

**COVENANTS**

**STATE OF NORTH CAROLINA**

**COUNTY OF HENDERSON**

**DECLARATION OF AMENDED AND RESTATED COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND CONDITIONS GOVERNING OLETA FALLS, A PLANNED COMMUNITY, IN HENDERSON COUNTY, NORTH CAROLINA**

**THIS DECLARATION OF AMENDED AND RESTATED COVENANTS, RESTRICTIONS, EASEMENTS, RESERVATIONS, TERMS AND CONDITIONS**, made and entered into this 23<sup>rd</sup> day of October, 2010, by the **Oleta Falls Property Owners Association LLC**, a North Carolina Limited Liability Company, hereinafter referred to as “Association,” and the owners of Lots within the Oleta Falls community located off Stepp Mill Road, Henderson County, North Carolina.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of a tract of land described in Deeds recorded in Deed Book 988, at Page 416, of the Henderson County, North Carolina Register’s Office (hereinafter “the Property”); and

**WHEREAS**, the Declarant plans to develop on some or all of the Property parcels of land for residential Lots along with supporting infrastructure to be locally known as Oleta Falls; and

**WHEREAS**, Declarant desires for the benefit of future purchasers of Lots making up Oleta Falls that Oleta Falls shall be developed as a restricted area and used exclusively as hereinafter set forth.

**NOW THEREFORE**, in consideration of the premises and for the advantage which the Declarant and Future Owners will receive from the sale and ownership of restricted land, Declarant and its successors and assignees do hereby covenant and agree with all other persons, firms, or corporations now owning or hereafter acquiring any portion of Oleta Falls, for full value received, and the landowner covenants and agrees upon acceptance of a deed or deeds of conveyance to any of the Lots making up Oleta Falls that Oleta Falls is hereby subjected to the following restrictions as to the use and occupancy thereof, running with the land by whomsoever owned, to wit:

***ARTICLE I***

PURPOSE; LAND SUBJECT TO RESTRICTIONS

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of the same has been the creation of a planned community which is aesthetically pleasing, functionally convenient and environmentally-sound; attracting residents seeking privacy and security in a beautiful environment. Subject to the Special Declarant Rights as hereinafter defined, the Declarant submits the land described on Exhibit A attached hereto and incorporated herein by reference to the covenants and restrictions contained in this Declaration.

**ARTICLE II**

DEFINITIONS

The following are terms that shall be considered as defined terms under this Declaration and the same definition shall be applicable whether the word is shown as singular or plural, capitalized or not.

1. “Act” shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes and amendments thereto.

2. “Annexed Properties” shall mean any tract of land not included within the boundaries of Oleta Falls as described on Exhibit A attached hereto and incorporated herein by reference which may be added to the Oleta Falls planned community as provided in Article IX below.

3. “Association” shall mean Oleta Falls Property Owners Association, Inc., a North Carolina non-profit corporation, its successors and/or assignees. The Articles of Incorporation of the Association are attached hereto as Exhibit B and incorporated herein by reference.

4. “Architectural Review Board” (ARB) shall mean the committee created pursuant to Article VII hereof.

5. “Board” shall mean the Board of Directors of the Association and the Executive Board referred to in the Act.

6. “Bylaws” shall mean the Bylaws of the Association and any amendments thereto. The original Bylaws of the Association are attached hereto as Exhibit C and incorporated herein by reference.

7. “Common Elements” shall mean those areas (i) designated as “Common Elements” on recorded plats for the use and enjoyment of all owners of Lots within Oleta Falls; and (ii) described in a Supplemental Declaration filed in the Henderson County Register of Deeds Office. Prior to the expiration of the Declarant Control Period as provided below, the Declarant shall convey by Special Warranty or Non Warranty deed or by an easement instrument

ownership and/or use of the Common Elements to the Association. PROVIDED HOWEVER, before the recording of the Supplemental Declaration as provided above, the Declarant has the right to remove any portion of the property denoted as "Common Elements" on a Plat and subject said area to its exclusive dominion whether for future sale or to build upon and without the need for any Lot owner approval or Association consent. "Common Elements" shall include at a minimum the private road(s) providing access from Stepp Mill Road to the Lots as hereinafter defined. "Common Elements" do not include those areas denoted as "Future Development" or as "Reserved" or those areas not labeled on the plats of record for Oleta Falls.

8. "Declarant" when used shall mean the development partnership group known as Waterside Properties, LLC.

9. "Declarant Control Period" shall mean the time in which Declarant has to exercise certain exclusive rights such as, but not limited to, Special Declarant Rights as hereinafter defined. The Declarant Control Period shall be the earlier of (i) twenty-five (25) years after the date of the recording of this Declaration, (ii) when all of Oleta Falls (platted at such times and in such phases as determined in Declarant's sole discretion) has been sold or transferred to parties other than a Declarant, or (iii) such earlier time as determined in Declarant's sole discretion by the recording of a written instrument in the Henderson County Registry executed by Declarant and expressly terminating the Declarant Control Period.

10. "Declaration" shall mean this Declaration of Covenants, Restrictions, Easements, Reservations, Terms and Conditions and any amendments thereto.

11. "Future Development" shall mean any parcel of land owned by the Declarant depicted on Site Plans or other advertising material for Oleta Falls as "Future Development" or "Reserved" which may or may not be included within Oleta Falls as determined in the Declarant's sole discretion and wherein the Declarant reserves the right to impose use restrictions that may differ from those set forth in this Declaration.

12. "Governmental Entity" shall mean any and all federal, state or local governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of Oleta Falls.

13. "Oleta Falls" shall mean that planned community made up of Lots, Common Elements and infrastructure located within the boundaries described on Exhibit A attached hereto and incorporated herein by reference and described on future recorded plats and Supplemental Declarations executed by the Declarant at such times and in such phases as determined in Declarant's sole discretion.

14. "Limited common elements" shall mean a portion of the common elements for the exclusive use of one or more but fewer than all of the Lots. "Limited common elements" shall be designated on plats for Oleta Falls and may include, but not be limited to, shared driveways.

15. "Lot" shall mean a physical portion of Oleta Falls designated with a number on a plat of Oleta Falls, intended for separate ownership or occupancy by an Owner, and restricted to single-family residential use. A Lot designated on a recorded plat of Oleta Falls shall be deemed "Improved" when a residence or guest house has been completely constructed thereon and a Certificate of Occupancy has been issued by Henderson County. All other Lots designated on a recorded plat of Oleta Falls shall be deemed "Unimproved".

16. "Owner" shall mean and refer to the owner or owners as shown by the real estate records in the Office of the Register of Deeds of Henderson County, North Carolina, of fee simple title to any Lot situated within Oleta Falls. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation.

