

**BY-LAWS OF**  
**THE ENCLAVE AT LAKE JAMES PROPERTY OWNERS ASSOCIATION, INC.**  
**A Nonprofit Corporation**  
**Under the Laws of the State of North Carolina**

**ARTICLE I**

**NAME AND LOCATION**

The name of the corporation is The Enclave at Lake James Property Owners Association, Inc., a North Carolina Nonprofit Corporation, hereinafter referred to as the "Association."

The principal of the corporation shall be located at 8209 South Mountain Institute Rd, Nebo, NC 28761, but meetings of members and directors may be held at such place within the State of North Carolina, Counties of Burke and McDowell or remotely, as may be designated by the Board of Directors.

**ARTICLE II**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to The Enclave at Lake James Property Owners Association, Inc., its successors and assigns.

Section 2. "Board" shall mean the duly elected board of directors for The Enclave at Lake James Property Owners Association, Inc.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Declarant" or "Developer" shall mean and refer to BFH Partners LLC, a North Carolina Corporation, its successors and assigns.

Section 5. "Declaration" shall mean and refer to the Declaration of Restrictive Covenants Easements and Conditions for The Enclave at Lake James recorded on 27<sup>th</sup> Day of September, in Deed Book 1256, at Pages 495-506, in the Register of Deeds Office for McDowell County, North Carolina and recorded on 28<sup>th</sup> Day of September, in Deed Book 2368, at Pages 783-794, in the Register of Deeds Office for Burke County, North Carolina

Section 6. "Lot" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers,

but excluding those having such interest merely as security for the performance of an obligation.

Section 9. “Properties” shall mean and refer to that certain real property described in the Declaration of Restrictive Covenants Easements and Conditions for The Enclave at Lake James, a Subdivision, as Amended, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

## ARTICLE III

### MEETING OF MEMBERS

Section 1. Annual Meetings. The annual meeting of the Association shall be held during the month of January, at a date, time and place, as determined by the Board of Directors, and each subsequent regular annual meeting of the Members shall be held during the month of January each year thereafter, at a date, time and place, as determined by the Board of Directors. If the day for the annual meeting of the Association is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. All meetings of the Association shall be conducted according to the most current edition of Robert’s Rules of Order.

Section 2. Special Meetings. Special meetings of the Association may be called at any time by the President or by the Board of Directors, or by 10% of the membership as provided in N.C. Code § 47F-3-108 (a) of the North Carolina Planned Community Act.

Section 3. Place of Meetings and Participation by Telephone Conference. All meetings of the Association Members shall be held via telephone or video conference or at a building, at such place, within McDowell and Burke Counties, North Carolina, as shall be determined by the Board; provided, however, that any one or more Association Members may participate in any regular or special meeting by means of a telephone conference or similar communications device that allows all Association Members participating in the meeting to simultaneously hear each other during the meeting, and such participation shall be deemed presence in person at such meeting.

Section 4. Notice of Meetings. Printed or electronic notice of each meeting of the Association shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mail or electronically, no less than ten (10) days nor more than sixty (60) days before such meetings to each member entitled to vote, addressed to the member’s mailing or electronic mail address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 5. Quorum. The presence at the meeting, including by telephone conference, of ten percent (10%) of the Members entitled to cast votes, or of proxies entitled to cast votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, including by telephone conference, the Members entitled to vote at the meeting present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 6. Proxies. At all meetings of the Association, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association or person

authorized no later than 5pm EST on the day prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot.

Section 7. Voting. Members shall be entitled to one (1) vote per lot owned, in accordance with the Declaration, and the Members shall have such voting rights as are described in and consistent with the Declaration, which is incorporated by reference thereto. Members with delinquent accounts at the time the vote occurs will not be entitled to vote.

## ARTICLE IV

### TERM OF OFFICE

Section 1. Number and Composition of the Board. The affairs of this Association shall be managed by a Board of at least three (3) directors but no more than seven (7) directors, who are Members of the Association. Directors shall be elected at the annual meeting.

Section 2. Term of Office. The initial Board that is elected under these By-Laws will decide among themselves to allocate their initial terms in the following manner: President, Vice President, Treasurer and Secretary are to serve one (1) year, additional directors are to serve two (2) years. In subsequent years, all director positions shall be elected for two (2) year terms. Directors are limited to serving no more than two consecutive terms. A Director desiring to serve a third term must sit out an election cycle.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association or by a majority vote of Board of Directors. In the event of death, resignation or removal of a director, his or her successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his or her predecessor.

Section 4. Vacancies. If any vacancies occur in the Board by reason of death, resignation, retirement, disqualification or removal from office of any director, the remaining directors, although less than a quorum, may by majority vote choose a successor or successors to fill the respective seat(s) vacated, subject to the composition requirements identified in Section 1, and the directors so chosen shall hold office until the next annual meeting of the Association.

Section 5. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 6. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

### NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The

Nominating Committee shall consist of a chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among the Members only.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these By-Laws. Cumulative voting is not permitted.

