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AVERY COUNTY NC FEE \$26.00
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RENEE DELLINGER
REGISTER OF DEEDS
BY: ERIN ENGLISH
ASSISTANT

BK: RE 578

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STATE OF NORTH CAROLINA

COUNTY OF AVERY

DECLARATION OF RESTRICTIONS, CONDITIONS, EASEMENTS, COVENANTS, AGREEMENTS,
LIENS, AND CHARGES OF
LINVILLE HEIGHTS SUBDIVISION

This Declaration made this the 4th day of June 2022, by:

Atlas Land Partners, LLC, a North Carolina Limited Liability Company
Hereinafter termed, "Declarant"

WITNESSETH:

WHEREAS, Weber Development Company, as "Initial Declarant", prepared and executed those certain Declarations of Restriction for the Linville Heights Subdivision ("Original Declarations"), record as instrument 5-1193, in the Avery County, North Carolina, Register of Deeds;

WHEREAS, the Initial Declarant resigned control of the Original Declarations to Linville Heights Property Owner's Association, Inc. ("Association") accepted;

WHEREAS, Declarant is the owner of a certain tract or parcel of land being all that certain tract or parcel of land, lying and being situated in the County of Avery, State of North Carolina, and being acres, more or less, and being more particularly described by Lots in Block "A" and Block "B" of Linville Heights Subdivision as same are shown in Map Book 3, page 103, and Map Book 7, page 43, of the Avery County, North Carolina, Registry (herein the "Property" or "Properties" or the "Subdivision");

WHEREAS, Association and Declarant wish to dissolve the Original Declarations and replace the Original Declarations with these Declarations of Restrictions, Conditions, Easements, Covenants, Agreements, Liens and Charges of Linville Height Subdivision ("Declarations")

WHEREAS, it is the desire and intention of Declarant to sell the above described real property and any property annexed hereto by a set of supplemental restrictions and to impose upon it mutual beneficial restrictions, conditions, easements, covenants, agreements, liens, and charges under a general plan or scheme of improvement for the benefit of all the said lands and future owners of said lands;

NOW, THEREFORE, Declarant declares that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following provisions, restrictions, conditions, easements, covenants, agreements, liens, and charges, all of which are declared and agreed to be in furtherance of a plan for subdivision improvements and sale of said real property and

are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property and every part thereof, all of which shall run with the land, be appurtenant thereto and shall be binding on all parties having acquired any part thereof.

1. With exception to those lot owners owning lots prior to June 4, 2022, the property shall be used for single-family residential use only. Building setbacks shall be as follows: Front fifteen (15) feet from Right of Way Easements, Side fifteen (15) feet, Rear fifteen (15) feet. Should it be reasonably necessary for a residence to be built closer to the road than the prescribed setbacks, at the discretion of the review committee, a variance can be applied for. No land disturbing activities/building within fifty (50) feet of Buffer Zone of streams unless a variance is granted.
2. With exception to those lot owners owning lots prior to June 4, 2022, any dwelling house erected shall be a minimum of seven hundred and twenty (720) square feet of heated floor space and shall be of pleasing appearance. House plans must first be approved by Avery County Planning and Zoning and the Association when the same is formed prior to the commencement of any construction. For those lots containing two (2) or more acres, a guest house shall be allowed and be limited to one such structure per lot.
3. With exception to those lot owners owning lots prior to June 4, 2022, no building shall be erected upon a lot which has cinder blocks or concrete blocks visible from the exterior of such building nor shall any building be erected thereon with exterior asphalt or asbestos siding; however, stucco or veneer is allowed. Primary residences and guest houses shall be site-built homes. System-built homes may be constructed with approval of the Association. No vinyl siding shall be used, and hardy plank or better shall be utilized for the facade.
4. No mobile homes, manufactured on-frame homes, modular homes, house trailers or inoperable motor vehicles shall be allowed upon any granted lot or tract. No building of a temporary character shall be erected or allowed to remain on any lot for a continuous period in excess of three (3) months unless approved by Association.
5. No trailer, tent, shack, garage, barn, or other outbuildings shall at any time be used as a residence, temporary or permanently, nor shall any temporary structure be permitted upon any lot; and specifically, no camping is allowed.
6. When the construction of a building is commenced by the owner of any lot in said development, the exterior construction of said building shall be completed within eighteen (18) months from the date construction is stated.
7. Lot owner will maintain their respective premises in a neat, presentable and attractive condition, including, but not limited to, the keeping of garbage in closed containers, the cutting of grass and weeds, and the removal from the premises of trash and debris; however, in the event the lot(s) is not kept in the conditions previously mentioned, the Association, or its successors and assigns may perform or cause to be performed the maintenance work to remedy the conditions, after which the owner will reimburse the Association for all expense incurred in the performance of the maintenance work on their individual premises.

