

INSTRUMENT # 2013011052



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FOR REGISTRATION REGISTER OF DEEDS  
 Elizabeth T. Cooper  
 Burke County, NC  
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FOR REGISTRATION REGISTER OF DEEDS  
 Elizabeth T. Cooper  
 Burke County, NC  
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**DECLARATION OF COVENANTS, RESTRICTIONS, PROPERTY OWNERS  
 ASSOCIATION AND LIMITATIONS RUNNING WITH THE LAND  
 FOR WATERSIDE SUBDIVISION**

THIS DECLARATION OF COVENANTS, RESTRICTIONS, PROPERTY OWNERS ASSOCIATION AND LIMITATIONS FOR WATERSIDE SUBDIVISION, made and published this B<sup>th</sup> day of November, 2013 by LR ACQUISITIONS, LLC (hereinafter, "Declarant"), hereafter referred to together with its successors-in-title who come to stand in the same relation to the property as its predecessor did as "Declarant".

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

WHEREAS, Declarant wishes to provide for the preservation and enhancement of property values, amenities and opportunity within the property in order to contribute to the personal and general health, safety and welfare of the property Owners and residents therein and do maintain the land and improvements therein, and to this end wish to subject the Property to the covenants, restrictions, Owners association, easements, reservations, assessments, charges, liens and other provisions hereinafter set forth;

NOW THEREFORE, for and in consideration of the premises and of the benefits to be derived by Waterside Subdivision and each and every subsequent Owner of any of the parcels and numbered lots in said development, Declarant does hereby set up, establish, promulgate and declare the following to apply to all of said parcels, numbered lots, marina and boat dock slips and to all persons owning said parcels or numbered lots, boat dock slips or any of them, hereafter. These covenants shall become effective immediately and run with the land and shall be binding on all persons claiming under and through LR ACQUISITIONS, LLC, their heirs, successors, successor-in-title and assigns, and Waterside Subdivision, to-wit:

**ARTICLE ONE  
 DEFINITIONS**

The following terms, as used in this Declaration, shall have the following meanings:

- 1.1 DECLARANT shall mean LR ACQUISITIONS, LLC, its heirs, successors and assigns.
- 1.2 PARCEL AND LOT shall mean and refer to any platted subdivision lot or to any parcel in the Property described the plat of survey referenced herein and as specified in Exhibit "A" hereof.
- 1.3 OWNER shall mean and refer to the record Owner, whether one or more persons or entities, of any Lot or parcel which is a part of this declaration, including contract sellers and Declarant. Owner shall not include a mortgage holder unless and until such mortgage holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- 1.4 ASSOCIATION shall mean and refer to Waterside Property Owners Association,

Inc., its successors and assigns.

- 1.5 BOARD shall mean and refer to the Board of Directors of Waterside Property Owners Association, Inc., its successors and assigns.
- 1.6 PROPERTY shall mean that real estate which is submitted to this Declaration as described on the plats of survey above referenced and as specified in Exhibit "A" hereof.
- 1.7 ARC shall mean and refer to the Architectural Review Committee. The ARC will review and approve all construction plans.
- 1.8 ACC Checklist shall refer to the Architectural Control Checklist. The ACC Checklist must be completed and submitted to the ARC or Association prior to the commencement of any construction.
- 1.9 DWELLINGS shall refer to houses within the Property.
- 1.10 THE RETREAT AT WATERSIDE shall refer to Lots 15 through 47.
- 1.11 COMMON PROPERTY shall mean any and all real and personal property and easements and other interests therein, together with any facilities and improvements located thereon, now owned by the Declarant and hereafter owned by the Association for the common use and enjoyment of the Owners, including, without limitation, the dock, boat slips, pavilion, observation deck, fire pits, etc., located upon the Property, all of which are located at or upon the Property. Common Property includes but is not limited to the portions of the property described as roads, access easements, and common areas, as shown on that certain plat of survey as recorded in Plat Book 43, Pages 164/165, Burke County records.
- 1.12 DEVELOPER shall mean LR ACQUISITIONS, LLC, its heirs and assigns.

**ARTICLE TWO  
PROPERTY SUBJECT TO THIS DECLARATION**

- 2.1 EXISTING PROPERTY. The initial property subject to this Declaration upon the recordation hereof in the county public records, are the Property, said property being described on the plat of survey referenced herein and as specified in Exhibit "A" hereof.

**ARTICLE THREE  
USE RESTRICTIONS**

- 3.1 SUBDIVISION OF LOTS. No Lot shall be subdivided after conveyed by Declarant.
- 3.2 COMMERCIAL ACTIVITY. No Lot shall be used for any commercial activity or business.
- 3.3 CONSTRUCTION OF HOMES. All homes and buildings must be completed within 15 months from the date construction begins.
- 3.4 DETACHED BUILDINGS. No more than one detached building shall be allowed per Lot and the detached structure shall be constructed in the same style and manner of the primary residence with regard to siding, style and roof color. Guest quarters shall be permitted above the detached garage.

(a) No detached garages shall be permitted on Lots 15 through 47.