## ARTICLE VI

### MEETING OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. The Board shall provide lot owners an opportunity to attend a portion of a Board meeting and to speak to the Board about their issues or concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak. All meetings of the Board of Directors shall be conducted according to the most current edition of Robert's Rules of Order.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors.

Section 3. Notice. Notice for Regular meetings and Special meetings of the Board of Directors shall begin at least one (1) day in advance. Notice may be waived by the resolution of the Board of Directors.

Section 4. Quorum. A majority of the number of directors consisting of at least fifty percent (50%) shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5. Executive Session. In the event that matters arise at either a Regular Meeting or Special Meeting that pertain to matters of a legal, confidential or private matter that in the Board's discretion need to remain confidential or private, the Board may motion to convene into Executive Session where only the Board can be present and remove all non-Board participants, including Members from the meeting. At the end of the Executive Session, the Board shall motion to reconvene the public portion of the meeting and to continue the business of the Association.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days from infraction of published rules and regulations;
- (c) exercise for the Association all powers; duties and authority vested in or delegated to this Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, the Declaration, or the North Carolina Planned Community Act where applicable;
- (d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board of Directors; and
- (e) employ a manager, an independent contractor, professional service provider or such other employees as they deem necessary, and to delegate and prescribe their duties, including but not limited to those listed herein below in Section 2 of this Article VII.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration and these By-Laws, to:
  - (1) fix the amount of the annual assessment and any other assessment permitted by the Declaration against each Lot;
  - (2) pass any special assessments including any new construction fees for the maintenance and construction of the common areas, infrastructure and roads;
  - (3) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - (4) foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against the owner personally obligated to pay the same;

(d) issue, or to cause an appropriate officer to issue upon demand by any person a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) require all vendors and/or contractors having fiscal responsibilities to be bonded, in an amount deemed appropriate by the Board;

(h) cause the Common Area and the exterior of the residences including all landscaping, mail boxes, fences, and other improvements to be maintained in a manner consistent with the overall quality and appearance of the Properties; and

(i) in discharging his or her duties, a Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more officers or employees of the Association who the Director reasonably believes is reliable and competent in the matters presented;

(2) legal counsel, public accountants, or other persons as to matters the Director reasonably believes are within the person's professional or expert competence;

(3) a committee of the Board of Directors of which the Director is not a member, as to matters within its jurisdiction, if the Director reasonably believes the committee merits confidence;

**Section 3. Indemnity.** The Association shall indemnify any Director or officer or former Director or officer of the Association against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such Director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance duty.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

**Section 1. Election of officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

**Section 2. Term.** The officers of this Association shall be elected annually by the Board and each shall hold office for two (2) years, unless he or she shall sooner resign, or shall be removed, or

otherwise disqualified to serve.

Section 3. Special Appointments. The Board may elect such officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any other offices, except in the case of special offices created pursuant to Section 3 of this Article.

Section 7. Duties. The duties of the officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors and Association Membership; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes with the Treasurer.

Vice President

(b) The Vice President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

Secretary

(c) The Secretary shall record the votes and keep minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate records showing the Members of this Association, together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the

Membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE IX

### COMMITTEES

The Association shall appoint an Architectural Review Committee (or the Board shall serve as such committee), at such time, as is provided with greater specificity in the Declaration. The Association shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE X

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost or provided in electronic format.

## ARTICLE XI

### ASSESSMENTS AND FEES

Section 1. Assessment. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made.

Section 2. Review and Impact Fees. As more fully provided in the Declaration, each Member submitting building plans, specifications and plot plan for new construction to the Architectural Review Board (ARB) for approval shall include with the submission a one-time ARB review fee. Any submissions made without payment of the review fee shall be deemed incomplete and not reviewable by the ARB. Upon approval by the ARB, the Member will submit a construction impact fee payment for the maintenance, repair and upkeep of the subdivision roadways. Payment of the construction fee must be received before any construction shall commence.

Section 3. Delinquent Payment. Any assessments, including but not limited to the annual assessment, special assessments, construction fees or any other fine or penalty charged by the Association for a violation of the Declaration or By-Laws, which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of fifteen (15%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the Assessments provided for therein by non-use of the Common Area or abandonment of

his Lot.

## ARTICLE XII

### AMENDMENTS

Section 1. These By-Laws may be amended, at a Regular Meeting or Special Meeting of the Members, by a vote of fifty-one (51%) percent of the Members entitled to cast votes, or of proxies entitled to cast votes at a fully called Regular Meeting or Special Meeting.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

## ARTICLE XIII

### MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. Rules regarding the rights and obligations of Members, as well as rules regarding the Association, are stated in the Declaration, which Declaration is hereby incorporated by reference and by such act the Declaration, as it may be amended from time to time, is expressly made a part of these By-Laws.

These By-Laws are hereby certified to be the By-Laws of the Corporation.