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**Prepared by and return to:**

**McGuireWoods, LLP (DEH)**  
**300 North Third Street, Suite 400**  
**Wilmington, North Carolina 28401**

**STATE OF NORTH CAROLINA**  
**COUNTY OF BUNCOMBE**

**FIRST AMENDMENT AND RESTATEMENT**

**OF**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR STARVIEW HEIGHTS**

**THIS FIRST AMENDMENT AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR STARVIEW HEIGHTS** made and entered into this 6<sup>th</sup> day of December, 2011, by and between **ATLAS NC I SPE, LLC** (herein "Successor Declarant").

**WITNESSETH:**

**WHEREAS**, L.T.K. Enterprises, Inc. ("Declarant") executed a Declaration of Covenants, Conditions and Restrictions for Starview Heights (the "Original Declaration") recorded in Book 4121, Page 1700 in the Office of the Register of Deeds of Buncombe County, North Carolina (the "Registry") relating to real property known as Starview Heights Subdivision (the "Subdivision"); and

**WHEREAS**, the Original Declaration provides for amendment of the Original Declaration by the Declarant with the written consent of sixty-seven percent (67%) of the votes allocated to Members of the Association; and

**WHEREAS**, Successor Declarant is the successor to Declarant's interest in the real property described in the Original Declaration by virtue of Deeds from Branch Banking and Trust Company to Successor Declarant recorded in Book ~~423~~ Page ~~1153~~ of the Registry (Branch Banking and Trust Company having acquired the property by virtue of a Substitute Trustee's Deed recorded in Book 4657, Page 327 and Book, ~~4557~~, ~~21148~~ of the Registry) and as "Declarant" pursuant to that certain Assignment of Declarant's Rights, Contracts and Permits recorded in Book ~~4533~~, Page ~~1160~~ of the Registry; and

**WHEREAS**, more than 67% of the votes allocated to Members voted to approve this First Amendment at a special meeting of the Members held on the 23rd day of February, 2011 called and noticed as required by the Original Declaration as shown by the certification of the Secretary attached hereto; and

**WHEREAS**, Successor Declarant, with the consent of the Members as called for in the Declaration, desires that the Original Declaration be superseded by and in its place and stead substituted this First Amendment and Restatement of Declaration of Covenants, Conditions and Restriction for Starview Heights (the "First Amendment").

**NOW, THEREFORE**, Successor Declarant hereby amend the Original Declaration and state and declare that the Property, as hereinafter defined, is subject to this First Amendment and the covenants contained herein, which are to run with the land and be binding upon all parties owning Lots and their heirs, successors and assigns and all persons claiming by, through or under the Declarant and the Successor Declarant, it being the express intention that the terms of this First Amendment shall supersede the terms of the Original Declaration.

#### **ARTICLE I Definitions**

1. "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
2. "Additional Property" shall mean and refer to any real property located within one (1) mile of the Property which has been subjected to this Declaration as provided herein.
3. "Approved Plan" shall mean the subdivision plan prepared by Land Planning Collaborate dated March 8, 2007 and approved, as the same is amended from time to time.
4. "Association" shall mean and refer to Starview Heights Property Owners' Association, a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.
5. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association and shall be the same as the "executive board" as that term is used in the Act.
6. "Bylaws" shall mean and refer to Bylaws of the Association.
7. "Community Property" shall mean and refer to i) private roads designated on any Subdivision Plat recorded by Declarant or Successor Declarant, as well as any other private road

constructed by the Declarant serving the Subdivision or any property adjoining the Subdivision; ii) the entrance area as shown on such Plat; iii) any other property designated as such by the Successor Declarant, including designations of Limited Community Property shown on a Subdivision Plat; and iv) any real estate owned by the Association, other than a Lot.

8. "Declarant" shall mean and refer to L.T.K. Enterprises, Inc.

9. "Declarant Control Period" shall mean that period terminating when Successor Declarant or its successors and assigns

(a) voluntarily terminates its Declarant Rights hereunder by the recording of a written notice of termination in the Registry; or

(b) December 31, 2020.

10. "Declaration" shall mean and refer to this First Amendment as modified or amended, either in whole or in part.

11. "Directors" shall mean and refer to the members of the Board of Directors of the Association.