- 3.5 FENCES. Fences must be constructed of only wood products and must be approved by Association. The Association may allow black aluminum or iron fence.
- 3.6 LANDSCAPING. All residents must do a reasonable amount of landscaping. The reasonableness of the amount of landscaping done is to be determined by the Association. Each lot shall be maintained in a neat and attractive condition including but not limited to mowing and/or weed eating so as not to become an eyesore to adjoining lots.
- 3.7 PONDS AND WATER FLOW. No building of ponds, redirection or restriction of water flow in any creek, stream, branch, or spring is permitted. Maintenance of existing ponds, creeks, streams, branches, or springs is allowed.
- 3.8 LAND DISTURBING ACTIVITIES. No mining, quarrying, drilling, or other such land disturbing activities shall be permitted on any portion of said property, provided, however, land disturbing activities as necessary for construction of road, trails, utility lines, house sites, driveways, septic tanks and drain fields shall be permitted so long as all disturbances for any and all such land disturbing activities are done in an environmentally sound manner with minimal impact on the sensitive water environment and resources including but not limited to (i) the construction and maintenance of all sedimentation fences, etc. necessary to prevent all sedimentation, siltation, erosion, etc. from entering into the said streams, branches and/or springs and (ii) taking all steps necessary to prevent chemicals and/or other pollutants from entering into the said streams and/or branches.
- 3.9 CUTTING OF TREES. Lot Owners shall make every effort to maintain as much of the natural tree canopy as possible. Cutting for views must be approved by the Declarant or the Association and Owners shall only remove 10 percent of the trees on their Lot without the prior written consent of the Association. Furthermore, no tree with a diameter of 8 inches or larger may be removed without the consent of the Association. All trees that have been cut must be entirely removed from property immediately.
- (a) Lot Owners shall refer to county and city code associated with the buffer zone around the lake.
- 3.10 ANTENNAS AND SATELLITE DISHES. No large antenna or satellite dishes of more than 18 inches in diameter are permitted.
- 3.11 EROSION CONTROL. Owners must construct erosion control methods such as siltation fences and/or screens, etc. during the home building process.
- 3.12 NOISES. No loud or obnoxious noise, including but not limited to, incessant dog barking, shall be permitted.
- 3.13 ADVERTISING. No advertising shall be allowed on any Lot, except if a Lot is for sale, then it may be advertised as such. No for sales signs may be placed on a Lot until such time as more than eighty percent of Lots have been sold by Declarant, or until such time as Declarant turns over control of the Association, or 3 years from the recording of this Declaration, whichever is earliest. Additionally, no for sale signs shall be placed upon a lot within thirty days of its closing.
- 3.14 PROPANE TANKS. All propane tanks shall be placed underground.
- 3.15 SEWAGE DISPOSAL. All septic systems shall be approved by the Burke County Health Department or its respective governing agent at the time of construction.
- 3.16 TEMPORARY STRUCTURES. No structure of a temporary character, such as a basement, trailer, tent, shed, shack, garage, barn or other outbuilding will be used

on any Lot at any time as a residence whether temporarily or permanently. Provided, however, that this paragraph shall not be deemed or construed to prevent the use of temporary construction, shed, or trailer during the period of actual construction of any residential structure on the such property, or the use of adequate sanitary toilet facilities for workmen which may be provided during such construction. All temporary structures shall be removed upon occupancy of the primary dwelling. No outbuilding, garage, shed, shack tent, trailer or temporary building of any kind shall be erected prior to commencement of the construction process.

- 3.17 MANUFACTURED HOME OR MOBILE HOME. No manufactured home or mobile home of any type shall be used or located on any Lot at any time whether temporarily or permanently.
- 3.18 RESIDENTIAL USE. There shall be only one single family, private, residential dwelling per parcel or Lot. No further subdivision of parcels or Lots shall be allowed. No residence may be used as a school, church, kindergarten, or business/commercial enterprise of any type and no such activity shall take place on any parcel or Lot whether temporarily or permanently. No accumulation of discarded personal effects, debris, waste or garbage shall be permitted on any Lot at any time.
- 3.19 CLOTHESLINES. No clotheslines or outside drying area shall be located on any parcel or Lot.
- 3.20 GARBAGE AND TRASH CONTAINERS. No parcel or Lot shall be used or maintained as a dumping ground for rubbish, trash, or other waste. All trash, garbage and other waste shall be kept in sanitary containers except as required during trash connection.
- 3.21 PETS. No animals, horses, livestock, cattle, goats, pigs or poultry shall be raised, bred, kept or maintained on any parcel or Lot, except that dogs, cats, or other ordinary household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No pet shall be permitted outside the boundaries of the Owners Lot unless accompanied by their Owners and all dogs must be on a leash.
- 3.22 RECREATIONAL VEHICLES. No recreational vehicle ("RV") shall be used on a Lot as temporary or permanent residence, nor shall recreational vehicles be parked on subdivision roads within the development; however, recreational vehicles may be parked on said lots provided that they are enclosed with a structure that has the same siding as the house located on the Lot. Professionally state licensed recreational vehicles shall be allowed on Lots up to three consecutive days during a thirty day period; however, concrete pads or temporary power poles shall not be permitted.
- 3.23 NUISANCES. No Lot shall be used in whole or in part for any illegal activity or for the storage of rubbish of any character whatsoever or for the storage of any property or thing that will cause such Lot to appear in any unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of surrounding property.
- (a) No automobiles, trucks, or other motor vehicles without a current year license tag may be placed or allowed to remain on the property.
- (b) No trail bikes, three and/or multi wheelers, dune buggies, all-terrain vehicles or other externally mounted engine vehicles shall be permitted in the development, including the Common Property, except for ingress and egress. Golf carts shall be permitted; however, all such vehicles shall be properly

muffled so as not to disturb occupants of the surrounding property.