17. "Plat" shall mean any existing or future plat of Oleta Falls signed by the Declarant and placed of record in the Henderson County, N.C. Register's Office, together with all amendments thereto, as approved by the governmental entity, if any, having authority to regulate subdivisions.

18. "POA, Inc" shall mean the Oleta Falls Property Owners Association.

19. "Reasonable attorneys' fees" shall mean attorneys' fee as allowed by the Act.

20. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or having a guardian/ward relationship created by decree of a Court of competent jurisdiction, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

21. "Single-Family Residence" shall mean a dwelling constructed in accordance with the restrictions and conditions set forth in Article VI hereof.

22. "Single-Family Residential Use" shall mean the occupation or use of a Single Family Residence in conformity with this Declaration.

23. "Structure" shall mean any building, (including, but not limited to, house, barn, garage) lampposts, driveway lights, fence, wall, swimming pool, tennis court, detached antennae, satellite dishes or other receivers/transmitters, mailboxes, fuel tanks, septic systems, dog lots, play sets, and sports equipment or any other thing artificially erected or installed on or under a Lot.

### *ARTICLE III*

#### PROPERTY RIGHTS AND EASEMENTS

Section 1. Owner's Easements of Enjoyment to Common Elements. Subject to the provisions of this Declaration, and the rules and regulations established by the Board, every Owner of a Lot shall have a permanent and perpetual right and easement of enjoyment in and to the Common Elements, existing now or in the future, which shall be appurtenant to and shall pass with the title to any Lot, subject to:

(a) the right of the Board to convey any Common Element or subject same to a security interest with a concurring vote of 80% of the members of the Association;

(b) the right of the Board to lease or grant easements or licenses of use over the Common Elements without a vote of the members of the Association;

(c) the right of the Board to dedicate any road and utility rights of way within Oleta Falls to any Governmental Entity or public utility without a vote of the membership of the Association;

(d) the right of the Board, after an opportunity for a hearing as provided in the Act, to suspend the use of the Common Elements (except for access to a Lot) by an Owner, his tenant or their invitees for any period during which any assessment against his Lot remains unpaid or for any infraction of the use restrictions contained in this Declaration or the rules and regulations promulgated by the Board;

(e) the right of the Board to reasonably regulate, locate, and direct access routes and to designate parking locations;

(f) the right of the Association as determined in the Association's sole discretion, to grant and reserve unto itself, its successors and/or assignees the right of access for road and utility purposes over or under the Common Elements or Lots owned by the Association to any parcel of land, whether located within or outside Oleta Falls, the Association, whether owned or not owned by the Association and regardless of the use of the beneficial parcel; and

(g) the right of the Association to add additional properties to be subject to this Declaration and to allow the owners of those properties to become members of the Association.

Section 2. Waiver of Unlimited Access. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does waive all rights of unlimited and uncontrolled access, ingress to and egress from such Lot, and agrees that:

(a) To attempt to provide a more secure environment, access, ingress, and egress to and within Oleta Falls may be controlled, restricted, and limited to exclude uninvited members of the general public; and

(b) Access, ingress and egress from any Lot shall be limited to the roads, walkways, and paths designated as Common Elements on the Plat.

Provided, however, that subject to the provisions of this Declaration, vehicular and pedestrian access to and from all Lots shall be available at all times.

Section 3. Gates and Attendants. The Board may, but shall not be required to, provide a gate at or near the entrance to Oleta Falls which gate may or may not be attended by one or more attendants for the purpose of limiting vehicular and pedestrian access to Oleta Falls.

Section 4. Easements to Government Entities. Subject to the provisions of this Declaration, the Association does hereby grant a permanent, perpetual and non-exclusive easement to each department, branch or agency of any Governmental Entity, and to any agents or employees of said Governmental Entity, over, across and through all roads within Oleta Falls, now or in the future, for the purpose of performing such duties and activities as may be necessary or desirable for the common welfare of all owners or for the Association which may include, but are not limited to, duties and activities related to law enforcement, fire protection, garbage collection, mail delivery and medical and emergency services.

Section 5. Easements to Utilities. Subject to the provisions of this Declaration, Declarant does grant to the Association, to Duke Energy, AT&T, and to any other utilities designated by the POA and their successors and/or assignees, a permanent, perpetual and nonexclusive easement over, across, under and through:

- (a) all Common Elements;
- (b) 10 feet inside the boundaries of all Lots; and
- (c) as shown on the Plat

Now or in the future, for the purpose of installing, replacing, constructing, maintaining, and operating utilities or utility systems which are necessary or desirable for the use of any part of Oleta Falls which include, but are not limited to, publicly or privately owned and operated electrical service, communication service, water service, sewer service, gas service, cable television, drainage systems, pipes, lines, conduits, storage devices, equipment, machinery or other devices necessary to the provision of such utility services. The easements established, reserved and granted herein shall include the right, where reasonably necessary, to cut and remove trees and other vegetation, to dig, excavate, fill and take any other action necessary to provide for the installation, maintenance, replacement, relocation or operation of any utility service.

Provided, however, that the easements herein granted or reserved shall not cause any undue interference with the use or occupancy of any Lot and further, that Declarant and/or the Association shall use good faith efforts to attempt to cause any utility provider, utilizing this easement, to repair any damage caused by such utility.

Section 6. Easements Reserved to Declarant.

(a) Easements for Access. Declarant reserves to itself, its successors and/or assignees, a perpetual alienable right to provide access over and across the roads and other Common Elements, if any, or across any Lot owned by Declarant to any parcels of land, whether within or outside Oleta Falls, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(b) Easements for Utilities. The Declarant reserves to itself, its successors and/or assignees the utility easements referred to in Section 5 above and Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside Oleta Falls, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(c) Easements for Storm Water and Drainage. Declarant, its successors and/or assignees, may cut drain ways or utilize existing natural drain ways for surface or storm water wherever and whenever such action may appear to Declarant to be necessary in order to maintain proper drainage and reasonable standards of health, safety and appearance. Declarant, in its sole discretion, may make such utility easements appurtenant to any parcel of land whether within or outside Oleta Falls, whether owned or not owned by Declarant and regardless of the use of the beneficial parcel.

(d) Easements for Vegetative, Pest or Fire Control. Declarant reserves unto itself, its successors and assignees, a perpetual alienable and releasable easement and right on and over and under all areas within Oleta Falls to dispense pesticides and take other action which in the opinion of Declarant is necessary or desirable to control insects, vermin and undesirable vegetation. The Declarant or its successor reserves the right to cut fire breaks and other activities on, over and under all areas within Oleta Falls which in the opinion of Declarant or its successor are necessary to control fires. Declarant or its successor, however, is under no duty to take such actions as herein above provided.