12. "Limited Community Property" shall mean and refer to those portions of the Community Property of the Subdivision (i) designated as such on a Subdivision Plat; (ii) designated by Successor Declarant for the exclusive use by one or more but fewer than all of the Lot Owners; or (iii) designated by Successor Declarant, in its sole and absolute discretion, as benefiting, either directly, or indirectly, one or more but fewer than all of the Lot Owners.

13. "Lot" shall mean and refer to any parcel of land, together with the improvements thereon, within the Subdivision and as shown on the Plat or additional plats hereinafter recorded by Successor Declarant including other Lots which may be added pursuant to any other expansion or annexation rights of Successor Declarant as provided herein. Lot shall include those parcels shown on the Plat which were conveyed by Declarant.

14. "Lot Owner" and/or "Owner" shall mean and refer to the Successor Declarant and other person or entity which owns fee simple title to any Lot including the Declarant. The term shall not include a person or entity having an interest in a Lot solely as security for an obligation.

15. "Member" shall mean and refer to each Owner or Owners of a Lot within the Subdivision who shall also then be a Member of the Association for such period of ownership. If a Lot is owned by more than one person or entity, then such persons or entities collectively shall be the Member and shall be entitled to vote only those voting shares allocated to such Lot.

16. "Person" shall mean a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

17. "Plat" or "Subdivision Plat" shall mean the plat(s) of survey of Phase 1A, Starview Heights Subdivision prepared by Ed Holmes & Associates and recorded in Plat Book

128, at Page 180, and Plat Book 130 at Page 185, in the Registry, as well as that plat of survey entitled Starview Heights prepared by Cipar, Ingle, Anders & Assoc., Inc. recorded in Plat Book 113, at Page 152, in the Registry, but shall also mean and include any additional plats recorded by the Successor Declarant pursuant to the provisions of this Declaration.

18. "Property" shall be all that real property described on the Plat together with any other real property annexed to this Declaration as provided herein.

19. "Special Declarant Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act and those rights reserved to Successor Declarant in this First Amendment or in the Bylaws.

20. "Subdivision" and/or "Property" shall mean and refer only to that certain real property shown on the Plat. The Declarant shall not be deemed to have subjected any other property that the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property to this Declaration is recorded in the Registry. To the extent additional property was subjected to the Original Declaration, it is withdrawn from this First Amendment. The Successor Declarant specifically reserves the right to add and subject any other property located within one (1) mile of the Property to the terms of this Declaration.

21. "Successor Declarant" shall mean Atlas NC I SPE, LLC or its successors and/or assigns, including any person or entity which succeeds to any Special Declarant Rights as set forth herein.

## ARTICLE II

### Submission of Property to the Act and Creation of a Planned Community

1. Submission of the Property and Creation of the Subdivision: Pursuant and subject to the terms and provisions of the Act, Successor Declarant hereby creates a planned community comprised of the Property. Successor Declarant hereby submits all of such Property to provisions of the Act and to the terms of this First Amendment.

2. Name: The name of the Subdivision created hereunder is Starview Heights.

3. Designation of Lots and Community Property: The Successor Declarant does hereby designate the Property as Lots in the Subdivision. To the extent that Community Property has been designated on prior plats, the designation of Lots and Community Property shown on the Plat shall supersede all prior designations.

4. Reservation of Special Declarant and/or Declarant Rights: Successor Declarant hereby reserves unto itself and its successors in interest as Special Declarant or Declarant Rights, the following:

- (a) Those Special Declarant Rights as set forth in the Act;

(b) The right, subject to the terms of Article XII, Section 3 herein, to revise, modify, amend, change, vary or release all or any part of this Amendment during the Declarant Control Period;

(c) The right to redesignate all or any portion of a previously designated Lot as an easement or right-of-way for access to adjoining property without regard to whether or not the adjoining property is owned by Successor Declarant;

(d) The right to revise, modify, amend, change, vary or remove any previously designated Lot, Community Property or Limited Community Property still owned in fee by the Successor Declarant;

(e) The right to appoint and remove all members of the Board of Directors of the Association during the Declarant Control Period;

(f) The right to conduct sales and marketing efforts within the subdivision including but not limited to the right to use the Community Property, including the Clubhouse and the Pool areas, for sales offices and for sales and promotional events;

(g) The right to grant easements to others for ingress, egress and utility installation and maintenance over the roads, streets and utility easements as well as over all Community Property; and

(h) The right to annex Additional Property to the Subdivision and subject the same to the terms of this Declaration, with such modifications and amendments as Successor Declarant, in its sole discretion may deem appropriate, by the recording of one or more Supplemental Declarations in the Registry.

