

Prepared by and return to:  
Alexander Ricks PLLC (JRM)  
1420 E. Seventh Street, Suite 100  
Charlotte, NC 28204

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR  
ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC. ("Declaration") is made on this 18th day of April, 2023 by PHOENIX DERBY PARK, LLC, a North Carolina limited liability company (hereinafter referred to as the "Declarant").

**WITNESSETH**

WHEREAS, Declarant is a limited liability company formed and existing under the laws of the State of North Carolina and is the fee simple owner and developer of that certain real property located in Craven County, North Carolina, which is more specifically described on Exhibit "A" (the "Property") is known generally as "Athens Acres Subdivision"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community and for the maintenance of the properties and the improvements thereon, and to that end desires to subject the real property as described above, together with any and all such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof, as well as to create an organization to administer the rules of the Subdivision, which such Association shall have enforcement powers as so defined hereinafter, and which Declarant shall be initially responsible for the management of; and

WHEREAS, Declarant desires to impose easements, covenants, conditions and restrictions upon all of the Property; and

WHEREAS, Declarant desires to create thereon a residential community of single-family homes; and

WHEREAS, Declarant has caused the incorporation of Athens Acres New Bern Homeowners Association, Inc., a North Carolina non-profit corporation, for purposes of enforcing this Declaration and exercising the functions described herein; and

NOW, THEREFORE, Declarant hereby declares that the Property hereinafter described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I** **DEFINITIONS**

Section 1. "Architectural Review Committee" shall be a committee composed of at least three members, all initially appointed by the Declarant, that shall approve or disapprove submitted plans and specifications for any improvements located on any part of the Property.

Section 2. "Association" shall mean and refer to Athens Acres New Bern Homeowners Association, Inc., incorporated and organized under the laws of the state of North Carolina as a non-profit corporation.

Section 3. "Board of Directors" shall mean the elected body governing the Association as provided by North Carolina corporate law.

Section 4. "Builder" shall mean ADAMS HOMES AEC, LLC, a South Carolina limited liability company, its successors and assigns. Builder shall have the right to assign any and/or all of its interest as Builder in whole or in part on an exclusive or non-exclusive basis to any successor builder of the Property. Such assignment shall be in writing and recorded in the official records of the county in which the Property is located and shall state the specific right or interest being assigned.

Section 5. "Common Property" or "Common Area" shall mean those certain portions of the Property (including any improvements thereon) owned by the Declarant or the Association for the common use and enjoyment of the Owners, hereinafter defined, including any landscaping, easement rights, mailbox kiosks, and any improvements constructed thereon. To the extent there are private roads on the Property, the Common Area shall include, but not be limited to, the private roads on the Property. The Common Property shall also include any on-site stormwater control structures or series of engineered stormwater controls, including storm drains and sewers, stormwater detention ponds, drainage and/or watershed protection areas located within the Subdivision (other than such areas located solely within the boundary lines of any Lot) (collectively, "Stormwater Management System").

Section 6. "Declarant" shall mean and refer to PHOENIX DERBY PARK, LLC, a North Carolina limited liability company, its successors and assigns. Declarant shall have the right to assign all or a portion of any rights granted to the Declarant in this Declaration. Declarant shall

also have the right to assign all or a portion of any obligations of the Declarant in this Declaration. In the event of a partial assignment of some, but not all of Declarant rights and/or obligations, the assignee shall not be deemed the Declarant, but may exercise those rights, and in such case, shall only be responsible for those obligations of Declarant assigned to it. Additionally, any partial assignee that does not assume all of the obligations of Declarant shall not be deemed the Declarant.

Section 7. "Declarant Development Period" shall mean and refer to that period of time during which: (i) the Declarant is the owner of any portion of the Property, including any Lot or Common Area; (ii) Declarant is in any way involved in the maintenance of streets, landscaping, or Common Area; or (iii) Declarant is providing funds to the Association.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Restrictions and Easements for Athens Acres New Bern Homeowners Association, Inc. as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

Section 9. "Entry Features" or "Monument Signage" shall mean those portions of the Property upon which permanent identification signs or monuments shall be initially installed and erected by Declarant at various entrances of Athens Acres Subdivision.

Section 10. "Landscaped Right-of-Way" shall mean the medians and other areas within the public or private street rights-of-way within or adjoining the Property which are designated as Landscaped Rights-of-Way by the Declarant.

Section 11. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded map of the Property, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site which is intended for residential purposes. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in any Common Property as a member of the Association.

Section 12. "Lot in Use" shall mean and refer to any Lot on which a residential structure has been fully constructed and is being or to be occupied as a residence.

Section 13. "Mortgage" shall mean any mortgage, deed of trust, and any and all other similar instruments used for the purpose of encumbering property as security for the payment or satisfaction of an obligation.

Section 14. "Mortgagee" shall mean the holder of a Mortgage.

Section 15. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Planned Community Act" shall mean Chapter 47F of the North Carolina General Statutes as may be amended.

Section 17. "Plat" shall mean a recorded Subdivision map or plat of the Property, or any part thereof, recorded in the public records of the county in which the Property is located, made subject to the terms hereof. Plats for future phases, if any, for lands annexed to the control of this Declaration shall be as referenced in the recorded annexation document for such future phase.

Section 18. "Person" means any natural person, corporation, joint venture, partnership, association, trust, limited liability company, or any other legal entity.

Section 19. "Property" shall mean and refer to that certain real property made subject to this Declaration, as defined in Exhibit A, and any and all other additional property hereinafter made subject to this Declaration.

Section 20. "Subdivision" or "Athens Acres Subdivision" shall mean and refer to all Property, Lots, or Common Areas shown on the Plat or Plats of Derby Park Subdivision, Phase Seven prepared by Thomas Engineering, P.A.

Section 21. "Supplemental Declaration" shall mean an addition or amendment to this Declaration which imposes additional or revised restrictions and obligations on the Property.

## **ARTICLE II**

### **PLANNED COMMUNITY ACT**

Declarant intends to create a planned community subject to the provisions of Chapter 47F of the North Carolina General Statutes. Nothing contained herein shall serve to limit any rights, procedures, enforcement mechanisms, or otherwise as provided in the North Carolina Planned Community Act (the "Planned Community Act"). However, if there is any conflict between the Planned Community Act and this Declaration, this Declaration shall control unless prohibited under the Planned Community Act.

## **ARTICLE III**

### **PROPERTY, ADDITIONAL DECLARATIONS, SUPPLEMENTAL DECLARATIONS**

Section 1. Property made subject to Declaration. The Property made subject to this Declaration is described as follows:

SEE ATTACHED EXHIBIT A.

The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth herein.

Section 2. Supplemental Declaration. The Declarant reserves the right to subject the Property to additional covenants, restrictions, easements, uses, privileges, changes, assessments,

liens, options, rights, terms and provisions as Declarant in its sole discretion may determine and/or to amend this Declaration as necessary in its sole discretion. Such an addition or revision shall not require any other Owner approval during the Declarant Development Period. Any Supplemental Declaration must be in writing and filed with the Craven County Register of Deeds Office.

#### **ARTICLE IV**

#### **MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot shall be a Member of the Association and shall be subject to annual and/or other assessments. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment. The Association shall be established before any Lots are sold by Declarant.

Section 2. The Association shall have the following two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant and Builder, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any such Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote or a fractional vote be cast with respect to any Lot, and in no event shall fractional votes be allowed.

Class B. The Class B Members shall be Declarant and Builder (as well as any successor of Declarant or Builder who takes title for the purpose of development and sale) and shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership at the earliest of the following events:

- (1) When all the Lots that will ultimately be contained within the Subdivision and operated by the Association are conveyed to Owners, other than Builder or Declarant; or
- (2) When the Declarant makes the election, with the prior written consent and approval of all Builders, to give written notice to the Association of its decision to terminate Class B Membership.

Section 3. Dissolution of Association. The Association shall be dissolved upon the termination of the Declaration, or upon written assent given in writing and signed by not less than Eighty Percent (80%) of all votes of the Association as are allocated to the Lot Owners, in which event a termination agreement shall be recorded. The Association may be guided by the laws as so established in N.C.G.S. 47F on the termination of the Association. Upon Dissolution or insolvency of the Association, or upon loss of ownership of the Common Areas (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason or merger and/or consolidation with the Common Area as allowed in this Declaration), any portion of the Common Area not under the jurisdiction of Craven County and being maintained

by the Association, shall be offered to Craven County, or some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted as defined by the Association. Neither Craven County nor any other governmental entity need to accept such conveyance for it to be valid. Once received by Craven County or other governmental entity, such portion of the Common Area and assets shall be conveyed by deed by the Association to said entity, subject to the superior rights of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located and subject to all other applicable rights of way and easements and to ad valorem property taxes subsequent to the date of conveyance. Should the County of Craven try to refuse the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most near conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance being made subject to the rights of the Owners and other matters set forth above.

#### **ARTICLE V**

#### **USE AND BUILDING RESTRICTIONS AND RULES**

Declarant reserves the right from time to time to waive each section of this Article V provided that any waiver is to be in writing, signed by Declarant and recorded in the Craven County Registry.