8. No livestock or animals shall be kept upon said premises, other than household pets; however, horses shall be allowed on lots consisting of five (5) acres or more. Hunting is strictly prohibited on all lots.
9. The discharge of firearms, including but not limited to handguns, shotguns and/or rifles, whether for target practice, hunting or for a shooting range is strictly prohibited on all lots.
10. It is the purpose and intent of these covenants that the development be preserved in its current rural character and that the existing serene peaceful atmosphere and setting of the area be maintained. No lot may be used for any illegal activities.
11. There shall be no commercial activities on any tract, specifically including, but not limited to, the operation of garages, car repair shops, machine shops, offices or business complexes, sawmills, storefronts, or logging facilities; however, remote work from home is allowed.
12. No advertising sign or billboard may be erected upon the foregoing described lot, except signs pertaining to the lease, hire, or sale of the premises, provided any such sign shall not exceed three square feet in size; and all signs must be approved by the Association.
13. No hardwood trees of twelve (12) inch diameter and above, measured at breast height from the ground, shall be cut or destroyed, except as may be necessary for actual homesites, impediment of view, or as may be permitted by grantors and their successors.
14. Notwithstanding the prohibition of commercial use in paragraph (10) above, and as exceptions thereto, a lot may be used for rentals of any structure, including but not limited to a Short-Term Rental, may be operated on a lot. For purpose of these restrictions, the term "Short-Term Rental" shall mean a lodging service within rooms of the principal dwelling or in a separate guest house. No industrial pursuit or enterprise shall be permitted to be conducted on any lot (other than a cottage industry by an artisan, i.e. artist, painter, photographer, wood, metal or glass sculptor or fabricator).
15. No nuisance shall be maintained upon any lot, whether by reason of unsightliness, unreasonable noise (from 11:00 pm to 7:00am), or bad odor.
16. All lot owners are subject to these restrictions and shall automatically become a member of the Association, and shall pay all dues, fees, charges, and assessments made by the Association. The failure to pay these dues, fees, charges, and assessments within sixty (60) days after the date of billing shall result in a lien, capable of enforcement by the Association by lawsuit upon any lot for which such charges remain unpaid. The amount of the lien shall be the sum of the dues, fees, charges, and assessments due and owing plus reasonable attorney's fees should the Association refer the collection of same to an attorney. This lien shall be subordinate in all respects to the lien of any bona fide mortgage or deed of trust unless a claim of lien or lis pendens is of record prior to the time of recording of such mortgage or deed of trust.
17. **Private Roads Disclosure.** Initial Declarant was the developer of that tract or parcel of land located in Avery County, North Carolina, and known as Linville Height Subdivision, a platted Subdivision. Initial Declarant or its assigns shall dedicate various rights-of-ways and easements, including but not limited to

public and/or private utilities, shared water lines (as needed) in the rights-of-ways and roads, all of which are private roads and are not for the general public's use. As a private road and not a public road, the responsibility for maintenance of the roads is placed upon the lot owners and said maintenance shall be governed by the Association that have been established and named by the Association. Declarant shall have the right to improve said roadways as needed. Avery County and/or the State of North Carolina will **never** accept these roads for maintenance and upkeep.