### **ARTICLE III Community Property Ownership and Maintenance**

1. Owner's Easements of Enjoyment: Every Owner shall have the right of ingress to and egress from the Community Property, together with the right of enjoyment in and to the Community Property, which rights shall be appurtenant to and shall pass with the title to every Lot.

2. Delegation of Use: Any Owner may delegate his rights of enjoyment of the Community Property to the members of his family, his tenants, contract purchasers who reside on the Lot, or his guests, subject to such rules and regulations as may be adopted by the Board. A Lot Owner who has delegated rights to use the Community Property to his tenant shall not in addition to his tenant have rights to the Community Property.

3. Rules and Regulations: The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Community Property. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Community Property on behalf of the Association and available to the Members for inspection during normal business hours, or at the designated office of the

Association, if there is no property manager. No rule adopted shall materially interfere with rights granted or reserved to Declarant herein.

4. Use of Community Property Facilities: Subject to the ordinances of Buncombe County, the Board shall have the power to lease the use of any recreational facility for functions or special events, and may charge reasonable admission or other fees for such use. The Board may also allow use of the Community Property by third parties and may create "social" memberships upon such terms and conditions as the Board shall deem appropriate; provided, however, that no such memberships shall create any voting rights in the Association nor shall they create any ownership rights in the Community Property. Upon receiving the grant of any such "social" membership, the holder thereof may have such right terminated upon default with respect to any terms and conditions placed upon the "social" membership by the Board (or the "social" member violate any rules and regulations otherwise applicable to the Community Property) OR upon the vote of 100% of the Board. Notwithstanding the foregoing to the contrary, during the Declarant Control Period termination of any "social" membership requires written consent of Declarant.

5. Operating Community Property Facilities: The Board shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the facilities or the peace and tranquility of adjoining residents with regard to the recreational facilities located on the Community Property. The Association shall promulgate rules regarding use of the swimming pool and clubhouse, including rules regulating unsupervised use by children.

6. Successor Declarant's Conveyance of Title to Community Property: At such time as it deems appropriate, but not later than at such time that all of the Lots of all phases of the Subdivision have been sold, Successor Declarant shall convey such title as it may have in the Community Property to the Association by Deed Without Warranty. The Association shall accept the conveyance of all such Community Property pursuant to this section.

7. Mortgaging Community Property: The Association shall have the power to subject the Community Property or any portion thereof that it owns to a Deed of Trust to secure obligations of the Association; provided, however, that the conveyance shall require approval of the Association as required by the Act.

#### **ARTICLE IV Land Use**

1. First Amendment: All Lots and the Community Property shall be subject to the covenants, conditions, and restrictions contained in this First Amendment.

2. Residential Use: All Lots shall be used for, improved for, and devoted exclusively to residential use.

3. Subdivision and Modification of Lots: No Lot may be subdivided or merged into other Lots without the consent of Successor Declarant. Notwithstanding the foregoing, the Successor Declarant reserves the right to modify the lines of Lots, to append other parcels to the

Subdivision and to establish access ways to and from any such other parcels, as it deems advisable.

4. Dwelling Units: No dwelling structure shall be erected, altered, placed, or permitted to remain on any Lot that exceeds three stories (from finish grade of any ground level) in height; there may be only one story above the front entry level and only one story below the front entry level. Only one dwelling structure, which may include an attached garage built for no more than three automobiles, shall be permitted on a Lot. The overall minimum heated floor area of the dwelling structure, exclusive of any open porches, basements and garages, shall be 2,400 square feet of heated living space with a minimum of 1300 square feet on the front, main entry level.

5. Successor Declarant Approval: Plans and specifications for all dwelling and/or improvements to be constructed on the property shall first be approved in writing by the Successor Declarant. The Successor Declarant shall have the final approval for all plans and specifications prior to any construction on the Property. The Successor Declarant shall not withhold approval of plans unreasonably. Successor Declarant may assign the approval rights contained herein as it deems appropriate including, without limitation, to the Association or its Board of Directors. Absent an assignment and following the termination of the Declarant Control Period, the rights contained herein may be exercised by the Board of Directors or by a committee appointed by the Board.

6. Community Property Construction or Alteration: No alteration or construction upon any portion of the Community Property shall be undertaken or allowed except at the direction of and with the express written consent of the Successor Declarant during the Declarant Control Period and thereafter the Association.