(e) Easements for Septic Systems. The Declarant reserves unto itself, its successors and/or assignees, the right to locate any portion of a septic system on any Common Element in cases where a Lot does not perk or otherwise a Lot does not support a septic system as determined in Declarant's sole discretion.

(f) Easements for Trails. Declarant reserves unto itself, its successors and/or assignees, the right to locate trails across any portion of Oleta Falls, including any Lots,

for the development of a trail system as a Common Element for the use and enjoyment of all Lot owners. The trail easement affecting any Lot shall be designated on a recorded plat at a location within the sole discretion of Declarant; provided however, the trail easement shall be no closer than one hundred (100) feet from any residence of a Lot existing as of the time of the recording of the plat designating the easement.

Section 7. Easements Appurtenant Upon Transfer of Lot or Common Element. All easements referred to in this Article III that are reserved unto the Declarant, its successors and/or assignees shall be automatically appurtenant to any Lot or Common Element at the time of transfer of said Lot or Common Element from the Declarant, its successors and/or assignees, regardless of whether the deed of conveyance expressly reserves such easements.

#### *ARTICLE IV*

##### ASSOCIATION MEMBERSHIP AND ASSESSMENTS

Section 1. Membership in the Association. Every Owner of a Lot shall be a member of the Association and bound by this Declaration, the Articles of Incorporation of the Association and its Bylaws and rules and regulations as hereafter promulgated. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Powers of the Association. The Association shall have such powers as are enumerated in its Articles of Incorporation, its Bylaws or as provided in the Act.

Section 3. Creation of the Lien and Personal Obligation Assessments. Each and every Owner of a Lot by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and as stated in the Bylaws. All such annual and special assessments, together with interest, costs and reasonable attorney's fees for the collection thereof shall be a charge and lien upon a Lot and its improvements. The amount owed shall be a continuing lien upon the applicable property against which such assessment is made, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the Lot and (ii) liens and encumbrances recorded before the recordation of the Declaration.

Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be a personal financial obligation of the person, or persons, who was, or were, the Lot owner or owners at the time when the assessments became due. The personal financial obligation for delinquent assessments shall not pass to successors in title to any such Lot unless expressly assumed by such purchaser: PROVIDED, HOWEVER, the same shall be and remain a charge and lien upon any such Lot and improvements until paid or otherwise satisfied except as may herein otherwise be provided.

Section 4. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes in keeping with a nonprofit corporation as set forth in the Association's Articles of Incorporation. Specifically, the assessments shall be used to promote the health, safety and welfare of the Owners and residents of Oleta Falls and for the improvements, maintenance and repair of the Common Elements, and easements appurtenant thereto, for the protection of the community from pollution or erosion; for the enforcement of these covenants; the provision of reserve funds, the employment of attorneys, accountants, and other professionals to represent the Association, when necessary, and for payment of local taxes, insurance and special governmental assessments on or to the Common Elements together with payment of services, if any, provided to the residents by the Association.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in accordance with its Bylaws, in any fiscal year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any acquisition, construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including, but not limited to, fixtures and personal property (such as road signs) related thereto and to pay special governmental assessments.

Section 6. Rate of Assessment. The determination of the total amount of Common Expenses for any given fiscal year of the Association shall be within the sole discretion of the Board. The Board shall allocate assessments for common expenses in such amounts to be fixed from year to year. Notwithstanding the above, the Board may, at its discretion, allocate assessments for Common Expenses based, at least, in part on whether a Lot is improved or unimproved. It is within the Board's discretion to determine what assessment is warranted in cases where a Lot is combined or subdivided.

Section 7. Effect of Nonpayment of Assessments.

(a) Remedies of the Association. Any assessments which are not paid when due as determined by this Declaration and the Board shall be delinquent. If the assessment is not paid within sixty (60) days after the due date, the assessment shall bear a penalty from the date of the delinquency at the rate of one and one half percent (1 ½%) per month or part thereof and the Board may bring action at law against the Owner personally obligated to pay the same, or foreclose the lien against his property, and interest, costs and reasonable attorney's fees of any such action for collection thereof shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges and liens as a debt and to enforce the aforesaid charge and lien by methods available for the enforcement of such liens. The available enforcement remedies include, but are not limited to, those rights stated under the North Carolina Planned Community Act, Chapter 47A of the North Carolina General Statutes. The lien provided for in this Section shall be in favor of the Association and shall be for the

benefit of all members of the Association. The Association, acting on behalf of its members, shall have the power to bid at a foreclosure sale and to acquire and hold, lease, mortgage and convey the same, and to subrogate so much of its right to such liens as may be necessary or expedient. No owner of a Lot may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

After notice and opportunity to be heard, the Association may restrict the use of Common Elements (not including rights of access to Lots) by a Lot owner who is delinquent in paying assessments.

(b) Remedies of Board. To the extent that any Lot owner fails to pay his assessments relating to the Common Elements, then the Board shall have the right, but not the obligation, in addition to the Association, to use any of the remedies enumerated above, including filing a lien against the defaulting owner and pursuing the enforcement of such lien and other remedies as set forth in the Act.

The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of Declarant or the Association to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement.

Section 8. Association Responsibility of Maintenance/Repair/Improvement. The Association and its members shall be responsible for the maintenance, repair and improvement of all Common Elements as identified on recorded plats for Oleta Falls and in a Supplemental Declaration.

Section 9. Reserve Funds, Operating Expense Surplus and Surplus Funds. The Board shall have the right, but not the obligation, within its sole discretion, to impose assessments on Lot owners for the maintenance of reserve funds or operating expense surpluses. The Association, within its sole discretion, may apply surplus funds to any purpose of a nonprofit corporation or may credit such funds to its members as provided for in North Carolina General Statutes §47F-3-1 14.

Section 10. Architectural Review fees; Impact fees; Cash Bonds. The Board shall have the right, but not the obligation, within its sole discretion, to impose a uniform schedule of fees to be applied to any Owner of a Lot at the time that Owner applies for approval to construct a residence on the Lot to offset the costs of architectural review and to mitigate the effect that Owner's development plans will have on the infrastructure and environment within Oleta Falls. These fees may take the form of Architectural Review fees and/or Impact fees and any such fees may be non-refundable in the sole discretion of the Board.

## *ARTICLE V*

### COMMON ELEMENTS

Section 1. Roads. All owners of Lots acknowledge that the roadways within Oleta Falls shall be privately maintained and not intended to be developed for takeover by the North Carolina Department of Transportation (“DOT”). This disclosure is given in accordance with North Carolina General Statutes § 136-102.6. The roadways within Oleta Falls shall be constructed to the minimum standards required for private roads by the County of Henderson. The schedule and completion of the construction and the design of said roads shall be within the sole discretion of Declarant.