Section 1. General. This Article sets out certain use and building restrictions to which all Owners must comply. The Declarant may, from time to time, promulgate rules and regulations applicable to the use of the Property. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners.

The Architectural Review Committee (the "ARC"), and any Owner shall have the power to file an injunction with the appropriate judicial authority to enforce all of the covenants and conditions contained in this Article.

The ARC has discretion to grant variances, except as prohibited by Craven County regulations, to all use and building restrictions found in this Article so long as such discretion maintains and does not violate the overall aesthetic nature of the Subdivision and such a variance is obtained in writing signed by the ARC and recorded in the Craven County Registry.

Section 2. Owner's Responsibility/Association Responsibility. All maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with this Declaration. Such maintenance shall include, without limitation, (i) the repairing and painting (or other appropriate external care) and otherwise caring for the dwelling and all other structures located on the Lot; (ii) the seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns; (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic, do not cause unsightly or unkempt conditions and do not

trespass onto the property of others; and (iv) the maintenance, repair and painting of all fences on the Lot. If the Declarant (or Association, after expiration of the Declarant Development Period) determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Declarant/Association shall, except in an emergency situation, give the Owner written notice of the intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) calendar days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, if such maintenance, repair, or replacement is not capable of completion within a ten (10) calendar day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Declarant/Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense. The remedies provided in this Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

It shall be the responsibility of each Owner to prevent and correct unclean, unsightly or unkempt conditions of buildings or on Lots. All Lots shall be kept clean and free of garbage, junk, trash, debris, non-operable vehicles or apparatus and vehicles without valid and proper license plates and registration, and any substances and conditions that might contribute to an unsightly condition, health hazard or the breeding and habitation of snakes, rats or insects. "Lot" as used in this section also includes that portion of the Lot between the right of way and the pavement.

Common Areas and improvements thereon shown on the recorded Plat of the Property shall be maintained by the Association. The streets within the Properties shall be constructed to standards required for maintenance, dedication and acceptance for public use by NCDOT. Declarant shall remain responsible for any maintenance or repair necessary for any streets until conversion to Class A membership at which time the Association shall maintain and repair the streets until maintenance is formally accepted by NCDOT or other appropriate government entity. Lot Owners shall not alter drainage patterns and shall not interfere with or alter ditched sections along the streets and no drain pipes or culverts may be installed prior to acceptance of the streets by NCDOT or other appropriate government entity without the prior written approval of Declarant.

Section 3. Land Use and Building Type. Each Lot shall be used exclusively for single-family, non-transient, residential purposes and, except as allowed by the terms of this Declaration, no building or other structure shall be constructed, placed or allowed to remain on a Lot except one single-family dwelling, an attached or detached garage and an outbuilding or storage building which meets the requirements contained in this Declaration and any subsequent architectural guidelines. A home office may be maintained and business activities can be carried out within the dwelling as long as there is no sign or other evidence that any type of business activity is being carried on inside the dwelling. There are to be no retail business or commercial customers to a dwelling. There shall be absolutely no business activity carried on outside the residential dwelling. Provided, however, Declarant and Builder shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development of the Subdivision and sales and re-sales of Lots, homes or other properties owned by Declarant or Builder or others outside of the Subdivision. This right shall include, but not be limited to, the right

to maintain models, sales offices and parking associated therewith, have signs on any portion of the Subdivision, including Common Area, employees in the models and offices without the payment of rent or any other fee, and maintain offices in models and use of the Common Area to show Lots or homes. Declarant and Builder shall have all of the foregoing rights without charge or expense.

Notwithstanding the foregoing, the provisions in this Section shall in no way limit the ability of the Declarant to subject other subdivision property to additional covenants and/or restrictions.

Section 4. Architectural and Landscaping Standards. No exterior construction, alteration, addition, erection or landscaping of any nature whatsoever shall be commenced or placed upon any part of the Property, except such as is installed by Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, alteration or landscaping shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, color, texture and location shall have been submitted in writing to and approved by the ARC. Such plans must also be approved and a building permit obtained from the applicable governmental authorities if so required. Declarant reserves the right to approve any plans and specifications submitted by Builder to Declarant, which shall be in writing and signed by Declarant ("Builder Approval"). Builder Approval shall be deemed as a blanket approval that complies with all conditions, architectural standards, and design guidelines herein or supplemented hereafter. Furthermore, any Builder with Builder Approval shall not be subject to review or inspection by ARC or Association.

The initial ARC shall consist of three (3) members, all initially appointed by the Declarant. The ARC may employ architects, engineers, or other Persons as it deems necessary to enable the ARC to perform its review. The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated. Written design guidelines and procedures may be promulgated for the exercise of this review which guidelines may provide for a review fee charged to the applicant. During the Declarant Development Period, Declarant shall have the sole right to appoint all members of the ARC. Upon the expiration or earlier surrender in writing of such right, the Declarant shall turn full control of the ARC over to the Association.

If the ARC fails to approve or to disapprove submitted plans and specifications within sixty (60) calendar days after the completed plans and specifications have been submitted to it and such failure continues for a period of ten (10) business days after ARC's receipt of written notice regarding such failure, the foregoing will be deemed approved. However, all activities commenced pursuant to such plans which have been deemed approved shall be consistent with such plans. In addition, no approval, whether expressly granted or deemed granted as provided herein, shall be inconsistent with this Declaration or any design guidelines promulgated hereunder unless a waiver or variance has been granted in writing.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair,

replacement, and insurance to and on any change, modification, addition, or alteration made of a Lot. In the discretion of the ARC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner or such Owner's successors-in-interest. The ARC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the ARC or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the ARC, in the event of noncompliance with this Section, the ARC may record, in the appropriate public registry, a notice of violation naming the violating Owner and describing the Lot.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, NEITHER THE DECLARANT, THE ACC OR THE MEMBERS THEREOF, NOR THE ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, OR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION, THE ARC, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND/OR AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE ARC, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 5. Signs. No sign of any kind shall be erected by an Owner within the Property or Subdivision without the prior written consent of the ARC except (a) when offering a Lot or residence for sale or for lease, not more than one (1) professionally lettered "For Sale" or "For Rent" sign having a maximum area of four (4) square feet and a maximum height of four (4) feet above ground level, (b) professional security signs (c) any signs required by legal proceedings, and (d) signs erected by Declarant or Builder. Professionally lettered "For Sale" or "For Rent" signs may be attached to a post of not more than Five Feet, Six Inches (5'6") in height. Notwithstanding the foregoing, the ARC shall have the right to erect reasonable and appropriate

signs. Declarant may elect to remove any sign not meeting the above qualifications without any advance notice to Owner and shall not be liable to Owner for such removal. Builder or Declarant, in its sole discretion, may install signs, banners, and other forms of signage on lots owned by Builder or Common Area for the purpose of advertising and promoting the sale of homes or lots within the Subdivision

Section 6. Vehicles/Garages. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, limousines and automobiles. All vehicles must be properly licensed, registered, inspected and otherwise kept in compliance with applicable governmental regulations. Vehicles shall not be allowed to park on any street within the Subdivision or on any portion of a Lot other than in the driveway or garage.

Notwithstanding the above, no towed vehicle, trailers, boat, boat trailer, recreational vehicle, motor home, mobile home, bus, trucks (except pick-up trucks or sport utility vehicles), commercial vehicles (including, without limitation, vehicles with commercial writing on their exteriors), go-cart or similar recreational vehicles shall be permitted on any Lot, except if kept in an enclosed garage, for periods longer than forty-eight (48) consecutive hours (the intent of this provision is that the aforementioned vehicles may not be stored on a Lot except if in a garage and the temporary removal of such vehicle from a Lot to break the continuity of the forty-eight (48) consecutive hours shall not be sufficient to establish compliance with this restriction).

No vehicle may be left upon any portion of the Property or Subdivision, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways unless said vehicle is located in the garage. Any such vehicle shall be considered a nuisance and may be removed from the Property or Subdivision.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 7. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration and Supplemental Declarations, if any and any rules and regulations promulgated by the Declarant or the Association. The lease shall also obligate the tenant to comply with the foregoing, and the lease shall provide that the violation of any provision of this Declaration and Supplemental Declarations, if any, shall be a breach of said lease, subjecting the tenant to termination of the lease and eviction. In addition, any violations of the covenants contained in this Declaration by the tenant or any person residing at the Lot shall be the responsibility of the Lot Owner.

Section 8. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

Section 9. Animals and Pets. No animals, livestock, poultry, or exotic animal of any kind may be raised, bred, kept, or permitted on any Lot, except that not more than three (3) dogs, cats, or other usual and common household pets may be kept on a Lot. Notwithstanding the foregoing, those pets which, endanger the health, make objectionable noise, have a vicious or dangerous propensity, or constitute a nuisance or inconvenience to the Owners of any Lot or the owner of any property located adjacent to the Subdivision, must be removed. No pets shall be kept, bred or maintained for any commercial purpose. No household pet that has caused damage or injury may be walked in the Subdivision. If the Declarant or Association determines, in its sole discretion, that a pet endangers the health, makes objectionable noise, has a vicious or dangerous propensity, or constitutes a nuisance or inconvenience, either may issue a written notice to Owner that said pet must be removed from the Subdivision within ten (10) calendar days. If Owner does not remove said pet within the time limit provided in the notification, Declarant or Association may have the pet removed from the Subdivision by an animal control authority or other appropriate authority. The cost of such removal shall be the responsibility of Owner and shall be an assessment against the Lot of Owner.