7. Offensive or Annoying Activity or Nuisance: No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within the Property. In the use of the Property, all applicable governmental regulations shall be observed.

8. Fences, Mailboxes and Antennas, Etc.: The Successor Declarant during the Declarant Control Period and thereafter, the Association, may regulate or prohibit the erection of antennas, ham radio towers, fences (chain-link, stockade-type or otherwise) on any Lot. Only mailboxes approved by the Successor Declarant may be used. No satellite dishes larger than 19 inches in diameter shall be allowed. No outside clotheslines are permitted.

9. Animals: Only dogs (a maximum of two), cats (maximum of two), birds, and fish and such other animals as approved by the Association may be kept and maintained in the dwelling unit. When outside, all pets must be on a leash, shall not be left unattended, and shall not become a nuisance. Owners must dispose of solid waste of any pet owned by them in accordance with the rules adopted by the Association.

10. Parking: No parking of unlicensed, un-inspected or inoperable vehicles shall be allowed on the Property. No overnight parking of any motor vehicles shall be allowed on streets within the Property. Campers and boats may be parked in driveways within twenty-four hours

before and after such time they are used. Residents of dwelling units may wash motor vehicles in their driveways. In addition, no one shall store or keep a trail-bike, motorcycle, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the Property, except one pick-up truck and one or more operational automobiles (but in any event (a) no more than a total of four motor vehicles or (b) no more motor vehicles than can be reasonably parked in the Owner's driveway and garage, whichever is less) and except as provided in the rules and regulations enacted by the Association.

11. Motor Vehicles: All motor vehicles shall be maintained in proper operating condition and in a condition so as not to be a nuisance by noise, exhaust emissions or otherwise.

12. Trash Receptacles: Storage, collection and disposal of trash shall be in compliance with rules set by the Association.

13. Signs: Unless authorized in writing by the Successor Declarant or the Association after the termination of the Declarant Control Period, no signs of any kind shall be displayed in public view on any Lot, Community Property, or Limited Community Property except one sign of not more than eight (8) square feet advertising the property for sale placed in a window. The foregoing prohibition shall not apply to signage owned or placed in the Subdivision by Successor Declarant or its designee.

14. Trade or Business: No part of any Lot shall be used for commercial purposes or for any type of business or store. Notwithstanding the above restriction, nothing herein shall prohibit a home occupation or office so long as such use would not, in the sole discretion of the Declarant during its Control Period, and thereafter the Association, unduly increase personal or vehicular traffic within the Subdivision whether by virtue of the delivery and pick up of goods, meetings or other gatherings of persons or vehicles related to the enterprise, nor shall it prohibit sales and marketing activities by Declarant or its designees.

15. Rentals: No dwelling unit shall be rented for a period of less than one (1) week. Any owner who rents a dwelling unit has an affirmative obligation to immediately report such rental, the period of the rental and the names of the tenants to the Association. A copy of any lease shall also be provided to the Association upon request by the Association.

## ARTICLE V

### Membership and Voting Rights

1. Every owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. The Association shall have two (2) classes of voting membership:

A. Class A: Class A Members shall be all Owners, with the exception of Successor Declarant, who shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than



one (1) vote be cast with respect to any Lot. If multiple Owners owning any Lot are unable to agree on their vote, their vote shall not be counted.

B. Class B: The Class B Member shall be Successor Declarant and the Class B Member shall be entitled to three (3) votes for each Lot owned by Successor Declarant within the Subdivision. For the purpose of determining Class B Membership, Successor Declarant shall be deemed to own each Lot within the Property shown on the Approved Plan. The Class B membership shall cease when the Declarant Control Period has terminated.

## ARTICLE VI Assessments

1. Creation of the Lien and Personal Obligation of Assessments: Every Owner of any Lot subject to this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association:

- (a) Annual assessments or charges, as determined by the Board;
- (b) Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Lot together with interest thereon and costs of collection thereof; as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot. In addition, the Association shall have all those powers provided for in the Act, including the ability to impose fines.

2. Declarant Exclusion; Advances by Declarant: Successor Declarant shall not be required to pay assessments for Lots or Community Property owned by it. The Successor Declarant may, but is not obligated to, fund all or any portion of the net operating deficit for the Association. In the event Successor Declarant does fund such deficit, the Successor Declarant shall be deemed to have made a loan to the Association which shall bear interest at the legal rate until paid. The loan to Declarant shall be paid within ninety (90) days of demand by Successor Declarant.