- 3.24 TOWERS. No towers, of any kind, shall be erected.
- 3.25 LEASES. All rentals or leases of any property must be for a minimum of seven days in duration unless a lease for a shorter amount of time is approved by the Association. All leases must be in writing.
- (a) Under no circumstances may a lease be made for an outbuilding or guest quarters. Any usage of outbuilding or guest quarters must be as part of a lease of the entire property under the terms herein.
- (b) Lot Owners are fully responsible for their tenants and must give written notice to the Association of their intent to lease or rent their Property. Additionally, the Association must be supplied with name of each lessee and their contact information.
- 3.26 BOATS AND BOAT TRAILERS. Boats and boat trailers may be stored in the driveway of a house for no more than five days out any thirty day period. Boats and boat trailers may be stored in the garage or on a Lot if, and only if, the boat or trailers cannot be seen from adjoining Lots. Boats or trailers shall be removed immediately upon request of Declarant or Association.
- 3.27 CAMPERS AND TRAILERS. No campers or utility trailers may be stored on a lot for more than two weeks per year unless they are stored in a garage.
- 3.28 DOCKS. Dock permits shall be submitted for approval to Duke Energy.
- 3.29 LAKEFRONTS. Lots 9, 10, 11, 26, 27, 28, 29, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 75, 94, 95, 96, 97, 98, 99 and 100 are the only lots that have been approved for private docks.
- 3.30 COMMON DOCKS. The proposed community dock and boat slips will be located on lot 74.
- 3.31 COMMON PROPERTY/Common Area. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written consent of the Association, 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.
- (a) Neither the Declarant nor the Association shall be liable for any damage or injury resulting from such use of the Common Area to the extent permitted by law.

#### **ARTICLE FOUR BUILDING REQUIREMENTS**

- 4.1 MINIMUM BUILDING REQUIREMENTS. The following shall be minimum requirements for construction of any improvement on any Lot. All construction plans shall be approved by the Association or the Architectural Review Committee ("ARC").
- (a) Dwelling Size. All dwellings must contain a minimum of 1,400 square feet footprint of heated living area. The calculation of square footage of floor area living space shall not include: garages, basements, covered walks, open and/or screened porches, patios, terraces, pool area or other similar areas. Square footage measurements shall be taken from the outside exterior walls of dwellings. However, Declarant reserves the right to provide variances to this provision as might be deemed necessary and allowable by law for up to three

years from the date of these covenants provided Declarant still owns a Lot in this subdivision or until Declarant turns this authority over to the Association at an earlier time, at Declarant's sole discretion. Once Declarant turns this authority over to the Association, or otherwise no longer has the authority to grant a variance under this paragraph, the Association shall have the right to provide variances to this provision as might be deemed necessary and allowable by law.

- a. Dwellings within The Retreat at Waterside, Lots 15 through 47, shall have a smaller minimum square foot requirement, per paragraph 4.4(b).
- (b) Construction. All dwellings must be site-built and constructed of either, brick, block, rock, wood or stucco. No vinyl or aluminum siding permitted.
- (c) System Built Homes. System built homes are not permitted unless prior approval of the Association or ARC.
- (d) Color. The ARC shall attempt to keep the exterior color schemes in harmony with the natural surroundings, and thus keeping a strong emphasis on earth tones. No bright colors will be permitted.
- (e) Staining and Painting. Staining and/or painting of all exterior surfaces of improvements shall be adequately done by Lot Owner as needed or at least once every ten years. Log homes shall be stained a minimum of every three years.
- (f) Roof and Pitch. All roofs on dwellings shall have at least a 6:12 pitch. Flat roofs shall only be permitted over porches and deck areas. Standing seam metal roofs are permitted.
- (g) Driveways. All driveways and parking areas shall have a hard surface constructed of either concrete, cultured stone or asphalt.
- (h) Buildings Location. All buildings must meet local building codes and setback requirements. In the event that there are no building codes for the area, the Southern Building Code will apply.
- (i) Garages. No front loading garages shall be permitted unless pre-approved by the ARC. Variances shall be granted only when the lay of land dictates such a variance is required.
- (j) Foundations. Dwelling foundations shall be finished with brick, stone, stucco or be built of split-face block that has the appearance of natural stone. No exposed block shall be permitted. All retaining walls shall be constructed of cement or cement blocks and finished to the same standards. Railroad ties shall not be permitted of the construction of retaining walls.
- (k) Utility Lines. All utility lines (including electrical, telephone and cable TV lines) shall be placed underground.
- (l) Signs. No signs of any type shall be displayed to public view on any portion of said property except (i) one sign advertising the property for sale and as provided for in this declaration, or a temporary builder sign and (ii) one sign identifying the residence by Owner's name and its Emergency 911 address. All such signs shall be professionally lettered and neatly installed.
- (m) Property Appearance. The Owner of each Lot (whether vacant or occupied) in the subdivision shall maintain the Lot in a neat and attractive condition.
- (n) Swimming Pools. In ground pools shall be permitted but must have prior approval of the Association or ARC prior to construction. No above ground

pools permitted.