No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for such structure have been approved by the ARC in accordance with this Declaration. A leash shall be used for all animals and pets which are outside the confines of their house or a fenced-in area.

Section 10. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No property within the Subdivision shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Subdivision. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Lots or property within the subdivision. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

It shall be the responsibility of each Owner to timely address the removal of debris and/or rebuilding of a dwelling or structure in the event of damage caused by fire, storm, or other occurrence. If Owner does not begin the removal of debris and/or reconstructing within sixty (60) days of said occurrence, the Declarant and/or Association may remove any debris, the costs of which shall be the responsibility of Owner and shall be collected as an assessment, so as to return the Lot to a neat and clean appearance; provided, however, there shall be no removal of any debris if prohibited by an applicable governmental authority, on-going investigation or law.

Section 11. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Property or Subdivision except in an enclosed garage.

Section 12. Antennas. The ARC may issue rules regarding the erection of exterior antennas, including, without limitation, satellite dishes; provided such rules do not prevent reception of acceptable quality signals or cause an unreasonable delay or cost. Unless screened and located in the rear of the home to provide minimum visual impact on neighboring properties and so as to be unseen from the streets, no exterior antennas of any kind, including without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of the Property or Subdivision, including any Lot; provided such screening and location do not prevent reception of acceptable quality signals or cause an unreasonable delay or cost. In no event shall any such antenna or satellite dish in excess of one (1) meter in size be permitted in the Property or Subdivision except if installed by the Declarant as provided in this Section. Declarant shall have the right (but shall not be obligated), to erect a master antenna, satellite dish or other similar master system for the benefit of the Property or Subdivision. Each Owner acknowledges that this provision benefits all Owners and each Owner agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

Section 13. Tree Removal. No trees that are more than four (4) inches in diameter (twelve and one-half (12 1/2) inches in circumference) at a point four and one-half (4 1/2) feet above the ground shall be removed without the prior written consent of the ACC except (a) dead or diseased trees, (b) trees that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence or a driveway, (c) trees removed by Declarant or Builder, or (d) trees removed during the construction of the original dwelling on a Lot.

Section 14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. During the Declarant Development Period, Declarant hereby reserves for the benefit of Declarant and the Association, if any, and their respective successors and assigns (perpetually) an easement across the Property and Subdivision property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property or Lots, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on the evening before a pick-up is to be made as necessary to provide access to persons making such pick-up. All rubbish, trash, and garbage shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Property or Subdivision except by Declarant or Builder during the original construction on a Lot.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the ARC and appropriate governmental entity. Declarant, however, hereby expressly reserves the right to re-plat any Lot or Lots owned by Declarant for as long as Declarant has the right unilaterally to annex additional property to the Property pursuant to Article VI and Article VIII of this Declaration. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations and shall not constitute a violation of the Declaration.

Section 18. Firearms, Hunting Prohibited. The use or discharge of firearms in the Subdivision is prohibited unless such firearm is used or discharged as a means of self-defense. The term "firearms" includes without limitation "B-B" guns, pellet guns, bows and arrows, sling shots and small firearms of all types. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type or method of propulsion; and no target practice or hunting of any type shall be carried on or conducted on the Subdivision.

Section 19. Fences and Party Walls. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Property or Subdivision, including any Lot, without the prior written consent of the ARC. The ARC may issue guidelines detailing acceptable fence styles or specifications, but all such fences or fencing type barriers must be made of material approved by the ARC and in no event may an uncoated chain link or barbed wire fence be approved. Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Any Owner performing any such repair or restoration shall have the right to go upon the adjoining Lot(s) to the extent necessary to perform such repair or restoration. Such repair or restoration shall be done expeditiously and upon completion, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such repair and restoration as is

reasonably possible. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Section 20. Utility Lines. Except as may be permitted by the ARC, no overhead utility lines, including lines for cable television, shall be permitted within the Property or Subdivision, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 21. Air-Conditioning Units. No window air conditioning units may be installed except as may be permitted by the ARC, but in no event shall a window air conditioning unit be installed in any dwelling so as to be visible from the front of any Lot or any adjoining street.

Section 22. Lighting & Power. Except as may be permitted by the ARC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one decorative post light, (c) street lights in conformity with an established street lighting program for the Property or Subdivision which may be established by the Declarant or Association and may be billed individually to Lot owners by the utility provider; (d) seasonal decorative lights from Thanksgiving to the following New Year's Day; or (e) front house illumination of model homes.

**Declarant reserves the right to subject the property in the Subdivision to a contract with the applicable utility providers for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the applicable utility providers by each residential customer.**

Section 23. Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items. No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, bird baths, bird houses, and similar items must be approved by the ARC.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARC.

Section 25. Swimming Pools. No swimming pool or outside jacuzzi or hot tub shall be constructed, erected or maintained upon any Lot without the prior written consent of the ARC, and in no event shall any above-ground swimming pool be permitted.

Section 26. Gardens and Play Equipment. No vegetable garden, hammock, statuary or play equipment (including, without limitation, basketball goals which are allowed to be erected beside the driveway) be constructed, erected or maintained upon any front area of any Lot unless the type and location thereof has been previously approved by the ARC.

Section 27. Mailboxes. If applicable to the Subdivision, there shall be a mailbox kiosk located within the Subdivision at a place and size as determined by the Declarant for the benefit of all Owners within the Subdivision. Pursuant to policy established by the United States Postal Service, Lot Owners shall receive and send mail via Centralized Box Units (CBUs) to be installed by the Declarant and maintained by the Association.

Section 28. Exteriors. All exterior finishes and colors must be approved by the ARC. Any change to the exterior color, finish or texture of any improvement located on a Lot, including, without limitation, the dwelling, the roof on any dwelling or any fence, must be approved by the ARC.

Section 29. Chimneys. Prefabricated fireplaces shall be allowed as long as the chimney does not extend beyond the main ridge of the roof of the dwelling. If such chimney does extend beyond the main ridge of the roof of the dwelling, such chimney must be solid masonry construction.

Section 30. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 31. Monument Signage. The Association shall have a perpetual easement over and across "Lot 101" as shown on the Plat for purposes of maintaining and repairing, as deemed necessary by the Association, certain monument signage located thereon.

Section 32. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose.

Section 33. Fuel or Water Tanks. No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any street or road or from any other Lot, unless used by Declarant in the ordinary course of developing the Property or Subdivision.

Section 34. Outbuildings and Similar Structures. No outbuilding, storage building or similar structure shall be erected, placed or allowed to remain on any Lot except those which are incidental to residential use, are constructed of the same or substantially identical materials as the residential dwelling on the Lot, are architecturally compatible with the residential dwelling on the Lot, are located no closer to the front boundary line of the Lot than the rear wall of the single-family residence located on the Lot and no closer to any side boundary line of a Lot than the applicable building setback requirements, and which have otherwise been approved by the ARC.

Section 35. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ARC of plans and specifications for the prevention and control of such erosion or siltation. The ARC may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling of such erosion or siltation.

Section 36. Insurance. Nothing shall be kept, and no activity shall be conducted on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be kept, on his/her Lot or on the Common Property which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance or regulation. No waste shall be committed on any portion of the Common Property.

Section 37. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 38. Dwelling Setback Lines. No dwelling shall be located on any Lot nearer to the front Lot line or nearer to the side street line than the minimum building setback lines as shown on the Plat of the Subdivision recorded in the Craven County Registry.

Section 39. Square Footage. Any dwelling erected on a Lot shall contain a minimum enclosed dwelling area of 1600 square feet above ground. The term "enclosed dwelling area" as used in this Section shall mean the total enclosed area within a dwelling subject to both heating and cooling; provided, however, that the term specifically does not include garages, basements, terraces, porches, decks, stoops and like areas regardless of heating or cooling. Variances of these square footage requirements may be granted by the Declarant and/or ARC.

Section 40. Height and Accessory Building. No structure, except as provided herein shall be erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single-family dwelling not to exceed two and one-half (2 1/2) stories in height exclusive of the basement. A garage and a small accessory building may also be permitted on the Lot, provided, the use of such dwelling or accessory building does not in the opinion of the ARC overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling nor without the approval of the ARC.