3. Purpose of Assessments: The Assessments levied by the Association may be used for the following purposes:

- (a) for the promotion of the recreation and welfare of the residents of the Property;

(b) for the payment of ad valorem taxes and public assessments levied on the Community Property or Limited Community Property, if any;

(c) for the maintenance and operation of any utility systems owned or used by the Association or the Owners;

(d) for the maintenance of private streets, roads, walkways, fences, and retaining walls within the Property, as well as all signs and lighting located thereon and adjacent thereto;

(e) for the Subdivision's share of the maintenance for the portion of Red Maple Drive and Starview Knoll (as located within Little Flat Creek Subdivision) used by the Lot Owners for access to the public road;

(f) for the maintenance of the Community Property or Limited Community Property and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Community Property or Limited Community Property, including any swimming pool, clubhouse, and/or furnishings therein;

(g) for landscape and yard work maintenance, including mowing of grass for all Property within the Community Property;

(h) for snow removal regarding all streets and sidewalks within the Property;

(i) for maintenance of the entrance area, which may include a secured gate; provided, that it is understood that any entrance gate is not to be construed as any representation or guaranty of security to residents of the Property;

(j) for the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws and the regulations of the Federal National Mortgage Association, such liability insurance to insure the Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Association requires;

(k) for the procurement and maintenance of officer and director liability insurance in such amounts as the Board deems sufficient;

(l) for the procurement and maintenance of fidelity bonds for all persons having access to funds of the Association;

(m) for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Association when necessary;

(n) to maintain a reasonable reserve for the foregoing purposes;

(o) for the mowing and maintenance of landscaping of Lots.

4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special

assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Community Property, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven (67%) percent of the allocated votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

5. Annual Assessments; Budget: Annual assessments shall be fixed by the Board of Directors of the Association. Prior to the beginning of each Fiscal Year, the Board of Directors of the Association shall approve an annual budget and fix the amount of the annual assessment against each Lot and send written notice of such assessment to every Owner subject thereto ratification procedures set forth in the Act and provided further that any budget approved by the Board shall be ratified unless seventy five (75%) of the allocated votes in the Association vote not to ratify the budget. The due dates of such assessments shall be as established by the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Declaration, subject to modification by action of the Board. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due. Assessments shall begin as to any Lot Owner the month following closing of the purchase of the Lot from Successor Declarant. The initial annual assessment is \$2,100.00 and is due and payable on the first day of each month in the amount of \$175.00 per month. The first month's payment (or prorated portion thereof for the month of closing) shall be collected and paid at the closing of the purchase of the Lot from the Successor Declarant. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating forth whether the assessment for a specified Lot have been paid.

6. Uniform Rate of Assessments: Both annual and special assessments must be fixed at a uniform rate for all Lots, subject to the exemptions for Lots owned by Successor Declarant.

7. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days of the due date, the assessment shall bear interest from the date of delinquency at a rate not to exceed 18% per year or the maximum interest rate then permitted by the Act, whichever is greater. Additionally, a late fee of Twenty-five and no/100ths Dollars (\$25.00) shall be assessed after ten (10) days from the due date of any assessment. The Board may, at its sole discretion, waive the imposition of interest to any delinquent assessment. The Association may bring an action in law against the owner personally obligated to pay the assessment and interest or file a claim of lien and foreclose the lien created therein in the same manner as allowed under the Act. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Community Property, or abandonment of his dwelling unit or Lot. In the event that an action at law results in a judgment being entered against the owner of any Lot and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of

the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed property manager.

8. Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any owner from the obligations to pay any assessments.

9. Subordination of Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to any mortgage or deed of trust which is a first lien on a Lot within Starview Heights. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a Lot Owner. Successor Declarant or Association shall notify by certified mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an owner prior to taking any action against such owner which would affect the mortgagee.

## **ARTICLE VII**

### **Insurance**

All owners of Lots on which dwelling units are located are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost thereof. All owners of Lots on which units are located shall have an affirmative obligation to provide the Successor Declarant or the Association with a copy of the declaration page of their current fire and extended coverage insurance policy. In the event of damage to or destruction of any dwelling unit which would be covered by a standard fire and extended coverage insurance policy, the owner of such dwelling unit shall have the affirmative responsibility of reconstructing or repairing it regardless of whether such owner has such a standard fire and extended coverage insurance policy. In the event of the owner's failure to repair or reconstruct such dwelling unit, the Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the assessment against the Lot upon which said dwelling unit is located, and collect such assessments pursuant to the provisions of Article VI.