- (o) Landscaping. Landscaping around dwellings shall be completed within three months of completion of construction.
- (p) Irrigation. Lawn irrigation is strongly encouraged.
- (q) Builders. All contractors, builders and subcontractors must be approved by the Association or ARC prior to start of construction.
- (r) Miscellaneous Controls. There shall be no window air conditioning units. No lattice shall be allowed on houses and no exposed concrete or block walls permitted.

4.2 PARCEL OR LOT SIZE. Notwithstanding other provisions of these covenants Declarant shall have the right to combine any lots or parcels, or portions of lots or parcels into other lots that are apart of this subdivision, in effect changing the boundary line of the lots so long as the number of resulting lots is no more than shown on the Final Survey for Waterside Subdivision and so long as the Lot size meets county, city and local building requirements. However, other than the above exception for Declarant, no residential parcel or Lot shall be subdivided into smaller tracts than the original tract size as shown on the above referenced plats of survey. The Association does not have any authority to grant variances under this paragraph.

4.3 ARCHITECTURAL AND BUILDING CONTROLS. With the specific exception of Declarant, all building plans with regard to exterior color and overall aesthetic appeal must be approved by the Declarant for three years from the date of these covenants provided Declarant still owns a Lot in this subdivision or until Declarant turns this authority over to the Association at an earlier time, at Declarant's sole discretion. Once Declarant no longer has the authority to approve building plans pursuant to this paragraph they must be approved by a two-thirds vote of the Board of Directors for the Association with regard to exterior color and overall aesthetic appeal. It is the aesthetic goal of this development that all improvements shall be uniform in appearance. All construction shall be in compliance with state and local building codes at all times. In the event that there are no building codes for the area, the Southern Building Code shall apply.

- (a) The standard for approval of building plans shall include, but not be limited to: (i) aesthetic consideration; (ii) materials to be used; (iii) compliance with the standards then in effect at the Property and widely adopted (the "Community-Wide Standard"), this Declaration, or the design standards which may be adopted by the Association or Architectural Review Committee (ARC); (iv) harmony with the external design of the existing buildings, lots and structures, and the location in relation to surrounding structures and topography; and (v) any other matter deemed to be relevant or appropriate by the Board or ARC.
- (b) Before construction commences, Owners must present two copies of blue line schematic drawings to the ARC and a completed Architectural Control Checklist ("ACC Checklist") for approval. The ACC Checklist consists of the following:
  - i. Two copies of preliminary site plan disclosing location of all improvements to be placed on Lot;
  - ii. Two copies of schematic drawings of home, locating improvements on Lot, showing elevation on all four sides, color schemes, building materials, and all site improvements;
  - iii. Proof of insurance, builder's risk, errors and omission, liability and workmen's compensation;
  - iv. List of all subcontractors to be used during construction.

- (c) Upon receipt of a completed ACC Checklist, the ARC must respond within thirty days for final approval.
- (d) One copy of site plan and schematic drawings will be returned to Owner.
- (e) Property Owners are responsible for agents, employees, contractors and subcontractors.
- (f) For so long as Declarant shall hold for sale in the ordinary course of business a Lot in Waterside Subdivision, Declarant shall not be required to submit any plans for approval. However, Declarant must abide by the limitations, controls and restrictions of these Declarations.
- (g) Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and the Declarant, Association or ARC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the ARC, the Declarant nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction or modifications to any Lot.
- (h) The ARC shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions.

4.4 THE RETREAT AT WATERSIDE. Property Owners who purchase in The Retreat at Waterside, Lots 15 through 47 shall adhere to the following building guidelines with regard to exterior construction and landscaping;

- (a) All dwellings ("Cabins") shall be styled in mountain craftsman architecture and resemble existing Cabins.
- (b) The Cabins shall contain a minimum of 600 square feet of heated floor space on main level, excluding basement and porches and a maximum of 1,400 square feet of heated floor space on main level.
- (c) All Cabins must have a front deck and back porch with handrails and spindles.
- (d) The exterior of the Cabins must be pine or cedar and shall be stained with cedar tinted Cabot 3000 or a similarly approved stain.
- (e) The exterior siding must be Board and Batten style with a combination of cedar or pine shakes applied to the siding under the gables. The ARC shall suggest style or approve alterations.
- (f) The exterior siding must be stained a minimum of one application every two years.
- (g) All foundations and fireplace bases must be covered with either stacked stone or a cultured stone product.
- (h) Ten percent of the Cabin's exterior must be covered in a stacked stone or a cultured stone product if the Cabin is constructed on a slab, or no fireplace exists, unless otherwise approved by the ARC.
- (i) Shed roofs covering the porch or deck are permitted but will be limited to one shed roof per cabin. Shed roof covering the front and back of the Cabin shall not be permitted unless otherwise approved by the ARC.