Section 41. Rights Reserved for Declarant and Builder. The provisions of this Declaration shall not be applicable to prevent or hinder the activities of Declarant or Builder in: (1) marketing the Subdivision, which includes, but not limited to, signage, parking facilities, or use of model homes, (2) operating sales and construction offices, (3) developing the Property, or (4) constructing residential dwellings. Declarant reserves an easement for itself and for Builder, and their nominees, over, upon, across, and under the Subdivision as may be required in connection with the development of the Subdivision, and other lands designated by Declarant and/or Builder, and to promote or otherwise facilitate the development, construction and sale and/or leasing of Lots, single-family dwellings, any portion of the Subdivision (excluding any land leases relating to the Common Area), and other lands designated by Declarant and/or Builder. Without limiting the foregoing, Declarant specifically reserves for itself and for Builder the right to use all paved roads and rights of way within the Subdivision for vehicular and pedestrian ingress and egress to and from construction sites. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Common Area. Without limiting the foregoing, at no time shall

Declarant and/or Builder be obligated to pay any amount to Association on account of Declarant's and/or Builder's use of the Common Area. Declarant and Builders intend to use the Common Area for sales of Lot and single-family dwellings. Further, Declarant and/or Builders may market other residences and properties located outside of the Subdivision from Declarant's and/or Builder's sales facilities located within the Subdivision. Declarant and Builder have the right to use all portions of the Common Areas in connection with their marketing activities, including without limitation, allowing members of the general public to inspect model homes, installing signs and displays, holding promotional parties, picnics and similar events, and using the Common Area for every other type of promotional or sales activity that may be employed in the marketing of single-family dwellings. The easements created by this Section 41, and the rights reserved herein in favor of Declarant and Builder, shall be construed as broadly as possible and supplement the rights of Declarant and Builder set forth in this Declaration. At no time shall Declarant and/or Builder incur any expense whatsoever in connection with its use and enjoyment of such rights and easements.

Section 42. Compliance with Restrictive Covenants and BMP Operation and Maintenance Agreement. For so long as Declarant owns any portion of the Property, Declarant shall continuously operate and maintain the Stormwater Management System as required by the Restrictive Covenants & BMP Operation and Maintenance Agreement for Athens Acres Subdivision (the "O&M Agreement") (attached hereto as Exhibit "D"). The O&M Agreement constitutes a covenant running with the Property and is binding upon all subsequent owners of any Property served by the Stormwater Management System, including the Association.

The following covenants ("Stormwater Covenants") are intended to ensure ongoing compliance with the City of New Bern Stormwater Ordinance, Code Section 15-501 *et seq.* and, as applicable, the State Stormwater Management Permit Number SW7210711, as issued by the Division of Energy, Mineral and Land Resources (the "Division") under 15A NCAC 02H.1000, effective January 1, 2017:

- (i) The City of New Bern, and the State of North Carolina, as applicable, is made a beneficiary of these Stormwater Covenants to the extent necessary to maintain compliance with the stormwater ordinance and approved stormwater plan for Athens Acres Subdivision.
- (ii) These Stormwater Covenants are to run with the land and be binding on all persons and parties claiming under them.
- (iii) Neither the Declaration nor these Stormwater Covenants pertaining to stormwater may be altered or rescinded without the express written consent of the City of New Bern, and/or the Division, as applicable.
- (iv) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the City of New Bern, and/or the Division, as applicable.
- (v) The maximum allowable built-upon area per Lot is 3,550 square feet. This allotted amount includes any built-upon area constructed within the Lot property boundaries, and that portion of the right-of-way between the front Lot line and the edge of the pavement not shown on the approved plans. Built upon area has the same meaning as G.S. 143-214.7, as amended. The maximum allowable built-upon area shall not be exceeded on any Lot until the permit is modified to ensure compliance with the stormwater rules, permit, and the approved plans and specifications.

- (vi) A 50-foot wide vegetative setback must be provided and maintained adjacent to all surface waters in accordance with 15A NCAC 02H.1003(4) and the approved plans. All roof drains shall be released no closer than at the edge of the 50-foot wide vegetated setback and allowed to flow through the setback as dispersed flow. At no time shall stormwater runoff be piped into or through the setback.
- (vii) Filling in, piping or altering any designated curb outlet swale or vegetated area associated with the development is prohibited by any persons.
- (viii) Each designated curb outlet must convey stormwater runoff to a vegetated conveyance or vegetated area as shown on the approved plans and must be maintained at a minimum of 100' long, 3:1 (H:V) side slopes or flatter, a minimum bottom width of 2 feet; have a longitudinal slope no steeper than 5%, carry the peak flow from the 10-year storm at a non-erosive velocity, and dense vegetated cover.
- (ix) Any individual or entity found to be in noncompliance with the provisions of the stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in NCGS 143, Article 21.

Section 43. Transfer of the O&M Agreement. At such time that Declarant is no longer the owner of any portion of the Property, including any Lot or Common Area, and the Common area, including the Stormwater Management System, has been conveyed from Declarant to the Association, Declarant may, at such time, transfer and assign the O&M Agreement to the Association for purposes of enforcing and complying with the conditions and restrictions contained therein. Notwithstanding, prior to any such transfer and assignment of the O&M Agreement, Declarant shall have a qualified professional and the City of New Bern inspect the Stormwater Management System/BMP facility and provide any reports of such inspections to the Association. Should either inspection discover any deficiencies, Declarant shall correct and pay for the costs of such repairs prior to the transfer and assignment of the O&M Agreement to the Association. The Association shall, upon request of Declarant, execute any and all documents that may be necessary to effectuate the said transfer and shall accept the same.

## **ARTICLE VI**

### **RIGHTS RESERVED FOR DECLARANT**

Notwithstanding anything contained herein to the contrary, during the Declarant Development Period, Declarant expressly reserves the right to (i) subject additional property to this Declaration by the method described herein; (ii) reasonably amend this Declaration without the consent of any Owners or Members; (iii) select, appoint and remove members of the Architectural Review Committee who need not be Members of the Association; (iv) select, appoint and remove the Officers and the Board of Directors of the Association who need not be Members of the Association. The Declarant may waive or assign any of the rights reserved herein to a Member, a non-Member, another entity (such as a management company) or the Association.

The Declarant Development Period shall automatically terminate when all of the Lots that will ultimately be contained within the Subdivision and operated by the Association are conveyed to Owners, other than Builder. At any time, Declarant may terminate, with the consent of Builder, the Declarant Development Period by executing a Notice of Termination of Declarant

Development Period and assigning all rights reserved herein to the Association. The Notice of Termination of Declarant Development Period shall be effective when filed in the Craven County Registry.

**ARTICLE VII**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner (other than Declarant and Builder), of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs, and reasonable attorneys' 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, late charges, costs, and reasonable attorneys' fees shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the welfare of the residents in the Property, for the improvement and maintenance of the Common Area, including Entry Features and Recreational Facilities, for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, for the payment of insurance premiums for contracts of hazard and liability insurance on the Common Area, for the payment of local ad valorem taxes or governmental charges, if any, on the Common Area, and for any other major expense for which the Association is responsible, and for such other needs as may arise. The Association itself is responsible for ensuring proper liability insurance is always in effect, maintenance of all recreational facilities is being done properly, landscaping of common areas is being performed, and all local taxes, if any, have been properly paid on time. Notwithstanding the foregoing, the assessments levied by the Association pursuant to this Article shall not exceed the sum of \$250.00 per Lot, per year.

Section 3. Budget and Reserves. The Association shall establish and maintain adequate reserve funds for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the property which the Association may be obligated to maintain by the Declarant or these Declarations.

Section 4. Date of Commencement of Annual Assessments. Annual assessments shall commence upon conveyance of a Lot to an Owner, other than Declarant or Builder. The annual assessment shall be payable in the manner and on the schedule the Board of Directors may provide, and if not stated in the budget, shall be on the first of the month, and begin to accrue late fees and interest if not paid within fifteen (15) days after the due date.

Until the Association first levies assessments, Declarant shall be responsible for any shortfalls in the budget of the Association. Thereafter, assessments shall be levied at least annually in accordance with this Article.

Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Annual Assessment"). The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments the Board of Directors shall determine, and after notice of the same shall have been given to all of the members of the Association by the Board of Directors, and shall be paid to the Association when due without further notice.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments for Common Expenses authorized above, the Board may levy in an assessment year, a special Assessment for unanticipated expenses not included within the budget and not reserves, as long as the Declarant is exercising its rights under the provisions hereof, not to pay assessments. Meetings for special purpose of considering special assessments shall be held only after due notice to the Owners mailed not less than thirty (30) days prior to the date of the meeting. Neither Declarant nor any Builder shall pay any special assessments for capital improvements.

Section 6. Uniform Rate of Assessment. Maximum assessments must be fixed at a uniform rate for all Lots; provided, however, annual and special assessments for all Lots owned by Declarant and Builder shall not be assessed unless and until dwellings are occupied by residents.

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10.0%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest, late charges, costs, management fee and reasonable attorneys' fees of any such action, or foreclose the lien against the Lot, which shall be come a lien as against the property. For purposes of this Section 8, the amount of delinquent assessment, plus accrued interest and late charges shall be considered evidenced by this Section 8 and, therefore, evidence of indebtedness shall exist hereby. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgages. 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 assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Working Capital Fund. Upon each and every transfer or conveyance of title to a Lot after it has been improved with a dwelling for which a certificate of occupancy has been issued, a working capital contribution in the amount of \$200.00, which amount may be increased or decreased from time to time by the Board in its sole discretion, shall be collected from the new Owner at the closing of such transaction and disbursed to the Association; or if not collected at closing, shall be paid immediately upon demand to the Association.