18. **ANNUAL DUES**. The initial assessments shall be Five Hundred and No/Dollars (\$500.00) per lot per year ("Annual Dues") beginning on January 23, 2023. The Annual Dues shall be used for the maintenance and upkeep of roads and right of ways within the development. The Annual Dues shall be payable to the Association. Any owner of more than one (1) lot and no more than three (3) Lots will pay only one Annual Due equally to that of one lot; however, each lot an owner owns above three (3) Lots, the owner will pay Annual Dues for each lot thereafter. In the event an owner of more than one lot sells a lot to a subsequent owner, the new subsequent owner will pay Annual Dues for their lot.

(a) Lot owner of each parcel or lot owned within the development shall pay the Association Annual Dues and special assessments subject to the terms of this paragraph. Any expenses incurred by the Association to enforce the covenants, restrictions and limitations described here in, or as amended, against an owner(s) shall immediately accrue as an assessment to said owner(s) in question. These additional accrued assessments may include, but are not limited to, any expenses incurred by the Association as a result of an Owner's failure to adequately maintain their lot as required herein such as landscaping, mowing or weed eating.

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

19. **PURPOSE OF ANNUAL DUES**: The annual dues levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of all owners and residents, and in particular for the acquisition, improvement, replacement, maintenance, use and operation of the Common

Property including but not limited to roadways and security gates and to pay for the services which the Association is authorized to provide, including, but not limited to, the installation of utilities, the maintenance of roadways including reasonable reserves therefore, erection and maintenance of security gates, the payment of taxes and insurance on Common Property, construction of repairs, replacement and additions to Common Property payment of the costs of labor, liability insurance, employees, agents, accountants, attorneys, equipment, material, management and supervision necessary to carry out its authorized function including reasonable reserves for replacement of all capital improvements. These expenses shall be and designated respectively as "Common Expenses".

20. **BOARD OF DIRECTORS DUTIES.** The Board of Directors of the Association ("Board") shall have such powers and duties as prescribed in the Association's Articles and Bylaws, as amended from time to time, and by law, which shall include the following duties: to fix the amount and due date of all special, annual or other periodically payable assessments; to provide for interest to accrue on unpaid assessments after the due date thereof at the rate of ten (10%) percent per annum or at such other rate as the Board deems appropriate; to provide for the charging of a late fee and the payment of costs of collection, including reasonable attorney's fees, incident to the collection of delinquent assessments and the enforcement and foreclosure of the association's assessment lien and charge as provided for herein; to cause written notice of every assessment to be sent to the Owner subject to such assessment at least thirty (30) days prior to the due date thereof; upon demand at any time to cause to any person legitimately interested, a statement in writing signed by the Association's President and the Treasurer, or other appropriate officer of the Association setting forth the amount of any unpaid assessments with respect to a lot subject to Annual Dues by the Association or stating that all assessments with respect to the Lot or Dwelling Unit which is the subject of the statement have been paid, as the case may be.
21. **VIOLATIONS.** In the event of a violation or breach of any of these restrictions by any lot owner, or agent, or agent of such owner, the Association, the developer, the lot owners in the development, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Association shall have the right, whenever there exists on any lot within the subdivision any situation which is in violation of these restrictions, to enter upon the lot where such violation exists and summarily abate or remove the same at the expense of the lot owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction, or conditions contained in this Declaration of Restrictions, however long continued, shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restrictions in this Declaration of Restrictions contained shall in no way effect any of the other restrictions, but they shall remain in full force and effect.
22. **ARCHITECTURAL REVIEW COMMITTEE.** The Board is authorized to establish an Architectural Review Committee ("Committee") and to delegate to said Board the following powers:

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

The Committee shall consist of no fewer than three (3) members, and one (1) of the three (3) shall be a member of the Board. However, until the annual meeting of the members. The Board, may, in its sole discretion, appoint a professional architect, engineer, or land planner, who may or may not be a member of the Association serve on said Committee and may provide that said architect, engineer, or land planner be fairly compensated for services. The Board may approve the distribution of funds to meet the reasonable expenses of the Committee.