- (j) Gables and/or dormers must be incorporated into the style of the Cabin.
- (k) Exterior decking must be constructed entirely of wood. The decking must be stained the same color as the exterior of the Cabin. No composite material permitted. The support decking must be stained within six months of completion, if treated lumber has been used.
- (l) The roof material on all Cabins must be metal and contain one of the following five colors; green, red, copper, brown or black. The separation of colors from Cabin to Cabin is encouraged and may be required. In no instance shall the same color be permitted on three adjoining Cabins.
- (m) The roof pitch must be at least 9/12.
- (n) Windows shall have wooden frames unless otherwise permitted by the ARC.
- (o) The window treatments that are visible from the outside must have wooden paddle blinds. The blinds must be one and one-half inch to two inches in width and match the exterior color of the home.
- (p) All Cabins must have exterior landscaping consisting of mulch and shrubbery. The ARC shall approve and suggest appropriate landscaping.
- (q) Detached garages are not permitted.
- (r) Garages are discouraged and shall only be permitted in those Cabins that are constructed with a basement; the garage shall exist in the basement portion of the Cabin only, and must be side or rear facing only. No front loaded garages unless otherwise approved by the ARC.
- (s) Wooden fences must be approved by the ARC and shall generally be for the rear of the Lot, and shall not be placed any closer to the road than the rear corners of the Cabin.
- (t) One small outbuilding shall be permitted. It must be constructed in the same manner as the Cabin and shall not exceed eight feet by ten feet in size. Outbuildings must be approved by the ARC and shall be placed at the rear of the Cabin or Lot.
- (u) Driveways must be constructed of hard surface and shall consist of either asphalt, cultured stone or concrete and must be applied within thirty days of Cabin's completion.
- (v) Southern Living Designs showcases several examples of Cabin styles that will be permitted in The Retreat.
- (w) Log homes shall not be permitted.

**ARTICLE FIVE  
MAINTENANCE OF ROADWAY, IMPROVEMENTS, COMMON PROPERTY**

- 5.1 The roads within Waterside Subdivision are and will remain private roads, and be maintained and repaired by the Property Owners Association, Inc.
- 5.2 Declarant shall maintain the roads within the Property until Declarant deeds the roads to the Association (all such roads collectively referred to herein as the "Private Road") upon the first Association meeting. Each Lot Owner covenant and agrees to participate and cooperate, on a pro rata basis, in the repair, replacement,

maintenance and operation of the Private Roads and to maintain all slopes or other supports on all Lots for purposes of providing lateral support to the Private Road including, but not limited to, costs, repair and expenses. It is expressly acknowledged and understood by the Lot Owners that damage to the subdivision road caused directly by any construction by or other activities of a particular Lot Owner shall be the responsibility of said Owner to repair. Said damage shall include, but not be limited to, that damage caused by irresponsible use of and/or loading on said road during adverse conditions. Declarant shall deed the roads to Association once Declarant conveys all the Lots in the subdivision; provided, however, nothing shall prevent Declarant from deeding the roads at an earlier time at Declarant's sole discretion.

- (a) Upon approval of the ARC of building plans submitted to it, pursuant to section 4.3 above, there will be due a \$1,000.00 impact fee, from each Lot Owner, for maintenance and road improvement. Any approval given shall be contingent upon receipt of this fee, whether specified or not in said approval. This fee shall be paid before any construction on said site shall begin. If the Lot Owner fails to pay this fee before construction begins, the ARC may file a lien against Owner's property; withdraw any prior approval given, or any other remedies available at law or in equity.
- (b) So long as Declarant is responsible for maintaining the subdivision roads, the above impact fee shall be used by Declarant to repair roads. Declarant shall keep this money in an escrow account, and keep an accurate accounting of how this money was used for road maintenance. Any funds in this escrow account for road development shall, upon Declarant relinquishing this responsibility to the Association, be turned over to the Association.

5.3 RESPONSIBILITY. Owners shall be solely responsible for any repairs, and costs of such repair, for the acts of their guests, invitees, agents or family members for damage to the private roads caused by gross negligence, intentional misfeasance of usage of the Private Road in a manner not constituting reasonable, ordinary, everyday or typical use of the Private Road. All such repair shall be completed in a timely and workmanlike manner.

5.4 MAINTENANCE OF COMMON PROPERTY/AREA. Declarant shall maintain and keep in good repair the Common Property until he deeds the Common Property to the Association, at which time the Association shall take title to said property. Thereafter, the Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, all maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving, and other improvements, if any, situated on the Common Property.

## ARTICLE SIX EASEMENTS

6.1 EASEMENT GRANTS. The following easements are hereby granted and/or reserved over, across, and through the property.

- (a) ROAD INGRESS AND EGRESS. There is hereby granted to all subdivision parcel or Lot Owners, their heirs, successors, and assigns, and to all Owners of the limited common area, their heirs, successors, and assigns, a reciprocal easement for ingress and egress across all roadways contained in the subdivision as well as access from the public roads to the subdivision roads.
- (b) PUBLIC EASEMENTS. Fire, police, health, sanitation, medical, ambulance and other public service personnel and their vehicles have a perpetual, non-exclusive easement of ingress and egress over and across all roadways contained in the subdivision for the performance of their respective duties.