Section 10. Budget Deficits During Class B Membership. For so long as Declarant or Builder are Class B members, Declarant or Builder may, but shall have no obligation to: (a) advance funds or contributions of services or materials or a combination of services and materials, rather than money (herein collectively called and "in kind contribution"), or a combination of these, to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, special and specific Assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the party advancing such funds); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Subdivision; provided, however, no mortgage secured by the common area or any of the structures or improvements maintained by the Association shall be given in connection with such loan without the consent of the Owners entitled to cast two thirds (2/3) of the total eligible votes present and voting, in person or by proxy, at a duly called meeting at which a quorum is present.

Section 11. Failure to Assess. The failure of the Board to fix assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## **ARTICLE VIII**

### **ANNEXATION OF PROPERTY**

As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to annex and subject such additional real property which is contiguous to the boundary of the Property, to the provisions of this Declaration or any Supplemental Declaration thereto, by filing for record in the public registry of the county in which the property to be annexed is located a Supplemental Declaration describing the property being

subjected. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, Declarant may include additional restrictions and limitations affecting any such annexed real property.

## **ARTICLE IX** **EASEMENTS**

### **Section 1. Easements for Use and Enjoyment.**

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to such Lot.

(b) Any Lot Owner may extend such Owner's right of use and enjoyment granted hereunder to the members of such Owner's family and to such Owner's tenants and social invitees, as applicable.

**Section 2. Easements for Utilities.** There is hereby reserved to Declarant a blanket easement upon, across, above and under all property within the Property and Subdivision for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or Subdivision or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which Declarant might decide to have installed to serve the Property or Subdivision. It shall be expressly permissible for Declarant, or the designee of the Declarant, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant shall have the right to grant such easement. Within any easements for the installation and maintenance of utilities and drainage facilities shown on a recorded plat of any portion of the Property or Subdivision, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of waters through drainage channels in the easements.

**Section 3. Easement for Entry.** In addition to the right of the Declarant to exercise self-help as provided herein, the Declarant shall have the right, but shall not be obligated, to enter upon any part of the Property for emergency, security, and safety reasons, which right may be exercised by a property manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Declarant to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other

hazard in the event an Owner or occupant fails or refuses to cure the condition upon request by the Declarant.

Section 4. Easement for Entry Features and Monument Signage. The Association shall have a perpetual easement over and across "Lot 101" as shown on the Plat for purposes of maintaining and repairing, as deemed necessary by the Association, certain Monument Signage located thereon. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such Monument Signage.

Section 5. Easements Over the Lots. The Lots shall be subjected to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:

(a) Each Lot shall be subject to all easements which are shown and depicted on any recorded plat as affecting and burdening such Lot;

(b) Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plat slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow; and

## **ARTICLE X** **GENERAL PROVISIONS**

Section 1. Enforcement. Each Owner and occupant shall comply strictly with this Declaration and Supplemental Declarations, if any. It is stipulated and agreed that the Owner and their heirs, successors, or assigns, may enforce this Declaration or Supplemental Declarations, if any, by injunction and that this shall not be in exclusion of, but in addition to, all other remedies available in law or equity. The Association shall have all enforcement rights as provided in the Planned Community Act including the right to fine for violations of this Declaration pursuant to the procedures provided in the Planned Community Act.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Declarant or its duly authorized agent, during the Declarant Development Period, shall have the power to enter upon any Lot or any other portion of the Property or Subdivision to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Declarant shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as, and to the extent that, North Carolina law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law,

after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of twenty (20) years, unless a written instrument reflecting disapproval signed by the then Owners of at least two-thirds (2/3) of the Lots and Declarant (so long as Declarant owns any property for development and/or sale in the Property or Subdivision or has the right unilaterally to annex additional property to the Property or Subdivision) has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, during the Declarant Development Period, Declarant may, with the consent of Builder, unilaterally amend this Declaration for any other purpose.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant, during the Declarant Development Period. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to Declarant shall be amended without Declarant's prior written approval during the Declarant Development Period. Any rights, privileges, benefits in this Declaration provided to Builder shall not be amended, changed, or altered without the written consent of Builder, which shall be recorded in the Craven County Registry.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the appropriate court in the county in which the Subdivision is located within one (1) year of the recordation of such amendment in the public registry of the county in which the Subdivision is located.

Section 5. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 8. Notice of Sale or Lease. In the event an Owner, excluding Builder, sells or leases such Owner's Lot, the Owner shall give to the Declarant, during the Declarant Development Period, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Declarant may reasonably require. The lot Owner shall fully inform all prospective purchasers of the Declarations and the requirements thereunder. The lot Owner shall also give to the purchaser of the Lot a copy of the Declarations and any amendments or Supplemental Declarations.

Section 9. Variances. Notwithstanding anything to the contrary contained herein, the Declarant or its designee, during the Declarant Development Period, shall be authorized to grant individual variances from the provisions of this Declaration, and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Subdivision.

Section 10. Security. The Declarant may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the Subdivision. Notwithstanding the providing of any such measures or taking of any such action by Declarant, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Declarant is not a provider of security and shall have no duty to provide security in the Subdivision. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner. The Declarant shall not be held liable for any loss or damage by reason of the failure to provide adequate security or ineffectiveness of security measures undertaken or provided.

Exhibits:

A – Legal Description

B – Bylaws

C – Articles of Incorporation

D – Restrictive Covenants & BMP Operation & Maintenance Agreement for Athens Acres  
Subdivision

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized representative and under seal on the date set forth below.

**DECLARANT:**

PHOENIX DERBY PARK, LLC,  
a North Carolina limited liability company.

By: [Signature]  
Name: Kristian Kellogg  
Title: Member

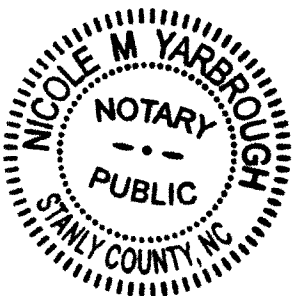
STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, a Notary Public of <sup>Stanly</sup> ~~the~~ County and State aforesaid, do hereby certify that Kristian Kellogg, Member for PHOENIX DERBY PARK, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed on behalf of the company.

Witness my hand and official seal, this the 18th day of April, 2023.

[Signature]  
Notary Public  
My Commission Expires: 12.21.27

(NOTARY SEAL)



**EXHIBIT A**  
**LEGAL DESCRIPTION**

**All of that certain tract or parcel of land lying and being situate in Number Eight Township, Craven County, North Carolina, and being more particularly described as follows:**

**Being all of that certain parcel designated as Tract "A" containing 37.98 acres as set forth and delineated on that certain map entitled "recombination Map, DERBY PARK REMAINING AREA" prepared by Parker & Associates, Inc., dated 3/13/15, recorded March 31, 2015 in Plat Cabinet I, Slide 58D in the office of the Register of Deeds of Craven County, reference to said map being hereby made for a more perfect description of said Tract "A."**

**This conveyance is made subject to a twenty-foot, non-exclusive drainage easements hereby reserved in favor of Grantor, the centerline of which is described as follows: Beginning at a Point, said Point being located North 50 degrees 22 minutes 04 seconds West for a distance of 12.47 feet from the northwestern most corner of lot 4329 Elizabeth Downs Phase III as shown on that certain plat entitled Elizabeth Downs Phase III as recorded in Plat Cabinet H Slide 112-F in the Craven County Register of Deeds; Thence, from said Point of Beginning, South 39 degrees 08 minutes 51 seconds West for a distance of 143.23 feet to a point; Thence, North 53 degrees 12 minutes 35 seconds West for a distance of 113.51 feet to a point; Thence, North 61 degrees 17 minutes 13 seconds West for a distance of 85.80 feet to a point; Thence, North 13 degrees 57 minutes 56 seconds West for a distance of 98.43 feet to a point.**

