

# **DECLARATIONS**

**For**

**ETOWAH'S REACH PROPERTY OWNERS ASSOCIATION**

**A Planned Community in Henderson County, North Carolina**

**Replaces ERPOA Declaration Dated December 2017**

## TABLE OF CONTENTS

Article	Page
1. Etowah's Reach Planned Community	5
2. Description of Etowah's Reach	5
Section 2.1    Name	5
Section 2.2    Location	5
Section 2.3    Composition	5
3. Lots	5
Section 3.1    Lot Descriptions	5
Section 3.2    Allocated Interests	5
4. Common Elements	6
Section 4.1    Common Elements	6
Section 4.2    Conveyance or Encumbrance	6
Section 4.3    Use	6
Section 4.4    Restrictions	6
5. Association of Lot Owners	7
Section 5.1    Association Authority	7
Section 5.2    Powers and Duties	7
6. Use Restrictions and Purpose	7
Section 6.1    Restrictions in General	7
Section 6.2    Residential	7
Section 6.3    Business Activities	7
Section 6.4    Construction	7
Section 6.5    Vehicles	7
Section 6.6    Animals	8
Section 6.7    Subdividing	8
Section 6.8    Nuisances	8
Section 6.9    Lawful Use	8
Section 6.10    Rules and Regulations	8
Section 6.11    Leasing	9
Section 6.12    Time-Sharing	9
Section 6.13    Water Flow	9
Section 6.14    Political Signs	9
7. Insurance	9
Section 7.1    Coverage	9

8. Damage, Repair, and Reconstruction of Common Elements	9
Section 8.1 Duty to Repair	9
Section 8.2 Repair and Reconstruction	9
9. Easements and Additional Rights	10
Section 9.1 Enjoyment of Common Elements	10
Section 9.2 Utility Easements	11
10. Assessment and Collection of Common Expenses	11
Section 10.1 Purpose of Assessments	11
Section 10.2 Apportionment of Expenses	11
Section 10.3 Expenses Attributable to Fewer than All Lots	11
Section 10.4 Lien for Assessments	11
Section 10.5 Annual Assessment	11
Section 10.6 Personal Liability of Lot Owners	12
Section 10.7 Liability for Common Expenses	12
Section 10.8 Special Assessments	12
11. Fiscal Responsibility	12
12. Leases and Sales	12
Section 12.1 Renting or Leasing of a Residence	12
Section 12.2 Sale of Residence	13
13. Architectural Standards and Controls	14
Section 13.1 Dwelling Type	14
Section 13.2 Dwelling Height	14
Section 13.3 Dwelling Appearance	14
Section 13.4 Dwelling Exterior	14
Section 13.5 Dwelling Location	14
Section 13.6 Antennas	14
Section 13.7 Approval	14
Section 13.8 Solar Collectors	14
14. Maintenance Responsibility	15
Section 14.1 By the Association	15
Section 14.2 Restrictions on Lot Owners	15
Section 14.3 Responsibility for Damages	15
Section 14.4 Insurance Deductibles	15
15. Enforcement Procedures	15
Section 15.1 Violation Identification	15
Section 15.2 Hearing	15
Section 15.3 Demand Letter	15
Section 15.4 Sanction	16
Section 15.5 Sanction Guidelines	16

16. Condemnation	17
17. Miscellaneous Provisions	17
Section 17.1 Gender	17
Section 17.2 Captions	17
Section 17.3 Waiver	17
Section 17.4 Invalidity	17
Section 17.5 Conflict	17
Section 17.6 Disputes	18
Section 17.7 Grandfathering	18
Section 17.8 Appeals	18
18. Amendments	18
19. Renewal and Termination	19
20. Definitions	19
Section 20.1 Declaration	19
Section 20.2 Bylaws	19
Section 20.3 Documents	19
Section 20.4 Association	19
Section 20.5 Board	19
Section 20.6 Agenda	19
Section 20.7 Voting Quorum	19
Section 20.8 Ballot	19
Section 20.9 Voting	20
Section 20.10 Eligible Voter	20
Section 20.11 Lot	20
Section 20.12 Lot Owner	20
Section 20.13 Association Member	20
Section 20.14 Renter	20
Section 20.15 Common Expenses	20
Section 20.16 Operating Budget	20
Section 20.17 Capital Budget	20
Section 20.18 Operating Fund	20
Section 20.19 Reserve Fund	20
Section 20.20 Contingency	21
Section 20.21 Assessments	21
Section 20.22 Reasonable Attorneys' Fees	21
Section 20.23 Political Sign	21
Certification of Documents	22
Appendix A. North Carolina Planned Community Act	23
Appendix B. Description of the Property Known as Etowah's Reach	24

## **Article 1**

### **Etowah's Reach Planned Community**

Etowah's Reach, a Planned Community, shall not be bound by the provisions of the *North Carolina Planned Community Act (N.C. Gen. Stat., Chapter 47F)* in its entirety nor shall Etowah's Reach be bound by Section 47F-3-107.1. As required by the *North Carolina Planned Community Act* for planned communities formed prior to January 1, 1999, Etowah's Reach will be governed by Sections: G.S. 47F-3-102 Powers of owners' association (1) through (6) and (11) through (17); G.S. 47F-3-107 Upkeep of planned community; responsibility and assessments for damages (a), (b), and (c), G.S. 47F-3-115 Assessments for common expenses, and G.S. 47F-3-116 Lien for assessments. The full text of these Sections are in Appendix A.