- (c) GATED ENTRANCE. Waterside Subdivision will have a gate across the entrance to the subdivision. Such gate and its use shall be governed by the Association and said gate shall not inhibit, in any way, the peaceful and unfettered enjoyment of the easements described herein.
- (d) UTILITY EASEMENTS. Declarant does hereby establish for the benefit of, and grant and convey to, the Owner of each Lot, a perpetual, nonexclusive easement appurtenant to each of the other Lots for the purpose of construction, installation, maintenance, repair, replacement, renewing, connecting into and use by such Owner of gas, telephone, power, water, sewer, or other utility lines serving any portion of a Lot within ten feet of the boundary line(s) of any Lot(s), provided there are no buildings or structures constructed in such areas. All such utility lines shall be installed and maintained below the ground level or surface of the Lots (except for such parts thereof that cannot be and are not customarily placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot).

#### ARTICLE SEVEN

#### WATERSIDE SUBDIVISION PROPERTY OWNERS ASSOCIATION

- 7.1 MEMBERSHIP. All parcels or Lot Owners shall become members of WATERSIDE PROPERTY OWNERS ASSOCIATION, INC. ("Association") at time of closing. Each parcel or Lot shall enjoy one vote only regardless of whether the parcel or Lot is owned by multiple titleholders owning jointly. The Declarant and its successors are all members of the Association until all lots are sold. The Association, acting through its Board of Directors shall have the rights and authority as set forth in the Declaration and in the By-Laws, to be adopted by the Declarant or the Association as set forth herein.
- 7.2 CONTROL BY DEVELOPER. Declarant shall have the absolute authority to control the Association until Declarant has sold seventy-five percent of the lots subject to this Declaration. Declarant may relinquish control of the Association sooner in Declarant's sole discretion. Members of the Association, including Declarant after control is relinquished, are entitled to one vote per Lot owned. Declarant may establish by a separate document rules governing the affairs of the Association. Once Declarant has relinquished control, the Association may amend those rules by a seventy-five percent approval, or alternatively establish rules governing said Association with a seventy-five percent approval, if Declarant fails to establish those rules.
- 7.3 MEETING. An Association meeting shall be called and convened each year at some time during the first two weeks of August after Declarant has relinquished control of the Association. Declarant, or an assigned representative, shall preside as temporary chairman at the first Association meeting and shall serve as the Board of Directors until such time as the Declarant no longer has control or has relinquished control, at which time a special meeting shall be called and a new Board of Directors shall be elected. Written notice of any meeting called shall be sent to all Association members not less than thirty days or more than sixty days in advance of the meeting. At the meetings the presence of members either in person or by proxies entitled to cast fifty percent of all votes shall constitute a quorum.
- (a) The acts approved by a majority of those present at a meeting either in person or by proxies at which a quorum is present shall constitute the acts of the members, except when approval by a greater number of members is required by the Declaration or By-Laws.
- 7.4 ASSESSMENTS. The annual Association assessment shall be three hundred dollars (\$300.00) per lot.

- (a) The Lot Owners of each Lot owned within the Property, by acceptance of a deed, therefore, hereby covenants, whether or not it shall be so expressed in such deed, and is deemed to covenant and agree to pay the Association's annual assessments and special assessments subject to the terms of this paragraph.
- (b) Declarant and later the Association shall keep the Assessment funds in an escrow account, and keep an accurate accounting of how this money was used. Any funds in this escrow account, upon Declarant relinquishing this responsibility to the Association, shall be turned over to the Association.
- (c) Annual assessments are due the 1st day of January of each new calendar year.
- (d) The annual assessment for Lots 123 and 124 shall only be one hundred dollars (\$100.00).
- (e) Lot Owners that own multiple Lots shall be assessed three hundred dollars (\$300.00) on one Lot and each subsequent vacant Lot owned shall be assessed one hundred and fifty dollars (\$150.00) per year. If a dwelling is constructed on a vacant Lot, that had been previously assessed at one hundred and fifty dollars (\$150.00), then said Lot shall be assessed at three hundred dollars (\$300.00) per year.
- (f) No assessments shall be required for Lots owned by the Developer until said Lots have been conveyed.

7.5 ASSESSMENT PURPOSE. Annual assessments shall be used for road maintenance, landscaping the entrance gate, insurance premiums, taxes, utility fees, improvement or maintenance of the Common Property regardless of whether the Declarant or the Association owns the Common Property, or other purposes the Declarant or later the ARC desires to use said assessments for that exclusively promote the recreation, health, safety and welfare of the residents in the subdivision; provided, however, the maintenance of Common Property and the payment of the insurance described above shall be given absolute priority over any other use of the Assessments that may be determined by the Association at a later date.

- (a) The annual assessment shall be used to mow the grass along the edges of the road a minimum of two times per month during the months of April through October, or as needed, to maintain community appeal.
- (b) The Common Property shall be mowed or landscaped a minimum of two times per month during the months of April through October, or as needed, to maintain community appeal.

7.6 SPECIAL ASSESSMENTS. Special assessments may be made for any lawful purpose by the approval of seventy-five percent of the membership at the meeting once a quorum is established.