**This conveyance is also made subject to a ten-foot, non-exclusive drainage easements hereby reserved in favor of Grantor, which easement is more particularly described as follows: BEGINNING AT A POINT, said POINT being the southernmost corner of tract A, Derby Park Remaining Area, as shown on the certain plat as recorded on Plat Cabinet I Slide 58D in the Craven County Register of Deeds; Thence, North 54 degrees 39 minutes 39 seconds West for a distance of 10.18 feet to a point; Thence, North 46 degrees 04 minutes 16 seconds East for a distance of 111.69 feet to a point; Thence, North 41 degrees 14 minutes 35 seconds East for a distance of 33.74 feet to a point; Thence, North 28 degrees 16 minutes 26 seconds East for a distance of 49.86 feet to a point; Thence, North 11 degrees 24 minutes 37 seconds East for a distance of 56.46 feet to a point; Thence, North 09 degrees 57 minutes 16 seconds East for a distance of 72.32 feet to a point; Thence, North 07 degrees 43 minutes 03 seconds East for a distance of 62.19 feet to a point; Thence, North 00 degrees 09 minutes 24 seconds East for a distance of 61.17 feet to a point; Thence, North 13 degrees 33 minutes 48 seconds West for a distance of 29.41 feet to a point; Thence, North 23 degrees 18 minutes 33 seconds West for a distance of 29.46 feet to a point; Thence, North 30 degrees 28 minutes 14 seconds West for a distance of 67.27 feet to a point; Thence, North 27 degrees 12 minutes 42 seconds West**

for a distance of 50.04 feet to a point; Thence, North 00 degrees 34 minutes 49 seconds West for a distance of 49.60 feet to a point; Thence, North 35 degrees 52 minutes 58 seconds East for a distance of 31.50 feet to a point; Thence, North 49 degrees 46 minutes 48 seconds East for a distance of 48.62 feet to a point; Thence, North 50 degrees 23 minutes 32 seconds East for a distance of 80.54 feet to a point; Thence, North 50 degrees 56 minutes 16 seconds East for a distance of 65.39 feet to a point; Thence, North 46 degrees 33 minutes 34 seconds East for a distance of 77.68 feet to a point; Thence, North 42 degrees 24 minutes 06 seconds East for a distance of 64.21 feet to a point; Thence, North 41 degrees 28 minutes 33 seconds East for a distance of 65.07 feet to a point; Thence, North 37 degrees 58 minutes 48 seconds East for a distance of 32.66 feet to a point; Thence, North 42 degrees 52 minutes 50 seconds East for a distance of 63.97 feet to a point; Thence, North 45 degrees 28 minutes 31 seconds East for a distance of 42.55 feet to a point; Thence, South 37 degrees 39 minutes 08 seconds East for a distance of 10.07 feet to a point; Thence, South 45 degrees 28 minutes 31 seconds West for a distance of 41.12 feet to a point; Thence, South 42 degrees 52 minutes 50 seconds West for a distance of 63.32 feet to a point; Thence, South 37 degrees 58 minutes 48 seconds West for a distance of 32.54 feet to a point; Thence, South 41 degrees 28 minutes 33 seconds West for a distance of 65.46 feet to a point; Thence, South 42 degrees 24 minutes 06 seconds West for a distance of 64.65 feet to a point; Thence, South 46 degrees 33 minutes 34 seconds West for a distance of 78.43 feet to a point; Thence, South 50 degrees 56 minutes 16 seconds West for a distance of 65.72 feet to a point; Thence, South 50 degrees 23 minutes 32 seconds West for a distance of 80.44 feet to a point; Thence, South 49 degrees 46 minutes 48 seconds West for a distance of 47.35 feet to a point; Thence, South 35 degrees 52 minutes 58 seconds West for a distance of 26.99 feet to a point; Thence, South 00 degrees 34 minutes 49 seconds East for a distance of 43.94 feet to a point; Thence, South 27 degrees 12 minutes 42 seconds East for a distance of 47.39 feet to a point; Thence, South 30 degrees 28 minutes 14 seconds East for a distance of 67.61 feet to a point; Thence, South 23 degrees 18 minutes 33 seconds East for a distance of 30.94 feet to a point; Thence, South 13 degrees 33 minutes 48 seconds East for a distance of 31.47 feet to a point; Thence, South 00 degrees 09 minutes 24 seconds West for a distance of 63.03 feet to a point; Thence, South 07 degrees 43 minutes 03 seconds West for a distance of 63.05 feet to a point; Thence, South 09 degrees 57 minutes 16 seconds West for a distance of 72.64 feet to a point; Thence, South 11 degrees 24 minutes 37 seconds West for a distance of 58.07 feet to a point; Thence, South 28 degrees 16 minutes 26 seconds West for a distance of 52.48 feet to a point; Thence, South 41 degrees 14 minutes 35 seconds West for a distance of 35.30 feet to a point; Thence South 46 degrees 04 minutes 16 seconds West a distance of 110.22 feet to the POINT OF BEGINNING.

This conveyance is also made subject to the following easements hereby reserved in favor of Grantor, which easements are more particularly described as follows: non-exclusive easements for the purposes of vehicular and pedestrian ingress, egress, and regress; and for the installation and maintenance of stormwater conveyances and utilities within a sixty-five foot right of way of which the centerline is described as follows: Beginning at a Point, said Point being located South 40 degrees, 48 minutes, 58 second West for a distance of 32.50 feet from the southwestern most corner of lot 4328 Elizabeth Downs Phase III as shown on that certain plat entitled Elizabeth Downs Phase III as recorded in Plat Cabinet H Slide 112-F in the Craven County Register of Deeds; Thence, along a curve to the right having a radius of

**532.50 feet, and an arc length of 125.04 feet, being subtended by a chord of North 42 degrees 49 minutes 18 seconds West for a distance of 124.76 feet to a point; thence, along a curve to the left having a radius of 400.00 feet, and an arc length of 9.09 feet, being subtended by a chord of North 36 degrees 44 minutes 52 seconds West for a distance of 9.09 feet to a point.**

**This conveyance is also made subject to the following easements hereby reserved in favor of Grantor, which easements are more particularly described as follows: fifteen (15) foot, non-exclusive Temporary Construction Easements as shown on that certain plat entitled "Derby Park Remaining Area" dated March 13, 2015, as recorded in Plat Cabinet I Page 58D (Book 3345 Page 581) in the Craven County Register of Deeds.**

**Saving and excepting from this conveyance is the portion of the real property Beginning at a Point, said Point being located along a curve to the right having a radius of 500.00 feet, and an arc length of 117.62 feet, being subtended by a chord of North 42 degrees 50 minutes 01 seconds West for a distance of 117.35 feet to a point; thence, along a curve to the left having a radius of 432.50 feet, and an arc length of 10.40 feet, being subtended by a chord of North 36 degrees 47 minutes 07 seconds West for a distance of 10.40 feet to a point, from the southwestern most corner of lot 4328 Elizabeth Downs Phase III as shown on that certain plat entitled Elizabeth Downs Phase III as recorded in Plat Cabinet H Slide 112-F in the Craven County Register of Deeds; Thence, from said Point of Beginning, South 51 degrees 36 minutes 03 seconds West for a distance of 110.62 feet to a point; Thence, along a curve to the left having a radius of 260.50 feet, a delta angle of 15 degrees 49 minutes 06 seconds, and an arc length of 71.92 feet, being subtended by a chord of South 43 degrees 41 minutes 30 seconds West for a distance of 71.69 feet to a point; Thence, North 55 degrees 02 minutes 24 seconds West for a distance of 118.86 feet to a point; Thence, North 89 degrees 24 minutes 24 seconds West for a distance of 158.67 feet to a point; Thence, North 02 degrees 49 minutes 28 seconds East for a distance of 162.46 feet to a point; Thence, South 83 degrees 28 minutes 08 seconds East for a distance of 79.76 feet to a point; Thence, North 06 degrees 31 minutes 52 seconds East for a distance of 65.00 feet to a point; Thence, South 83 degrees 28 minutes 08 seconds East for a distance of 3.63 feet to a point; Thence, along a curve to the right having a radius of 432.50 feet, a delta angle of 45 degrees 59 minutes 41 seconds, and an arc length of 347.19 feet, being subtended by a chord of South 60 degrees 28 minutes 16 seconds East for a distance of 337.94 feet to the Point of Beginning, containing 1.53 acres, more or less.**

**EXHIBIT B**  
**BYLAWS**

BYLAWS  
OF  
ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC.

ARTICLE I  
NAME

Section 1.1 The name of the corporation is ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC., a non-profit North Carolina corporation (hereinafter referred to as the "Association").

ARTICLE II  
DEFINITIONS

Section 2.1 For ease of reference, these Bylaws of Athens Acres New Bern Homeowners Association, Inc. shall be referred to as the "Bylaws." The terms used in these Bylaws shall have the same definition, unless herein provided to the contrary or unless the context otherwise requires, and mean as those set forth in that Declaration of Covenants, Restrictions and Easements for Athens Acres New Bern Homeowners Association, Inc., recorded or to be recorded in the Office of the Register of Deeds of Craven County, North Carolina, as amended from time to time (the "Declaration"), the terms of which pertaining to membership is specifically incorporated by reference herein.

ARTICLE III  
MEETING OF MEMBERS

Section 3.1 Annual Meetings. The annual meeting of the Members shall be held on a date, time and at a place to be determined by the Board with due and proper notice thereof as provided in Section 3.3 hereof.

Section 3.2 Special Meeting. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of a majority of the Members of each class.

Section 3.3 Notice of Meetings. Notices of all board meetings must be posted in a conspicuous place in the community at least forty-eight (48) hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place, written notice of each meeting of Members shall be given, by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least seven (7) days before such meeting, to each Member entitled to vote thereat, addressed to the Members' addresses last appearing on the books of the Association, or supplied by such Member to the

Association for the purposes of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, and the purpose of the meeting.