Section 2. Other Common Elements. During the Declarant Control Period, the Declarant may, but is not obligated to, provide other properties within Oleta Falls as Common Elements. The designation and transfer of these areas are solely in the discretion of Declarant and no parole or oral agreement or claims of estoppel shall be asserted by any resident providing rights to areas not explicitly denoted as “Common Elements” on the Plats for Oleta Falls and described in a Supplemental Declaration. Before the Association and its members shall assume the responsibility for maintenance, repair and improvement of a Common Element not specifically defined in this Declaration (such as roads), the Declarant shall record a Supplemental Declaration and plat reasonably identifying the Common Element.

### Section 3. Conveyances.

Any Common Element conveyed by the Declarant to the Association shall be conveyed subject to:

- (a) All restrictions on use contained in this Declaration;
- (b) All existing mortgages, provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgage;
- (c) The right of access for ingress, egress and regress and utilities of the Declarant, its successors and/or assignees over and across such property; and
- (d) The right of the Declarant, its successors and/or assignees, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Element prior to the commencement of such activities or location of any object therein.

The recording of a Deed or an Easement instrument from the Declarant to the Association of a Common Element in the Henderson County, NC Register’s Office shall be conclusive evidence that the Association has accepted such transfer.

## *ARTICLE VI*

### *SITE IMPROVEMENT REVIEW AND APPROVAL*

Section 1. Construction Within Oleta Falls. Except as provided for the Declarant below, no structure shall be commenced, erected or maintained upon any Lot in Oleta Falls; nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any site work be done until complete final construction plans and specifications showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location, and floor plan therefor, and showing front, side and rear elevations thereof, and septic system plans have been submitted to and approved in writing by an Architectural Review Board (herein "ARB") appointed by the Board of Directors as provided in Article VII below. Prior to the construction or erection of any structure, a site plan to scale must be approved on a topographical map that shows the location of the structure, including all drives, walks and parking areas, with each clearly indicated. A landscaping plan must be submitted to the ARB at the time of rough-in electric inspection where upon a certificate is obtained from the Henderson County Inspector's Office. Failure to do so may cause the construction site to be shut down until a landscaping plan has been submitted and approved by the ARB.

Prior to any physical disturbance of a Lot, special drainage and/or irreplaceable features are to be identified and provisions for their protection clearly established. This includes large and/or specimen trees, rock outcroppings, springs and streams, and concentrations of azaleas, rhododendrons, and other shrubs and wild flowers. Silt fences shall be required prior to any physical disturbance. Culverts needed for ingress or egress shall be provided by the Owner of a Lot and shall be as specified by the ARB. The Owner of a Lot shall insure that all development performed by said owner conforms to all applicable federal, state and local laws and regulations. The ARB shall have the right to establish reasonable procedures for the preparation, submission, and determination of applications for any structure construction or alteration or landscaping work. Prior to construction, every Lot owner shall comply with the erosion control provisions in Article VIII, Section 14 below.

Section 2. Approval of Plans, Contractors and Enforcement. The ARB's refusal or approval of plans, specifications, or location of any structure may be based upon any grounds including purely aesthetic considerations which at the sole discretion of the ARB, for projects within Oleta Falls, shall be deemed sufficient. In passing upon construction plans, specification plans, or landscaping plans, and without any limitation of the foregoing, the ARB shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings and the effect of the building or other structure on the appearance from neighboring property. Notwithstanding that improvements meet or exceed specified minimum size requirements, the quality and attractiveness of every structure must also meet high neighborhood standards and the ARB is hereby granted broad discretion in judging the compatibility of proposed structures for the neighborhood. In any case, it is intended that the

ARB will not approve plans, materials or specifications that do not comply with Sections 43 and below.

Any contractor prior to performing any work within Oleta Falls must be approved by the ARB. No person, firm or entity shall be approved as a building contractor unless such person, firm or entity obtains his income primarily from construction of the type which the building contractor is to perform and is licensed by the State of North Carolina for his services.

The ARB is presumed to have approved any plans referenced above, upon failure to respond within sixty (60) days after receipt of each completed application and particular plan. In the event any Owner violates the terms of this Article, the ARB shall give written notice to the Owner or responsible party to cure such violation within thirty (30) days. The ARB or its agents shall be entitled to enter upon the property of the Owner and remedy such defect including removal of any structure built in violation hereof, all at the expense of the Owner. This right of the ARB shall be in addition to all other general enforcement rights which the ARB may have for a breach or violation of the terms of these covenants and restrictions and shall not be deemed a trespass by the Association or its agents.

Section 3. Minimum Floor Areas/Floor Plan; Maximum Building Coverage.

(a) All one-story houses shall have the minimum floor area of one thousand five hundred (1,500) square feet of heated living space.

(b) All one and one-half story houses shall have a total minimum floor area of at least one thousand two hundred (1,200) square feet on the ground floor of heated living space with one thousand seven hundred and fifty (1,750) square feet overall of heated living space.

(c) All two-story houses shall have a total minimum floor area of one thousand seven hundred and fifty (1,750) square feet of heated living space.

(d) For minimum size calculations, unfinished basement and attic areas, garages, porches, patios and greenhouses are not included in computing heated living space. Notwithstanding the exclusion of basements from the foregoing calculation of square footage, the ARB, by unanimous consent, may, at its sole discretion and judgment, include in its computation of heated living space, up to seventy-five percent (75%) of the square footage of that portion of a basement that is finished. The ARB, in its deliberations, will consider the following factors in this regard:

- (i) That the finished ceiling height is not less than eight (8) feet;
- (ii) That the exterior grade of the dwelling is such that said finished area is located substantially above ground level;
- (iii) That the exterior finish of said basement area is in substantial conformity with the exterior finish of the remainder of the dwelling;

- (iv) That the interior basement finish is substantially similar in quality and appearance to the interior finish of the remainder of the dwelling; and
  - (v) That basement windows, in such finished area, are similar in size, number and location to windows located in the remaining portions of the dwelling.
- (e) The maximum structural ground coverage (Foot Print) on a Lot shall not exceed eight thousand (8,000) square feet with a maximum of six thousand (6,000) square feet for any principal building.

Section 4. Minimum Site Improvement Requirements.