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

- 1) Guidelines and procedure to be followed by an applicant seeking its approval.
- 2) Guidelines and procedure to be followed by an applicant seeking a special exception.
- 3) An adequate application form to be prepared and submitted by an applicant seeking its approval as a special exception.
- 4) A fifty dollar (\$50.00) application fee will be required with proposals.
- 5) A procedure for calling a meeting of the Board or Committee (which may include regularly scheduled meetings).
- 6) Such other procedural rules, regulations, and requirements as the Committee may deem necessary and proper, which are not in conflict with the By-Laws, and Declaration of Protective Covenants and Protections.
- 7) Timeline of approval is thirty (30) days.

23. COMMON AREA. The Common Area ("Common Area") shall mean any and all real and personal property and easements and other interests therein, together with any facilities and improvements located thereon, owned by the Association for the common use and enjoyment of the owners. Common Area includes but is not limited to the portions of the property described as roads, access easements, and Common Area as shown on that certain plat of survey as recorded as shown on the aforesaid plat.


- a) There shall be no obstruction of the Common Area, nor shall anything be kept, parked, or stored on any part of the Common Area without prior written Board consent, except as specifically provided herein. This includes but is not limited to, parking in any of the roadways or streets that serve the Subdivision, or the cul-de-sacs, or the Common Areas.
- b) The Common Area is for the sole use of the Association and its owners. The Association reserves the right to implement such scheduling and/or additional restrictions as deemed necessary to ensure the proper use.
- c) The Association shall not be liable for any damage or injury resulting from such use of the Common Area to the extent permitted by law.

24. **The Declarant** shall relinquish any and all Declarant rights under this Declaration when Declarant sells its last Lot within the Subdivision or on a date which is three (3) years after the date of the execution of the Declarations; whichever occurs first.

These Declaration of Restriction may be added to, deleted, modified, or amended by two thirds (2/3) vote of the members of the Association.

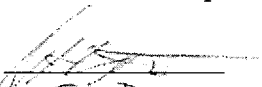
DECLARANT

Atlas Land Partners, LLC, a
North Carolina Limited Liability Company

By: 
Name: Peter Springer
Title: Managing Member

ASSOCIATION

Linville Heights Property Owner's Association, Inc., a
North Carolina non-profit corporation

By: 
Name: Jon Dwyer
Title: Linville Heights HOA - President

STATE OF NORTH CAROLINA
COUNTY OF AVERY

ACKNOWLEDGMENT

I Donetta K McKinney a Notary Public of the County and State
aforesaid, certify that Jon Driggers personally came before me this day and acknowledged that he
is _____ President of LINVILLE HEIGHTS PROPERTY OWNER'S
ASSOCIATION INC. a North Carolina Nonprofit Corporation and that he,
as _____ President, being authorized to do so, executed the foregoing on behalf of
the corporation.

Witness my hand and Official stamp or seal this 16th. of JUNE 2022.

My commission expires:

Donetta K. McKinney
Notary Public

DONETTA K. MCKINNEY
NOTARY PUBLIC
Avery County
North Carolina
My Commission Expires 8-5-22


State of North Carolina
County of Mecklenburg

Acknowledgement

I, John W. Oakes, II, a Notary Public do hereby certify that Peter Springer personally appeared before me this day and acknowledged that he is the Managing Member of Atlas Land Partners, LLC, a North Carolina limited liability company ("Company") and that by authority duly given and as an act by the Company, the foregoing instrument was signed in his name by its Managing Member.

WITNESS my hand and Official stamp or seal, this 16th day of June 2022.

My Commission Expires:


Notary Public