Section 3.4 Quorum. The presence at the meeting of Members of each class entitled to cast votes, or of proxies entitled to cast votes, equal to twenty percent (20%) of each class, shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at the meeting, the Members of each class entitled to vote shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 3.5 Proxies. At all meetings of Members of each class, each Member of each class may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 3.6 Vote Required. At every meeting of the Members, the owner or owners of each Lot, either in person or by proxy, shall have the right to cast the number of votes to which he is entitled as set forth in the Declaration. The vote of the majority of the votes cast by those present of each class, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of the Declaration, the Articles of Incorporation, or these Bylaws, a different vote is required, in which case such express provisions shall govern and control.

Section 3.7 Order of Business. The order of business at all annual or special meetings of the Members of each class shall be as follows:

- A. Roll Call
- B. Proof of Notice of meeting or waiver of notice
- C. Reading of minutes of previous meeting
- D. Reports of officers
- E. Reports of committees
- F. Election of officers or directors (if election to be held)
- G. Unfinished business
- H. New business
- I. Adjournment

#### ARTICLE IV BOARD OF DIRECTORS: SELECTION - TERM OF OFFICE

Section 4.1 Number. The affairs of this Association shall be managed and governed by a Board of Directors composed of not less than three (3) members. The first Board of Directors shall have three (3) members.

Section 4.2 Classes. Each director will be appointed or elected to one of three classes: Class 1, Class 2, or Class 3. Directors will be elected by class to provide for staggered terms. This Section 4.2 shall not apply to Article IV, Section 4.7

Section 4.3 Term of Office. Each member of the Board shall serve for a term of two (2) years until the next annual meeting, or until such time as his successor is chosen. The eligibility of a member to be elected for more than one (1) term shall not be abridged, excluding the initial terms as explained as follows: the initial term for Class 1 director will be for one (1) year, the initial term for the Class 2 director will be for two years, and the initial term for the class 3 director will be for three years.

Section 4.4 Removal. Any director may be removed from the Board with or without cause, by a majority of each class of the Members of the Association entitled to vote. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board of Directors and he shall serve for the unexpired term of his predecessor. This Section 4.4 shall not apply to Board of Directors appointed by Declarant and only Declarant shall have the right to remove a Board of Director appointed by Declarant.

Section 4.5 Compensation. No director shall receive compensation for any service she/he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in performance of his duties.

Section 4.6 Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 4.7 The First Board of Directors. The first Board of Directors shall consist of three (3) persons who shall be appointed by the Declarant and who, subject to the provisions set forth hereinabove with regard to resignation and death, shall be the sole voting members of the Board of Directors of the Association and shall hold office until the termination of Class B Lots as set forth in the Declaration.

#### ARTICLE V ELECTION OF DIRECTORS

Section 5.1 Elections to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each such vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving a majority of the votes cast for that office shall be elected. Cumulative voting is not permitted.

#### ARTICLE VI MEETING OF DIRECTORS

Section 6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held annually, at such place and hour as may be fixed from time to time by resolution of the Board.

Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 6.3 Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors' present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

#### ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers. In addition to the powers set forth in the Articles of Incorporation for the Association, the Board of Directors shall also have the following powers:

A. Adopt and publish rules and regulations governing the use of the Common Property or Common Area as well as the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

B. Suspend the voting rights and right to use the Common Property or Common Area by a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such right to use of the Common Property or Common Area may also be suspended, after notice and hearing;

C. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

D. Employ a manager, management company, an independent contractor and/or such other employees as the Board deems necessary and to prescribe the duties to be undertaken and the compensation thereof, and authorize the purchase of necessary supplies and equipment and to enter into contracts with regard to the foregoing items or services;

E. Accept such other functions or duties with respect to the property hereunder, including Architectural Control, in addition to maintenance responsibilities, as are determined from time to time to be proper by the majority of the Board of Directors;

F. Delegate to and contract with a financial institution for collection of the assessments of the Association;

G. To procure and maintain adequate liability insurance on property owned by the Association, and such other insurance which in the opinion of a majority of the Directors may be necessary or desirable for the Association, the policies and limits to be reviewed at least annually

and increased and decreased at the discretion of the majority of the Members of the Board of Directors;

H. To cause the Common Property, Common Area, and those portions of lots and dwellings to be maintained in accordance with the Declaration; and

I. To prepare and file the appropriate governmental tax returns and in compliance with Revenue Ruling 70-604, the corporation elects to apply excess assessments to help reduce future years assessments. Therefore, no tax is due on the excess payment.

Section 7.2 Duties. The Board of Directors shall act according to those standards and duties set forth in N.C.G.S. Chapters 55A and 47F.

#### ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Officers. The officers of this Association shall be a president, secretary, and treasurer who shall at all times be members of the Board of Directors.

Section 8.2 Election of Officers. The election of officers shall take place at the meeting of the Board of Directors which shall immediately follow the adjournment of each annual meeting of members.

Section 8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless said member shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

Section 8.5 Standing Committees. The Board shall appoint such standing committees as are required under the Declaration, the Articles of Incorporation, or these Bylaws, as well as such other committees as are necessary or desirable from time to time, which committees shall exist for such periods of time, have such authority, and perform such duties as the Board may, from time to time, determine in its discretion.

Section 8.6 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.7 Vacancies. A vacancy in any office may be filled by appointment by a majority vote of the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.8 Duties. The duties of the officers are as follows:

A. President: The president shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

B. Secretary: The secretary may act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board of Directors. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as may be required by the Board of Directors.

C. Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association along with the president; keep proper books of account; cause a financial report of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX  
COMMITTEES

Section 9.1 The Board of Directors may, at its discretion, create such committees as it sees fit from time to time.

ARTICLE X  
BOOKS AND RECORDS

Section 10.1 The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, or such other address as the Board of Directors may from time to time designate, and copies may be purchased at a reasonable cost at such address.

ARTICLE XI  
ASSESSMENTS

Section 11.1 As more fully provided in the Declaration, except as therein provided, each Member is obligated to pay to the Association annual and special assessments and reserves which are secured by a continuing lien upon the property against which the assessment is made and are a personal obligation of the Member of each class.

ARTICLE XII  
CORPORATE SEAL

Section 12.1 The Association may have a seal in circular form, having within its circumference the words: ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC., a non-profit North Carolina corporation.

ARTICLE XIII  
AMENDMENTS

Section 13.1 Requirements to Amend. These Bylaws may be amended at a regular or special meeting of the members by a vote of fifty-one percent (51%) of each class of the Members present in person or by proxy except as otherwise provided in the Declaration.

Section 13.2 Control of Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Declaration, the Articles of Incorporation, and/or these Bylaws, the Declaration shall control.

ARTICLE XIV  
MISCELLANEOUS

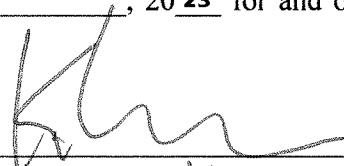
Section 14.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of each year, except that the first fiscal year shall begin on the date of incorporation of the Association.

Section 14.2 Indemnification. The Association shall indemnify any officer or director or any former officer or director to the full extent permitted by law.

Section 14.3 Insurance. The Board of Directors may, but is not required to, elect to carry a policy of officers and directors' liability insurance, insuring the officers and directors against any claims made against them whatsoever, except claims of willful negligence and misfeasance of office.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, we, the directors of ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC., a non-profit North Carolina corporation, have hereunto set our hands this 18 day of April, 2023 for and on behalf of the Association.

  
\_\_\_\_\_  
\_\_\_\_\_  
Kristin Kelly, President

CERTIFICATION

~~I, the undersigned, do hereby certify that I am duly elected and acting Secretary of ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC., a non-profit North Carolina corporation, and that the foregoing Bylaws constitute the original Bylaws of the said Association, as duly adopted at the meeting of the Board of Directors thereof, held on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.~~

~~IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, SECRETARY~~

~~Executed and declared in the presence of:~~

STATE OF NORTH CAROLINA

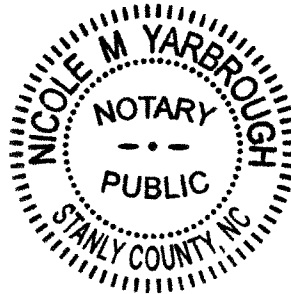
COUNTY OF MECKLENBURG

I, a Notary Public of Stanly County, North Carolina, do hereby certify that Kristian Kellogg, President of ATHENS ACRES NEW BERN HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed on behalf of the corporation.

Witness my hand and official seal, this the 18<sup>th</sup> day of April, 2023.

*Nicole M Yarbrough*  
\_\_\_\_\_  
Notary Public *Nicole M Yarbrough*  
My Commission Expires: 12.21.27

(NOTARY SEAL)



**EXHIBIT C**  
**ARTICLES OF INCORPORATION**

**[see attached]**

SOSID: 2557064  
Date Filed: 1/18/2023 9:18:00 AM  
Elaine F. Marshall  
North Carolina Secretary of State  
C2023 013 33383

State of North Carolina  
Department of the Secretary of State

ARTICLES OF INCORPORATION  
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the nonprofit corporation is: Athens Acres New Bern Homeowners Association, Inc.