- (a) Each principal dwelling is to have at least a two car enclosed garage.
- (b) All driveways and parking areas must be paved asphalt, concrete or other surface approved by the ARB. The ARB may require an Owner of a Lot with a driveway greater than 300 feet in length to clear and grade a space adjacent to the drive for emergency service use.
- (c) All play equipment shall be placed so that it is not visible from any street. Tree-houses are considered structures that require written approval from the ARB.
- (d) No outside clothesline shall be permitted.
- (e) No decorative exterior lighting or features such as columns, sculptures, bird baths, bird houses, fountains or other decorative embellishments shall be permitted that are visible from any street unless approved in writing from the ARB.
- (f) The exterior material of all buildings shall extend to ground level and shall be either brick veneer, stucco, stone veneer, wood, concrete fiberboard, a combination of same or other material approved by the ARB. In no case will exposed concrete block, unpainted sheet metal, particle board, plywood, vinyl or aluminum siding be permitted. All vents, roof caps, and flashing extending above the roof line must be painted to match the roof color and vents extending through the exterior walls must be painted to match the exterior walls. No foundation footings shall be visible. Other conditions may be taken into consideration that allows the alteration of the materials to come to the finish grade at the sole discretion of the ARB.
- (g) No bright-finished or bright-plated metal exterior door, screen door, window, window screen, louver, or other closure may be used. However, a factory painted or an anodized finish may be used, the color of which must be approved by the ARB.
- (h) Window air conditioning units are not permitted. All compressor units shall be ground mounted. Compressor units shall be screened by approved fencing or

planting. The ARB may waive this requirement if the Lot owner is able to show that new technology has made air conditioning systems aesthetically acceptable.

(i) Reception Equipment. As expressly provided by law, without prior approval of the ARB, an Owner may install, at his or her sole expense, (i) antennas that receive television broadcast signals, (ii) satellite dish antennas 39.37 inches or less in size in diameter that receive or transmit video, data or other programming, or (iii) antennas 39.37 inches or less in size in diagonal measurement that receive or transmit video, data or other programming via multipoint distribution services so long as:

- a. Said equipment is installed entirely within the boundaries of the Owner's Lot and within areas exclusively set aside for that Owner's use. Areas that are required by this Declaration to be maintained by the Association shall not be considered "exclusive use" areas;
- b. Said equipment can be safely installed;
- c. The placement of said equipment is in a "Preferred Location" as defined by the ARB, which location may be unique to said Lot based on such considerations, without limitation, as topography, signal reception, costs, safety and/or aesthetics;
- d. The Federal Communications Commission (the "FCC") or any other governmental agency preempts community regulation that is more restrictive than the provisions established in this Section; and
- e. The Oleta Falls community does not otherwise qualify for an exemption under FCC rules imposing federal limitations on local covenants or rules addressing the installation of equipment described above such as an exemption related to the provision of community antenna or satellite services.

(j) All fencing must be of wood, brick, stone, wrought iron, or other material approved by the ARB. The use of chain link or other like metal fencing will not be permitted except where concealed by a wood fence and, provided, that said chain link or metal fencing is black, charcoal, dark brown or some other color, as approved by the ARB.

(k) All screened porches and screens must have a dark color or anodized finish screen. Bright-color finish screens are not permitted.

(l) Front, side and rear setbacks for single family residences on Lots shall be determined in the sole discretion of the ARB. Setbacks for single-family residences on Lots shall be based upon, but not limited to, such factors as topography, lot shape, frontages and also potential views to give property owners

the fullest enjoyment of their Lots while balancing ecological constraints. Notwithstanding the above, no structure on a Lot located West of the Little Hungry River shall be constructed closer than: twenty-five (25) feet from the front Lot boundary line; ten (10) feet from the side Lot boundary line; and fifteen (15) feet from the rear Lot boundary line; and

(m) Residences visible from a street shall be erected in such as manner that the front thereof shall face in the direction of the road serving the Lot. In the case of corner Lots or of residences constructed on two or more Lots, the residence may face an appropriate direction for either Lot subject, however, to written approval of the ARB.

For the purpose of this covenant, ARB-approved fences, driveways, or sidewalks nor eaves, steps or other minor projections extending beyond the foundation, shall be considered as part of the building, provided, however, that this provision shall not be construed to permit any portion of a building on a Lot to encroach on another Lot. Variances from this section are set forth in Article VIII, Section 29.

Section 5. Occupancy Permit. At the completion of all construction in accordance with the plans submitted, the Owner shall request an on-site inspection by the ARB. Approvals will not be unreasonably withheld, but in addition to the above, the following will be required:

- (a) Final as-built plans must be submitted in conformance with plans approved by the ARB for the construction of the structure, unless waived in writing by the ARB;
- (b) Exterior lighting must be approved;
- (c) All clean-up must be completed; and
- (d) A copy of the Henderson County occupancy permit must be given to the ARB.

## *ARTICLE VII*

### *ARCHITECTURAL REVIEW BOARD*

Section 1. Organization, Power of Appointment and Removal. There shall be an Architectural Review Board (“ARB”) organized as follows:

(a) ARB Composition. The ARB shall consist of up to five (5) members, being a Chairperson and four additional members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership. A member need not be a member of the Board or an officer of the Association. Exofficio members may serve at the discretion of the Board.

(b) Quorum and Meetings of Members. The ARB shall meet upon the call of the Chair or of any three (3) members. At any meeting, three (3) members, one of which may be the Chair, shall constitute a quorum.

(c) Terms of Members. The length of term is not defined and is at the discretion of the Board.

(d) Appointment and Removal. The right to appoint and remove all members of the ARB at any time, and for any reason, shall be and is hereby vested solely in the Board, provided, however, that no member may be removed from the ARB by the Board except by the vote or written consent of three-fifths of all of the members of the Board.

(e) Resignations. Any members of the ARB may at any time resign from the ARB by giving written notice thereof to the President of the Board.

(f) Vacancies. Vacancies of the ARB, however caused, shall be filled by the Board.

Section 2. Duties. It shall be the duty of the ARB to consider and act upon any and all proposals or plans submitted to it pursuant to the terms set forth in Article VI above, to adopt appropriate rules establishing policies for site improvements within Oleta Falls, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The ARB shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Paragraph (b) of Section 1 above, the vote or written consent of any three members, at a meeting, shall constitute an act of the ARB. The ARB shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. No member of the ARB who is a member of the Association shall receive from the Association any compensation for services provided that the Board may pay reasonable compensation to any member of the ARB who is not a member of the Association. All members of the ARB shall be entitled to reimbursement from the Association for all reasonable expenses incurred by them in the performance of any ARB functions.

Section 4. Architectural Review Board Rules. The ARB may recommend to the POA Board for approval to adopt, amend, and repeal rules and regulations to be known as "Architectural Review Board Rules" which shall establish policies for review procedures and standards for site improvements within Oleta Falls.