## **ARTICLE VIII**

### **Easements**

1. Easements Established: All Lots and Community Property within the Subdivision shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television, electric power lines, and other utility services and ingress and egress and for other purposes as shall be established by Successor Declarant or the Association.

2. Road Rights-of-Way: All Lots within the Subdivision are serviced by certain road and/or road rights-of-way described on the Plat and such other plats to be recorded.

Successor Declarant does hereby dedicate said roads and rights of way as shown as private roadways for the use of the Lot Owners, their licensees, invitees, tenants, heirs, successors and assigns. As such, and pursuant to North Carolina General Statutes Section 136-102.6, all future Lot Owners acknowledge that the roads as shown on these plats are intended to be and remain private roads dedicated to the aforesaid private use and will not be developed in accordance with the minimum right-of-way and construction standards established by the North Carolina Department of Transportation for acceptance on the State highway system.

All Lots within the Subdivision will initially have access to the public road sometimes known as North Buncombe Road over and upon those existing road right-of-ways known as Red Maple Drive and Starview Knoll as such right-of-ways are shown on plats of Little Flat Creek Subdivision, which are recorded in the Buncombe County Public Registry. Both Red Maple Drive and Starview Knoll are currently privately maintained by the lot owners of Little Flat Creek Subdivision, but Red Maple Drive has been constructed to North Carolina Department of Transportation specifications and will be submitted to the State for public maintenance. Starview Knoll will remain a private road. By agreement with Little Flat Creek Subdivision, the Lot Owners of Starview Heights will share prorata in the maintenance and upkeep of the portions of Red Maple Drive and Starview Knoll used by the Lot Owners of Starview Heights for access to the Subdivision. The Association expressly assumes the obligation to pay the pro-rata portion attributable to Starview Lots and shall include the cost in its annual budget. To the extent, and only to the extent, that the Association fails to pay the road assessment, all Lot Owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of Red Maple Drive, Starview Knoll, and the Subdivision roads unless at such time in the future the Department of Transportation may assume the obligation for the maintenance of said roads and road rights of way.

3. Encroachments and Declarant's Easements to Correct Drainage: All Lots and the Community Property shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Successor Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a phase, the Successor Declarant reserves 'a blanket easement on, over and under the ground within that phase to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance, expressly including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Successor Declarant shall restore the affected property to its original condition to the extent practicable. Successor Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Successor Declarant. Nothing in this section shall be deemed to impose an obligation upon Successor Declarant to maintain and correct drainage and surface water conditions.

4. Easements to Buncombe County and Public or Private Utilities: A perpetual easement is hereby established for county, state or public or private utilities serving the area, and

their agents and employees, over all Community Property hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

5. Easement for Construction Purposes: Successor Declarant shall have full rights of ingress and egress to and through, over and about the Community Property during such period of time as Successor Declarant is engaged in any construction or improvement work on or within the Property. Successor Declarant shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No owner, his guests or invitees, shall in any way interfere or hamper Successor Declarant, its employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Successor Declarant or its contractors or subcontractors, so far as practical, shall not interfere with the quiet enjoyment of Lots within the Property.

6. Progress Energy Contract: The Successor Declarant reserves the right to subject the Property to a contract with Progress Energy for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy by the Association.

7. Encroachments Upon Adjoining Land of Successor Declarant: All other adjoining land of the Successor Declarant which is not expressly subject to this Declaration shall be subject to a perpetual easement for any improvements, roads, and utilities created, placed, or constructed for the benefit of the Subdivision, which may now or in the future encroach upon the said land of the Successor Declarant. This easement shall run with the land of the Successor Declarant for the benefit of the Lot Owners and the Association.

## ARTICLE IX Party Walls

1. General Rules of Law to Apply: Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply therein.

2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of dwelling units adjoining such party wall.

3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall equally contribute to the cost of restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Weatherproofing: Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. Right to Contribution Runs with the Land: The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. Arbitration: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, and such dispute cannot be resolved by voluntary mediated settlement conference by the parties, then each party shall choose one arbitrator, and such arbitrators shall choose on additional arbitrator, and the decision shall be by a majority of all the arbitrators pursuant to arbitration rules to be established by the arbitrators.