7.7 DELINQUENT ASSESSMENTS.

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

- (b) If the annual assessment is not paid within thirty days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent per annum, or the maximum allowed by law, whichever is less. The Association may bring an action of law against the Owner personally obligated to pay the same, or to foreclose the lien against the property, in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment interest as provided herein together with the costs of the action and collection of the assessment, including a reasonable attorney's fee and costs and fees on appeal. Reasonable attorney's fees and costs of collection shall be recoverable whether or not suit is brought. In addition, if the annual assessment is not paid within thirty days after the date when due, then the Owner shall lose right to use of the Common Property (excluding subdivision roads) until such time as assessments are paid in full.
- (c) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.
- (d) The Association shall upon demand at any time furnish to any Lot Owner liable for said assessment a certificate in writing and in recordable form, signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

#### 7.8 INSURANCE.

- (a) The Association's Board ("Board") or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Association may purchase "all-risk" coverage in like amounts.
- (b) The Declarant shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million dollars (\$1,000,000.00). The Association shall be responsible to ensure this policy stays intact once the Common Property is turned over to the Association.
- (c) The Declarant or Association shall obtain a policy to cover the replacement of any amenities within the Common Property if destroyed.
- (d) Insurance coverage obtained by the Association shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth;
- (i) All policies shall be written with a company licensed to do business in North Carolina;
  - (ii) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of Lot Owners and their Mortgagees,

- as their interests may appear;
- (iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;
  - (iv) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Lot Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary;
  - (v) All casualty insurance shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the property is located;
  - (vi) The Board shall be required to make every reasonable effort to secure insurance policies that provide for the following:
    - (1) a waiver of subrogation by the insurer as to any claims against the Association, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;
    - (2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
    - (3) a provision that no policy may be canceled, invalidated, suspended or subjected to non-renewal on account of any one or more individual Owners;
    - (4) a provision that no policy may be canceled, invalidated, suspended, or subjected to non-renewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
    - (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
    - (6) that no policy may be canceled or substantially modified or subjected to non-renewal without at least thirty days prior written notice to the Association.
- (e) Each Owner covenants and agrees that in the event of damage and destruction of structures on their Lot(s), Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made. The Owner shall pay all costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide standard.
- 7.9 **REPAIR AND RECONSTRUCTION.** In the event of damage to or destruction of all or any part of the Common Property as a result of fire or other casualty, unless at least eighty percent of the Lot Owners, vote not to proceed with the reconstruction and repair of the structure, the Association or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the damaged structures.

- (a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Common Property, the Association shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Association determines to be necessary.
- (b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Association, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Property to be used as directed by the Board.
- (c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the structures were originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Association.
- (d) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners, if any, on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Association.
- (e) Damage to or Destruction of Dwellings on Lots. In the event of damage to or destruction of structures on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Lot Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.
- 7.10 **SALE OF LOTS**. Within thirty days after receiving title to a Lot, the purchaser of the Lot shall give the Association written notice of their Ownership of the Lot(s). Upon failure of an Owner to give the required notice within the thirty-day time period provided herein, the Association may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining their identity.
- 7.11 **SECURITY**. The Declarant or Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with

each Lot Owner. Neither the Declarant nor Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

- 7.12 ESCROW ACCOUNT. All funds collected are required to be held in an escrow account under these covenants.
- 7.13 DECLARANT'S RIGHT TO ASSESSMENTS. So long as Declarant owns and/or maintains the Common Property, Declarant shall have the right to the proceeds collected by the Association from any and all Assessments to pay for the maintenance, taxes and insurance of the Common Property. In the event the Association fails to reimburse or pay, on demand, the Declarant the amounts necessary as set forth above, the Declarant shall have the right, by written notice to each Lot Owner, to instruct that all further Assessments be paid to Declarant in lieu of the Association, and to enforce non-payment of Assessments by Lot Owners in such an event in the manner set forth above.

## ARTICLE EIGHT PROPERTY RIGHTS IN COMMON PROPERTY

- 8.1 USE OF COMMON PROPERTY. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written consent by the Association, except as specifically provided herein.
- (a) The use of the Common Property shall be governed by the Declarant, until such time as he turns the Common Property over to the Association, after such time the use of the Common Property shall be governed by the Association. The Declarant, while in control of the Common Property, and thereafter the Association, shall have the authority to establish written policies for the use of the Common Property.
- (b) Anyone who uses a portion of the Common Property hereunder shall assume, on behalf of himself/herself/themselves and his/her/their guests, occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. Neither the Declarant, nor Board, nor Association shall be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.
- (c) Users of the Common Property must remove all trash immediately. Upon use of the fire pit or grill, the user must clean or remove all debris, ashes, burnt logs, etc. Trash shall not be deposited into the lake.
- (d) The proposed community dock shall be used on a temporary basis. Lot Owners may leave their boat tendered to the dock for overnight purposes if space is available and is intended for use by those Lots that cannot have a dock. The Association may create a standard use protocol for the dock, to be implemented and observed by all Lot Owners. Only boats owned by Lot Owners or their overnight guests shall be permitted to use the dock.
- 8.2 EASEMENT OF ENJOYMENT. The rights of access to and from the Common Property shall include the right of the benefitted parties to the use of said Common Property for recreational purposes, use of the subdivision roads, and the right to repair and maintain the same.
- (a) Except as provided in 8.3, the benefit of the aforementioned easement right shall be a covenant running with the land and appurtenant to the Ownership of lots within said subdivision, and may not be transferred, assigned or separately



conveyed to any person, or entity which does not own title (equitable or legal) to one or more Lots within said subdivision.