Section 5. Waiver. The approval by the ARB of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the ARB, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specifications or matter subsequently submitted for approval.

Section 6. Liability. Neither the ARB nor any member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of:

(a) The approval or disapproval of any plans, drawings, specifications, whether or not defective.

(b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications.

(c) The development of any property, including, but not limited to, defective construction of residences.

(d) The execution and filing of any estoppel certificate, whether or not the facts therein are correct.

Section 7. Appeal of ARB Decisions. Any party aggrieved by a decision of the ARB may appeal such decision to the Board, and such decision of the ARB is final, unless overridden by a majority vote of the full Board. No Owner or any other party shall have recourse against the ARB or the Board for its refusal to approve any plans, specifications or contractors.

## *ARTICLE VIII*

### USE RESTRICTIONS

Subject to the Special Declarant Rights, the following use restrictions shall apply to all property within Oleta Falls:

Section 1. Single-family Residential Purposes; Principal Building; Accessory Structures; Guesthouse. All Lots shall be used for single-family residential purposes only. No more than one principal building shall be permitted on any Lot. Accessory structures may be allowed subject to ARB approval. A guesthouse may be built at any time subject to the following conditions:

(a) The guesthouse must be approved by the ARB and the ARB is afforded sole discretion in approving or disapproving the structure based on aesthetic or environmental grounds, and in determining location, style and landscaping for the structure; and

(b) The guesthouse must be at a minimum 800 square feet in size, but no larger than 1200 square feet; and

(c) A site for the principal dwelling shall be designated at the time that construction of the guesthouse is considered by the ARB and thereafter maintained as such.

Section 2. Subdividing, Combination and Boundary Relocation. No Lot shall be subdivided, or its boundary lines relocated, for any purpose other than to merge an additional Lot or part thereof so as to create a Lot larger than the original Lot. No subdivision, combination or boundary relocation shall be made without the written approval of Declarant, its successors and assignees except, however, Declarant hereby expressly reserves to itself, its successors or assignees, the right to re-plat, combine or subdivide any Lot or Lots, shown on the recorded plats, prior to the conveyance thereof, in order to create a modified Lot or Lots. These restrictions herein apply to each Lot which may be so created. Following the combination of two Lots into one larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Once combined, the resulting larger Lot may only be subdivided with the consent of the Declarant, its successors and/or assignees. The Board, in its sole discretion, shall determine what effect, if any, the combination or subdivision of a platted Lot has on the assessments for that modified Lot.

Section 3. Commercial Use. Except for home occupations as defined below, no commercial or industrial enterprise, undertaking or use is permitted within Oleta Falls, unless specifically shown on a recorded Plat that has been signed by Declarant. If no such enterprise, undertaking or use is shown on a signed recorded plat, then no such enterprise undertaking or use is permitted. Notwithstanding the above, a “home occupation” on a Lot is allowed with the written consent of the Board. A “home occupation” is a use of a residence by an Owner occupant wherein not more than 25% of the residence is dedicated to business use and there is no traffic generated by the business.

Section 4. Duty to Maintain and Rebuild.

(a) Each Owner shall, at his sole cost and expense, maintain and repair his residence, keeping the same condition comparable to the condition of such residence at the time of its initial construction, excepting only normal wear and tear.

(b) Each Owner shall keep the grass on the lot properly cut, shall keep the lot free from trash, and shall keep it otherwise neat and attractive in appearance. This shall not be construed as requiring natural areas on a Lot to be mowed.

(c) If all or any portion of a residence is damaged or destroyed by fire, or other casualty, then the Owner shall, with all due diligence, promptly rebuild, repair or reconstruct such apparent condition existing immediately prior to the casualty. Alternatively, the Lot owner shall completely raze the residence and sod or seed the entire Lot until such time construction of a new residence is begun.

Section 5. Temporary Structures. No structure of a temporary character shall be placed upon any portion of Oleta Falls at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any single family residence. Basements or partially complete single-family residences will be considered temporary and may not be inhabited. Mobile homes, trailers, recreational vehicles, and tents, may not, at any time, be

used as temporary or permanent residences, except that the Board may designate areas within Oleta Falls as camping sites.

Section 6. Exterior Construction. The exterior of a single-family residence on a Lot as well as site work and landscaping should be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of a Lot due to strikes, fire, natural emergencies or natural calamities. Single family residences may not be occupied until the exterior thereof has been completed. If the exterior is not completed within one (1) year, the Board may require a responsible Lot owner to pay the Association the sum of one hundred fifty dollars (\$150.00) in liquidated damages for each day after 1 year that the exterior is not completed.

Section 7. Trees. No trees, living or dead, shrubs or wildflowers may be removed without the written approval of the ARB, unless said trees are located within fifteen (15) feet of a residence or within the right-of-way of driveways, walkways and septic fields. Notwithstanding the above, any tree which poses a threat to life or property may be removed without the written consent of the ARB. Should a party remove any tree or vegetation as herein provided without the above-described written approval, the Board may fine a party the sum of one hundred fifty dollars (\$150.00) for every tree, shrubs, wild flowers or vegetation removed without permission, and thereafter one hundred fifty dollars (\$150.00) per tree for each day that a replacement plan acceptable to the Board is not completed. In addition to the above remedies, the ARB, the Board or its agents may enter the property to replace the removed tree or vegetation and charge the violating owner the costs of such replacement.

Section 8. Trash. No Lot shall be used or maintained as a dumping ground or disposal site for rubbish, trash, or garbage. Trash, garbage or other waste shall not be kept except in sanitary containers and at all times stored inside of a garage or residence. This restriction shall not apply during the period of construction of a residence on the Lot or adjoining Lots, however, upon completion of construction the owner shall comply with all restrictions with respect to disposal of trash and maintenance of the Lot and property in a neat and attractive manner.

Section 9. Utilities; Antennae; Wireless Communication. All utilities, wires, cables, antennae and the like, of any kind (such as telephone, electrical, television, radio and citizens band radios) must be placed underground except as may be expressly permitted and approved in writing by the ARB. No wireless communication towers or antennae shall be permitted within Oleta Falls, except with the written permission of the ARB and the POA Board.

Section 10. Off-Street Parking. Each Owner of a single-family residence on a Lot shall attempt to provide sufficient parking space, off the roadways, for any of the Owner's or his/her guest's vehicles in order to prevent a public nuisance or a safety issue.

Section 11. Vehicles. The Board shall have the power to place any reasonable restrictions upon the use of roadways, including but not limited to the types and sizes of vehicles, including motor cycles, the maximum and minimum

speeds of vehicles, all other necessary traffic and parking regulations and the maximum noise level of vehicles. The intent of this Bylaw is to prevent ANY vehicle -- ATV, Jeep, SUV, pickup, etc. – from being driven on any “common ground” trail, former logging road, and stream or river bed for any reason except to facilitate the maintenance of trails or “common ground.”