2.  (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).

3. The name of the initial registered agent is: Alexander Ricks PLLC

4. The street address and county of the initial registered agent's office of the corporation is:

Number and Street: 1420 E 7th Street, Suite 100

City: Charlotte State: NC Zip Code: 28204-2408 County: Mecklenburg

The mailing address *if different from the street address* of the initial registered agent's office is:

Number and Street or PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State: NC Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

5. The name and address of each incorporator is as follows:

Name	Address
<u>James R. McLeod</u>	<u>1420 E. 7th Street, Suite 100 Charlotte NC, 28204-2408 United States</u>
_____	_____
_____	_____

6. (Check either "a" or "b" below.)

a.  The corporation will have members.

b.  The corporation will not have members.

7.  Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.

8.  Attached are provisions regarding the limitation of activities of the corporation.

9. Any other provisions which the corporation elects to include are attached.

10. The street address and county of the principal office of the corporation is:

Principal Office Telephone Number: (917) 647-3872 x \_\_\_\_\_

Number and Street: 108 Mary Mack Lane \_\_\_\_\_

City: Fort Mill State: SC Zip Code: 29715-9774 County: York \_\_\_\_\_

The mailing address *if different from the street address* of the principal office is:

Number and Street or PO Box: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ County: \_\_\_\_\_

11. Principal Office Email Address: Privacy Redaction \_\_\_\_\_

12. (Optional): Listing of Officers (See instructions for why this is important)

Name	Address	Title

13. (Optional): Please provide a business e-mail address: Privacy Redaction \_\_\_\_\_

The Secretary of State's Office will e-mail the business automatically at the address provided at no charge when a document is filed. The e-mail provided will not be viewable on the website. For more information on why this service is being offered, please see the instructions for this document.

14. These articles will be effective upon filing, unless a future time and/or date is specified: \_\_\_\_\_

This is the 13th day of January, 2023.

\_\_\_\_\_  
Incorporator Business Entity Name

James R. McLeod

\_\_\_\_\_  
*Signature of Incorporator*

James R. McLeod Incorporator

\_\_\_\_\_  
*Type or print Incorporator's name and title, if any*

NOTES:

1. Filing fee is \$60. This document must be filed with the Secretary of State.

**ADDENDUM**

Upon the dissolution of the Corporation, the Corporation's assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

The Corporation is organized exclusively for charitable, religious, educational and scientific purposes under section 501(c)(3) of the Internal Revenue Code, or any corresponding section of any future federal tax code.


To the fullest extent permitted by the North Carolina Nonprofit Corporation Act as it now exists or may hereafter be amended, no person who is serving or who have served as a director of the corporation shall be personally liable to corporation or any of its shareholders for monetary damages for breach of duty as a director.

To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the North Carolina Nonprofit Corporation Act permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of shareholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by the North Carolina Nonprofit Corporation Act.

No amendment or repeal of this Addendum, nor the adoption of any provision to these Articles of Incorporation inconsistent with this Addendum, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

**EXHIBIT D**  
**O&M AGREEMENT**

**[see attached]**

  
 Doc No: 10110995 Page 1 of 4  
 DocType: DECL  
 Recorded: 04/05/2023 02:27:17 PM  
 Fee: \$26.00 Revenue Tax: \$0.00  
 Craven County North Carolina  
 Sheri B. Richard, Register of Deeds  
 BK 3759 PG 2063 - 2066 (4)

RWHT 14  
 Thomas Eng.

NORTH CAROLINA        )  
                                   )  
 COUNTY OF CRAVEN        )        DECLARATION OF COVENANTS FOR  
                                   )        STORM AND SURFACE WATER  
                                   )        FACILITY MAINTENANCE

THIS DECLARATION OF COVENANTS, is made and entered into this the  
28<sup>th</sup> day of Mar, 2023 by and between Phoenix Derby Park, LLC. hereinafter  
 "Covenantor" to and for the benefit of the City of New Bern, a North Carolina municipal  
 corporation and its successors and assigns, hereinafter "City".

WITNESSETH:

THAT WHEREAS, the City is authorized and required to regulate and control the  
 disposition of storm and surface waters within the City's jurisdiction as set forth in the  
 City of New Bern Stormwater Ordinance, Code Sections 15-501 *et seq.*; and

WHEREAS, Covenantor is the owner of a certain tract or parcel of land as shown  
 on that certain plat entitled "Athens Acres Phase One" as recorded in the office of the  
 Register of Deeds of Craven County in Plat Cabinet J, Slide 45C, such property being  
 hereinafter referred to as "the property"; and

WHEREAS, the Covenantor desires to construct certain improvements on its  
 property that will alter the extent of storm and surface water flow conditions on both the  
 property and adjacent lands; and

WHEREAS, in order to accommodate and regulate these anticipated changes in  
 existing storm and surface water flow conditions, the Covenantor desires to build and

maintain at its expense, a storm and surface water management facility and system more particularly described and shown on plans titled Athens Acres (formerly Derby Park Phase Seven) and further identified under City approval/permit number 132; and

WHEREAS, the City has reviewed and approved these plans subject to the execution of this Agreement.

NOW THEREFORE, in consideration of the benefits received by the Covenantor as a result of the City's approval of its plans, Covenantors, with full authority to execute deeds, mortgages, other covenants, and all rights, title and interest in the property described above do hereby covenant with the City as follows:

1. Covenantor shall construct and perpetually maintain, at its sole expense, the above-referenced storm and surface water management facility and system in strict accordance with the plan approval granted by the City.
2. Covenantor shall, at its sole expense, make such changes or modifications to the storm and surface water management facility and system as may, at the City's discretion, be determined necessary to insure that the facility and system is properly maintained and continues to operate as designed and approved.
3. The City, its agents, employees and contractors shall have the perpetual right to ingress and egress over the property of the Covenantor, and the right to inspect at reasonable times and in reasonable manner, the storm and surface water facility and system, in order to insure that the system is being properly maintained and is continuing to perform in an adequate manner.
4. The Covenantor agrees that should it fail to correct any defects in the above-described facility and system with ten (10) days from the issuance of written notice, or shall fail to maintain the facility in accordance with the approved design standards and with the law and applicable executive regulation or, in the event of an emergency as determined by the City in its sole discretion, the City is authorized to enter the property to make all repairs, and to perform all maintenance, construction and reconstruction as the City deems necessary. The City shall then assess the Covenantor and/or all landowners served by the facility for the cost of the work, both direct and indirect, and applicable penalties. Said assessment shall be a lien against all properties serviced by the facility and may be placed on the property tax bills of said properties and collected as ordinary taxes by the City.
5. Covenantor shall indemnify, save harmless and defend the City from and against any and all claims, demands, suits, liabilities, losses, damages and payments including attorney fees claimed or made by persons not parties to this Declaration against the City that are alleged or proven to result or arise from the Covenantor construction, operation,

or maintenance of the storm and surface water facility and system that is the subject of this Covenant.

6. The covenants contained herein shall run with the land and the Covenantor further agrees that whenever the property shall be held, sold and conveyed, it shall be subject to the covenants, stipulations, agreements and provisions of this Declaration, which shall apply to, bind and be obligatory upon the Covenantor hereto, its heirs, successors and assigns and shall bind all present and subsequent owners of the property served by the facility.

7. The Covenantor shall promptly notify the City when the Covenantor legally transfers any of the Covenantors responsibilities for the facility. The Covenantor shall supply the City with a copy of any document of transfer, executed by both parties.

8. The provisions of this Declaration shall be severable and if any phrase, clause, sentence or provision is declared unconstitutional, or the applicability thereof to the Covenantor is held invalid, the remainder of this Covenant shall not be affected thereby.

9. This Declaration shall be recorded in the office of the Register of Deeds of Craven County at the Covenantors expense.

10. In the event that the City shall determine in its sole discretion at a future time that the facility is no longer required, then the City shall at the request of the Covenantor execute a release of this Declaration of Covenants which the Covenantor shall record at its own expense.

IN WITNESS WHEREOF, Phoenix Derby Park, LLC, has executed this Declaration by and through its Manager, Kristian Kellogg, by authority duly given and has adopted as its seal the typewritten word "SEAL" appearing after its name herein below on this the day and year first above written.

Phoenix Derby Park, LLC

Manager

(SEAL)

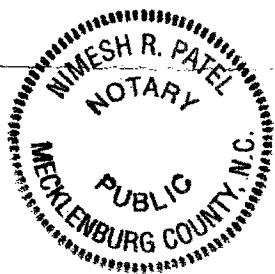
Book 3759  
Page 2065

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Nimesh R Patel, a Notary Public for the County of Mecklenburg State of North Carolina, do hereby certify that Kristian Kellogg personally appeared before me this day and acknowledged that he is the Manager of Phoenix Derby Park, LLC, a North Carolina corporation, and further acknowledged the due execution thereof.

WITNESS my hand and official stamp this the 28 day of March, 2023



Nimesh R Patel  
Notary Public

My commission expires: **My Commission Expires  
Nov. 7, 2024**

Book 3759  
Page 2066