8.3 **TITLE TO COMMON PROPERTY.** The roadways and common areas shall be conveyed to the Association at any time Declarant desires, but in all events before Declarant conveys the last Lot owned in this subdivision. However, title shall be conveyed subject to the following covenant which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns:

(a) In order to preserve and enhance the property values and amenities of the development, the Common Properties and all facilities now or hereafter built or installed thereon shall at all times be maintained in good repair and condition. The maintenance and repair of the Common Properties shall include, but not be limited to the repair of damage to roadways, walkways, outdoor lighting, fences, decking, stone work, docks, and landscape maintenance.

(b) This section shall not be amended to reduce or eliminate the obligation for maintenance and repair of the Common Property.

#### **ARTICLE NINE ENFORCEMENT AND DURATION**

9.1 **ENFORCEMENT.** If the Owner of the parcels or lots of Waterside Subdivision violate any of the covenants set forth in this Declaration, it shall be lawful for any other person owning real property in the subdivision or the Association to prosecute any proceeding at law or in equity against any person or persons violating any of such covenants and either to prevent such Owner from so doing or to recover damages for such violations, or both.

9.2 **AMENDMENT.** The covenants, restrictions, easements, reservations, terms and conditions contained in this declaration shall run with the land and shall be binding upon all Lot Owners and their heirs, successors and assigns, provided, however that the Declarant retains the absolute right to amend this declaration, as he may deem necessary, during the period Declarant is in control of the Association and all such amendments shall be binding upon all Lot Owners. Furthermore, the Association shall have the right to amend these covenants once Declarant no longer controls the association by approval of the Owners of seventy-five percent of the Lots subject to this declaration; provided, however, that the parcels and Lots shall NOT be divided into smaller tracts than as shown on the plats of survey above referenced except as provided in paragraph 4.2 above and that the land designated as common area shall NOT be sold and shall not be used for residential or commercial purposes during the duration of these covenants and restrictions. All amendments to the Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment.

9.3 **DURATION OF COVENANTS AND RESTRICTIONS.** These covenants and restrictions shall run with said land and shall be binding upon all portions and all persons claiming under them perpetually to the extent permitted by law. However, so long as North Carolina law limits the period during which covenants restricting lands to certain uses may run, any covenant affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty years, unless fifty-one percent of the persons owning parcels or lots execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all Owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A. 44-5-0. A written instrument reflecting any termination must be recorded no sooner than, but within two years immediately preceding the beginning of a twenty year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to these covenants, by acceptance of

a deed or other conveyance, agrees that the covenants contained herein may be extended and renewed as provided in this Paragraph.

9.4 BINDING OF HEIRS, ETC. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the Declarant and Owners and their respective heirs, administrators, executors, legal representatives, successors and assigns. Time is of the essence in each and every provision of these Agreements.

**ARTICLE TEN  
RESERVATION BY DECLARANT OF EASEMENTS**

10.1 Declarant hereby reserves unto Declarant, its heirs, successors and assigns, all necessary licenses, rights, privileges and easements over, under, upon, through and across the Property to, including without limitation, (i) use said Property for rights-of-way and easements to erect, install, maintain and use electric and telephone lines, wires, cables, conduits, water mains, pipes, and other suitable equipment for the conveyance and use of electricity, telephone equipment and service, cable, television, water or other public/private conveniences or subdivision utilities; (ii) to access the Property for purposes of development and construction; and (iii) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Waterside Subdivision; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such utility, development or service. Declarant also reserves the right to connect with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines which may from time to time be in or along the streets and roads within the Property. All easements, rights-of-way, rights, licenses and privileges herein reserved in Declarant shall be binding upon the Property and shall inure to the benefit of Declarant, its heirs, successors and assigns until such time as Declarant has quit claimed all its interests in the Property by filing such quit claim document with the Clerk of Superior Court of Burke County for purposes of recording same on the deed records of the county.

SO EXECUTED this 8<sup>th</sup> day of November, 2013.

**LR ACQUISITIONS, LLC, Declarant**

Dan Rawn (SEAL)  
By: Dan Rawn, Member

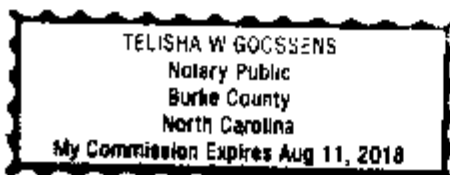
STATE OF NC  
COUNTY OF Burke

I, Telisha W. Gocssens a Notary Public of the County and State aforesaid, do hereby certify that Dan Rawn personally came before me this day and acknowledged that he is a Member of LR Acquisitions, LLC, and further acknowledged execution of this Declaration of Covenants, Restrictions, Property Owners Association and Limitations Running With The Land For Waterside Subdivision on behalf of the LLC.

Witness my hand and official seal, this the 8<sup>th</sup> day of November, 2013.

(Seal-Stamp)  
Telisha W. Gocssens  
Notary Public

My commission expires: Aug 11, 18



**EXHIBIT "A"**

BEING all of that property shown on that certain plat of survey recorded in Plat Book 43, Pages 164 & 165, Burke County Registry, which plat is incorporated herein by reference as if fully set out.