Section 11.1 ATVs. ATVs, as defined below, are banned from being driven on any “common grounds,” trail, former logging road, or stream or riverbed for any reason at any time. UTVs, as defined below, are permitted to be used on any “common grounds,” trail, or former logging road for the maintenance of said trails, former logging road, or “common grounds;” or to transport people on the trail system, when such UTVs are reasonably capable of traversing said trails.

#### ATV

A small motorized vehicle with three or four wheels and handlebars for steering, designed primarily for recreational offroad use, usually seating one person straddling the seat, but sometimes having seating for two arranged fore and aft, and not able to be registered for road use.

#### UTV

A small motorized vehicle with four wheels, using a steering wheel, and equipped with bodywork which encloses the occupants and engine. A UTV is designed as either a utility vehicle which seats a minimum of two persons in side-by-side seating and a cargo bed, or a passenger vehicle which seats a minimum of four persons in side-by-side, front and back seating and a small cargo area. UTVs are designed for on-road and offroad use, and not able to be registered for road use.

Ambiguous vehicle with aspects of an ATV, UTV (as defined above) may be classified as one or the other by a majority vote of the Board.

Section 11.2 Motorcycles. Motorcycles are banned from being driven on any “common grounds,” trail, former logging road, or stream or riverbed for any reason at any time.

Section 12. Vehicle Storage. All recreational vehicles, boats, motor homes, campers and the like must be parked in an area screened from view. Garage doors must be closed at all times when not in use.

Section 13. Lot Upkeep. It is the responsibility of each Lot Owner to prevent any unclean, unsightly, or unkempt condition of buildings or grounds to exist on the Lot Owner's property. The Board or its agent shall have the right, but not the duty, to enter upon any property for the purpose of abating any unclean, unsightly or unkempt condition of buildings or grounds which tend to decrease the beauty of the specific area or the neighborhood as a whole. The cost of such abatement and any damage resulting from such entry shall be at the expense of the specific Lot Owner and said entry shall not be deemed a trespass.

Section 14. Nuisances. No obnoxious or offensive activity shall be carried on upon any portions of Oleta Falls nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Owner of a Lot, tenant or guest thereof in any area of Oleta Falls thereby diminishing the enjoyment of other Lots by their owners. No hazardous or toxic substances or wastes as defined by applicable law shall be dumped within Oleta Falls. No plant, animal, device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any portion of Oleta Falls by the Lot owners, tenants, and guests thereof, may be maintained. The POA Board has the right in its sole discretion to determine a nuisance, and upon ten (10) days' written notification by the Board, the activity must cease.

Section 15. Erosion Control. Declarant and/or the Board or its agent shall have the right to protect from erosion the land designated as areas upon which residential building shall take place, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by Declarant and/or the Board or its agent to provide and insure against such erosion. The Declarant or the Board or its agent, however, is under no duty to take such actions as herein above provided. During the improvement of any Lot, every Owner of a Lot shall use best management practices as that term is defined by applicable State of North Carolina environmental regulations to control erosion and prevent off-site damages so long as one-fourth (1/4) acre of land is disturbed. The ARB may require any Lot owner disturbing more than one-fourth (1/4) acre of land to submit for ARB approval an erosion control and drainage plan, and therein require that such plan be signed off by a licensed Engineer. In order to implement effective and adequate erosion control and protect the beauty and purity of the water courses within Oleta Falls, the Board and its agents shall have the right, but not the obligation, to enter any Lot for the purpose of correcting or remedying any erosion control violations. Any costs of remediation attributable to a Lot Owner's failure to comply with best management practices in erosion control incurred by the Association shall be the responsibility of the Lot Owner.

Section 16. Fires. All outdoor fireplaces and fire pits must be approved by the ARB. Accordingly, no outdoor fire shall be built within Oleta except within the aforementioned structures. No leaves or similar debris shall be burned except as permitted in writing by the Board or Property Manager, who delegates this responsibility to the Management Company. Outdoor grilling shall be done with the greatest of care in view of fire and smoke hazards and general pollution.

Section 17. Signs. No sign for advertising or for any other purpose shall be displayed on any Lot or on a building or a structure on any Lot, except temporary construction signs not greater than nine (9) square feet in size; provided, however, Declarant shall have the right to (i) erect signs when advertising the property, (ii) place signs on Lots designating the lot number of Lots, (iii) following the sale of the lot, place signs of such Lot indicating the name of the purchaser of that Lot, and (iv) a single security sign measuring no more than 10x12". The latter shall be located no closer than 30 ft from the edge of the road nearest the sign. This restriction shall not prohibit placement of occupant name signs and Lot numbers. Notwithstanding the above, the Declarant may require an owner of a Lot to install, at Owner's expenses, and at a location designated by Declarant, common address signage for easy identification for emergency services.

This article should not be construed to prohibit any sign that is permitted according to NC Gen. Stat. 47S-3-121, which permits flags of the United States or North Carolina as well as election related signage.

Section 18. Water Courses. No lake shall be constructed, neither shall the course of any stream be changed, nor any culverts installed in any stream without prior written approval of the Board upon recommendation of the ARB. An Owner of a Lot shall maintain a thirty (30) foot undisturbed buffer from all watercourses within Oleta Falls unless a detailed grading plan is approved by the ARB and the Owner has provided to the ARB written confirmation of compliance from all Governmental Entities with jurisdiction over such project.

Section 19. Storage Tanks. Underground gasoline storage tanks are not permitted within Oleta Falls. Underground propane or liquid gas tanks and above ground storage tanks may be allowed subject to ARB written approval.

Section 20. Animals. No animal, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other commonly domesticated household pets may be kept, provided that they are not bred, maintained or housed (i.e. kennels) for commercial purposes. Pets, when running loose, must be kept strictly within the boundaries of a Lot Owner's property. At all other times, dogs must be kept under voice control. The Board will reserve the right to mandate that any specific dog which constitutes a persistent problem may be required to be on a leash when outside the owner's property. No pets are permitted if they are kept so as to constitute a nuisance as determined by the Board in their sole discretion.

Section 21. Vacant Lots, Reserved Areas and/or Future Development. Except for designated trails, unused and/or unoccupied lots are not to be trespassed upon for any reason.

Section 22. Hunting and Firearms. Hunting, trapping, or the harassing of animals, fowl or game is prohibited, and the discharge of firearms or bows or arrows for any purpose shall be prohibited, except that recreational bow and arrow target practice is permitted on a Lot.

