of Directors or committee (which may include regularly scheduled meetings).
- (6) Such other procedural rules, regulations, and requirements as the Architectural Review Committee may deem necessary and proper, which are not in conflict with the By-Laws, and Declaration of Protective Covenants and Protections.

16. COMMON OPEN SPACE. The Common Open Space shall mean any and all real and personal property and easements and other interests therein, together with any facilities and improvements located thereon, now owned by the Declarant and hereafter owned by the Association for the common use and enjoyment of the Owners. Common property includes but is not limited to the portions of the property described as roads, access easements, and Common Area as shown on that certain plat of survey as recorded as shown on the aforesaid Plat.

- (a) There shall be no obstruction of the Common Area, nor shall anything be kept, parked or stored on any part of the Common Area without prior written Board consent, except as specifically provided herein. This includes, but is not limited to, parking in any of the roadways or streets that serve the subdivision, or the cul-de-sacs, or the common areas.
- (b) The common area is for the sole use of the Declarant, the Association and its Owners. The Association reserves the right to implement such scheduling and/or additional restrictions as deemed necessary to ensure the proper use.
- (c) Neither the Declarant nor the Association shall be liable for any damage or injury resulting from such use of the Common Area to the extent permitted by law.

17. MARINA. The Marina shall mean the Common Piers constructed on Common Open Space 4 and containing the Private and Common Boatslips. The Common Piers housing the Private and Common Boatslips will be maintained through the Assessments mentioned above in Sec 13.1.

18. TRAIL EASMENT. The Overmountain Victory/Fonta Flora State Trail is a meandering public trail easement which crosses certain lots in the Subdivision as shown on Plat Book 49, Pages 43, Burke County, North Carolina. The Overmountain Victory/Fonta Flora State Trail is not a Common Area; it is a public amenity available to all members of the general public including the Owners. Pursuant to the Trail Easement, Burke County is entitled to cut trees, clear, construct and maintain a public access trail facility across the Subdivision. The Trail Easement imposes certain restrictions on the portion of the Lots within and near the Overmountain Victory/Fonta Flora State Trail, and Owners are advised to review the Trail Easement recorded at Book ___, Page ___ in the Burke County Registry.

19. Invalidity of any one or more of the foregoing covenants by court order or otherwise shall in no way affect any of the other covenants or restrictions herein set forth, and they shall remain in full force and effect.

20. **DECLARANT CONTROL PERIOD.** Declarant Control Period shall mean the time to which Declarant has to exercise rights such as, but not limited to, appointing and/or removing one or more of the Board of Directors of the Association and vetoing certain amendments to the Declaration. The Declarant Control Period shall be the earlier of twenty-five (25) years after the date of the Declaration or when all of Enclave (platted at such times and in such phases as determined in Declarant's sole discretion) has been sold or transferred to parties other than Declarant or such earlier time as determined in Declarant's sole discretion.

21. The covenants, restrictions, easements, reservations, terms and conditions contained in this declaration shall run with the land and shall be binding upon all Lot Owners and their heirs, successors and assigns, provided, however that the Declarant retains the absolute right to amend this declaration, as deemed necessary, during the period Declarant is in control of the Association and all such amendments shall be binding upon all Lot Owners. Furthermore, the Association shall have the right to amend these covenants once Declarant no longer controls the association by approval of the Owners of 75% of the Lots subject to this declaration; provided, however, that the land designated as common area shall NOT be sold and shall not be used for residential or commercial purposes during the duration of these covenants and restrictions. All amendments to the Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment.

22. The above covenants and restrictions are placed on the property hereinabove set forth as a part of a general plan of development for the benefit of all owners of the property hereinabove specified within Enclave Subdivision, and the covenants are and shall be binding upon the present owners of the property, their successors, heirs and assigns and shall be covenants running with the land, binding on all future owners of the property.

23. All covenants and restrictions herein set forth shall remain with the land and be binding on all parties and persons claiming under them until and including 31st day of December, 2032, and after the initial period, the covenants shall automatically be extended for successive periods of twenty (20) years each, unless an instrument signed by the owners of a majority of the lots or tracts of land herein affected by these covenants has been recorded in the Office of the Clerk of Superior Court of Burke County, North Carolina agreeing to a modification or change of the covenants, in whole or in part.

24. Streets in this Subdivision are private streets and are neither maintained by Burke County nor considered part of the road system of Burke County. The responsibility for the upkeep and maintenance of the streets shown hereon are the responsibility of the individual Homeowners through the Subdivision's Homeowners Association.

25. **ROAD MAINTENANCE AND IMPACT FEE:** It is expressly acknowledged and understood by the Lot Owners that damage to any subdivision road(s) caused directly by any construction by or other activities of a particular Lot Owner shall be the responsibility of said Owner to repair. Said damage shall include, but not be limited to, that damage caused by irresponsible use of and/or loading on said road during adverse conditions. Upon approval of the Architectural Review Board of building plans submitted to it, there will be due a \$1,500.00 fee, ("Impact Fee") from each Lot Owner, for maintenance and road improvement to be paid to the POA. Any approval given shall be contingent upon receipt of this fee, whether specified or not in said approval. This fee shall be paid before any construction on said site shall begin. If the Lot Owner fails to pay this fee before construction begins, the POA may file a lien against Owner's property; withdraw any prior approval given, or any other remedies available at law or in equity.

26. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

SO EXECUTED this 28th day of September, 2018.

BFH PARTNERS, LLC

By: [Signature]
Its: Manager

STATE OF NORTH CAROLINA
COUNTY OF Burke

I, the undersigned Notary Public of the County and State aforesaid, certify that Benjamin Vanhook, personally appeared before me this day and each acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein. Witness my hand and official stamp or seal, this the 28 day of September, 2018.

My Commission Expires: 3-23-2025

(SEAL – STAMP)

Jennifer H. Forney
Notary Public

Print Notary Name: Jennifer H. Forney