#### **ARTICLE X Maintenance**

Each Owner shall maintain any and all improvements on the Lot owned by it including dwellings and residences constructed thereon in a good and habitable condition consistent with the other residences in the Subdivision.

#### **ARTICLE XI Obligations to Mortgagees**

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include Deeds of Trust or other security instruments) encumbering any Lots located within the Property:

- (a) The Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any of such Owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;
- (b) First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Community Property;
- (c) No provision herein shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in Starview Heights pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Community Property.

#### **ARTICLE XII Starview Heights Property Owners' Association**

To provide for the continuing management of the Subdivision as contemplated in Article 3 of the Act, the Declarant has established a non-profit corporation known as the Starview

Heights Property Owners' Association (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of this Declaration, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Subdivision and of any Community Property or any other matter or area determined by the Association to be a common element or other area of common interest. The Board of Directors as established in the Bylaws of the Association shall constitute the Executive Board as defined in North Carolina General Statutes Section 47E-3-103 and shall be subject to the provisions of such statute, except as set forth in this Declaration or the terms of the Bylaws of the Association.

### **ARTICLE XIII General Matters**

1. Adjoining Properties and Governmental Actions: All Owners or potential owners do hereby acknowledge that Declarant nor Successor Declarant has made no representations as to uses of adjoining properties and Owners have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot with the Subdivision, such Owners do hereby understand and agree that Successor Declarant is not responsible for any activities or actions conducted on any property adjoining the Subdivision, or in any way relating to or arising out of any use of any property adjoining the Subdivision. The Owner of any Lot acknowledges that they have investigated on their own accord how such uses may affect the Subdivision and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot.

2. Enforcement: 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 Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Association or any Owner. Except for actions to recover past due assessments from an Owner or actions that may require immediate injunction relief, The Association will attempt to resolve disputes with Owners or the Successor Declarant by voluntary mediated settlement conference before filing an action to enforce this Declaration. In addition, the Association may impose reasonable fines pursuant to the Act against any Owner for violation of this Declaration. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other Owners to exercise any or all of the other remedies 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 on 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 a reasonable attorney's fee as a part of such action.

3. Binding Effect, Amendment and Modification: The Successor Declarant does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein



shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in this Declaration, during the Declarant Control Period, the Successor Declarant hereby reserves the absolute right to modify and/or to amend this Declaration in whole or in part in Successor Declarant's sole and absolute discretion as the Successor Declarant deems proper and appropriate. After the termination of the Successor Declarant Control Period, an amendment to this Declaration shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the Members sixty-seven percent (67%) of the votes allocated to Members of the Association are cast in favor of such amendment and once made, shall be come effective when recorded in the Buncombe County, North Carolina, Register's Office. Whenever herein the Successor Declarant has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Successor Declarant. Nothing herein shall require or shall be construed so as to require the Successor Declarant or its related persons or entities to subject all or any part of its remaining adjoining property to this Declaration.

4. Liability of Successor Declarant: Successor Declarant shall have no liability of any nature for actions or inactions by the Declarant, whether as Declarant or as developer. Furthermore, the Successor Declarant shall have no liability for any actions or inactions by any Person to which Special Declarant Rights are transferred, in whole or in part, which occur after the date of the recording of an assignment of Special Declarant Rights in the Registry. Successor Declarant may terminate or release any Special Declarant Rights, in whole or in part, by the recording of an instrument evidencing the termination or release.

[Execution Pages are Attached]

IN WITNESS WHEREOF, the Successor Declarant and Owners have hereunto set their hands and seals effective the day and year first above written.

ATLAS NC I SPE, LLC

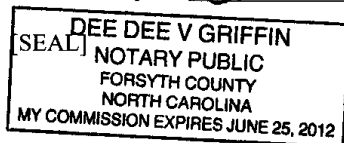
By: T. Shane Shuler

STATE OF NORTH CAROLINA  
COUNTY OF ~~BUNCOMBE~~ Forsyth

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of December, 2011, by T. Shane Shuler, as Vice President of ATLAS NC I SPE, LLC, a North Carolina Limited Liability Company.


Dee Dee V. Griffin  
Notary Public

My Commission Expires: 6/25/12



## CERTIFICATION

The undersigned hereby certifies that at meeting of the Starview Heights Property Owner' Association properly noticed and held on February 23, 2011, the foregoing Amendment to the Declaration was approved by more than 67% of the votes allocated to the Members .

  
Secretary

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