Section 23. Fishing. Fishing rules are to be governed by the State of North Carolina.

Section 24. Trespass. Whenever the Board or its agent is permitted by these covenants to correct, repair, clean, preserve, clean out or do any action on any portion of Oleta Falls, including Lots, entering such areas and taking such action shall not be deemed a trespass on the part of the Board or its agents.

Section 25. Septic Systems. Septic tanks, drain and repair fields constructed on a Lot must comply with all applicable State and local regulations. The location of the septic system on a Lot must be approved by the ARB.

Section 26. Enforcement.

(a) All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them.

(b) Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in the Act, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies given herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of the Board to exercise any or all of the others or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover reasonable attorney's fees as a part of such action.

Section 27. Responsibility for Others. Owners of a Lot are obligated to assume the responsibility that any and all dependents, guests, servants, visitors and building contractors working for the Lot Owner observe and maintain all the rules, regulations, covenants and restrictions binding the Lot Owners themselves.

Section 28. Leasing or Renting. A Lot Owner may lease or rent the family residence owned by such Owner; provided; however, that no rental period shall be for less than 30 consecutive days and that the tenant or lessee shall be bound by all covenants and restrictions contained herein. At no time may a Lot Owner lease or rent a portion of the family dwelling unit unless the entire family dwelling unit is leased or rented. Daily and/or weekly rentals are strictly prohibited.

Section 29. Variances. In case of hardship and for good cause shown, the Board or the ARB may in their sole discretion grant variances from any of these covenants and restrictions.

The decision of the Board to grant or not grant variances as herein provided is based upon the Board's or the ARB's sole and absolute discretion.

## ***ARTICLE IX***

### ***FUTURE PHASES; ANNEXED PROPERTIES; AND REMOVAL OF PROPERTIES***

During the Declarant Control Period, the Declarant reserves the right to subject Annexed Properties as herein defined to the terms of this Declaration and the general plan of development for Oleta Falls by the filing of a supplement to this Declaration with corresponding plat that identifies the property to be added to Oleta Falls. Notwithstanding any provision of this Declaration to the contrary, Declarant, in its sole discretion, shall designate in the Supplemental Declaration the permitted uses within the Annexed Properties, which may be other than residential, and any other development restrictions affecting the use and enjoyment of said land. Notwithstanding the differences, if any in the use restrictions for Annexed Properties, it is the intent of the Declarant that properties once annexed be part of the general plan of development for Oleta Falls; provided, however, during the Declarant Control Period, the Declarant reserves the right to modify the boundaries of Oleta Falls to remove unsold properties from the Oleta Falls planned community. This right to remove properties from the general plan of development for Oleta Falls does not apply to Common Elements unless such removal is in conformity with Section 47F-3-1 12 of the Act. This Article is to be construed to give the Declarant the broadest flexibility to add Annexed Properties to the Oleta Falls planned community with use restrictions tailored for each additional tract or to modify the boundaries of Oleta Falls when determined in the sole discretion of the Declarant to be in the best interest of Oleta Falls.

## ***ARTICLE X***

### ***WATER SYSTEM***

Declarant transferred the responsibility and the ownership of the community water system for Phase I to the POA. The POA shall be responsible or will delegate responsibility for the monitoring, maintenance, repair and improvement of said system. The POA, as the owner of the community water system for Phase I within Oleta Falls, will require lot owners within Phase I to connect to the community water system and pay appropriate user fees and/or tap fees as set by the POA.

## ***ARTICLE XI***

### ***AMENDMENTS***

The amendment of the Covenants or adoption of new Covenants can only occur at a regular meeting of the members and shall require an affirmative vote of sixty-six and two-thirds percent (66 2/3%) of all lots in Oleta Falls, represented either in person, or represented by proxy,

to be adopted at said meeting. Any amendments to these Covenants shall be recorded in the Henderson County, North Carolina Register's office.

**ARTICLE XII**

**MISCELLANEOUS**

Section 1. Severability. Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 2. Construction of this Declaration. This Declaration and the provisions contained herein shall be construed in accordance with the laws of the State of North Carolina. Except for Special Declarant Rights and other rights herein reserved to the Declarant, the Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret the provisions hereof, and its good faith determination, construction or interpretation shall be final and binding.

**THESE COVENANTS** adopted and approved at the duly called annual meeting of the Oleta Falls Property Owners Association this the 23<sup>rd</sup> day of October 2010.

**THESE COVENANTS** were amended and approved at the duly called annual meeting of the Oleta Falls Property Owners Association this the 19<sup>th</sup> of October 2024

**IN WITNESS WHEREOF**, the Secretary of the Oleta Falls Board of Directors has caused these presents to be signed this the 3 day of February 2025

**OLETA FALLS PROPERTY OWNERS' ASSOCIATION, INC.**

By: Victor Brandon Melton

Print Name and Title: Victor Brandon Melton, Secretary

STATE OF NORTH CAROLINA COUNTY OF HENDERSON

Vi-tVt £w\do

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally came before me this day executing the foregoing instrument.

Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of February, 2025

Ivett Ventura Guido  
Notary Public

My Commission Expires: 8/12/2025

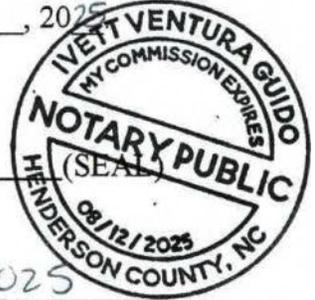


EXHIBIT A

**Property Subject to Declaration of Covenants, Restrictions, et al. for  
Oleta Falls, a Planned Community**

BEING all of Phase I of the Oleta Falls Subdivision as shown on a plat prepared by Paul C. Wash Surveying Co Inc., dated \_\_\_\_\_ and recorded in, of the Henderson County, North Carolina Register's Office, reference to said plat being made for a more particular description of said property.

\_\_\_\_\_, as Trustee and \_\_, as Note holder, under that certain Deed of Trust recorded in Deed of Trust Book \_\_, at Page\_\_, of the Henderson County, NC Register's Office join herein for the purpose of consenting to the foregoing Declarations and Restrictions.

**TRUSTEE:**

\_\_\_\_\_ (SEAL)

**NOTE HOLDER:**

**BY:** \_\_\_\_\_ **PRESIDENT**

**ATTEST:**

\_\_\_\_\_ (CORPORATE SEAL)

**SECRETARY**

**STATE OF** \_\_\_\_\_ :  
: **SS**  
**COUNTY OF** \_\_\_\_\_ :

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, Trustee, personally came before me this day executing the foregoing instrument.

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_ (SEAL)  
Notary Public

My Commission Expires: \_\_\_\_\_