## **Article 2**

### **Description of Etowah's Reach**

**Section 2.1 Name.** The name of the Planned Community is Etowah's Reach.

**Section 2.2 Location.** Etowah's Reach is located in Henderson County, North Carolina. Metes and bounds, descriptions, constituting Etowah's Reach are in Appendix B, which is the same description that is attached to the Original Declaration recorded in Deed Book 707 at Page 321 of the Henderson County Registry of Deeds. It is also the real property depicted on plats recorded in Plat Cabinet A at Slide 309A and Slide 310 of the Henderson County Registry.

**Section 2.3 Composition.** Etowah's Reach is made up of ninety-eight separate lots plus common elements which are for the use and enjoyment of lot owners.

## **Article 3**

### **Lots**

**Section 3.1 Lot Descriptions.** There are ninety-eight (98) separate Lots in Etowah's Reach. These Lots are shown and described on plats recorded in the Henderson County Registry and particularly described in the deeds of individual lot owners.

**Section 3.2 Allocated Interests.** The allocated interest in the common expense liability of and votes in the Etowah's Reach Property Owners Association, Inc. for each Lot is equal. There are ninety-eight (98) Lots, so the interest of each Lot is 1.0204 percent. Common expenses shall be shared by Lot Owners on the basis of the allocated interest of each Lot. Each Lot shall have one (1) vote on every matter for which a vote of the membership of the Association is required by the Documents.

## Article 4

### Common Elements

**Section 4.1 Common Elements.** Common Elements are the properties and facilities in Etowah's Reach owned by the Association.

**Section 4.2 Conveyance or Encumbrance.** The Common Elements shall be neither encumbered nor conveyed except as provided in this *Declaration*, the *Bylaws*, and Section 47F-3-115 of the Planned Community Act.

**Section 4.3 Use.** Each owner of a Lot shall have an easement over and the right to use the Common Elements in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of owners of other Lots. The Board shall, if any question arises, determine the purpose for which a part of the Common Elements is intended for use. The Board shall have the right to put into effect rules and regulations limiting the use of some or all of the Common Elements and to put into effect rules and regulations to provide for the exclusive use of a part of the Common Elements for special occasions, which exclusive use may be conditioned upon, among other things, payment of a fee. Any lot owner may delegate, in accordance with the provisions of this *Declaration*, the *Bylaws*, and *Rules and Regulations*, the right to use the Common Elements to immediate family members living on the Lot, to a limited number of guests, or to tenants who reside on the Lot.

### **Section 4.4 Restrictions.**

- a) **Construction.** Construction on and making structural alterations or modifications, excluding emergency repairs and replacement, to any of the Common Elements requires Association approval. This approval is described in Article 10, Section 10.8 of this *Declaration* (page 12).
- b) **Prohibitions.**
  - 1) The Common Elements shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind.
  - 2) No activities shall take place on the Common Elements, if such activities should despoil, or tend to despoil, the appearance of Etowah's Reach.
- c) **Ownership Restrictions.** The Association shall not abandon, partition, partition proceeding, subdivide, sell or transfer any portion of the Common Elements unless the Association is terminated in accordance with Article 19 of this *Declaration* (page 18).

## **Article 5**

### **Association of Lot Owners**

**Section 5.1 Association Authority.** The Association shall manage and administer the affairs of Etowah's Reach and shall have all powers and duties granted to it in the Documents (Documents are defined in Article 20, Section 20.3).

**Section 5.2 Powers and Duties.** The Association shall have the powers and duties necessary for the administration of the affairs of Etowah's Reach which shall include, but not be limited to, those described in Section 47F-3-102 (1) through (6) and (11) through (17) of the *North Carolina Planned Community Act*.

## **Article 6**

### **Use Restrictions**

**Section 6.1 Restrictions in General.** The Lots and Common Elements of the Etowah's Reach are subject to the restrictions contained in this *Declaration* and as may be set forth in the *Bylaws* and *Rules and Regulations* of the Association. The acceptance of a deed or the exercise of any incident of ownership or the entering into a lease or the entering into occupancy of a Lot constitutes agreement that the provisions of the *Declaration*, *Bylaws*, and *Rules and Regulations* are accepted by and are binding on all Lot Owners and their families, renters, and guests.

**Section 6.2 Residential.** Each of the Lots in the Etowah's Reach shall be restricted exclusively to single-family residential use and shall be occupied only by a single family, its nurses, aides, servants, or caretakers, and guests.

**Section 6.3 Business Activities.** The Lots and Common Elements of Etowah's Reach shall not be used in any way or for any purpose which may endanger the health of or unreasonably disturb the owner of any Lot or any resident thereof. The Board shall, in its sole discretion, determine what constitutes business activity, health hazard, or unreasonable disturbance.

**Section 6.4 Construction.** There shall not be erected on any Lot an addition to a dwelling, a detached structure, or a replacement structure except in accordance with Article 13 of this *Declaration* (page 14).

#### **Section 6.5 Vehicles.**

(a) Self propelled and towed licensed and unlicensed vehicles such as recreational vehicles, motor homes, conversion vans, campers, ATVs, utility trailers, boats, boat trailers, and similar vehicles must be stored in a garage behind closed doors. However these vehicles may be parked outdoors on the driveway for up to five (5) days within a 30 day period, excluding day in and day out without approval of the Board.

The parking area in front of the Clubhouse can be used as an alternative parking area with prior Board approval. All vehicle parking is restricted to paved areas.

(b). Vehicles used by the Lot owner or family members, or house guests for obvious commercial purposes as indicated by words or symbols on the vehicles or visible equipment must be parked overnight behind closed garage doors..

(c) Modified vehicles, i.e. any officially designated handicapped plated conversion vans, for residents or guests are exempt from the five (5) day parking restrictions.

**Section 6.6 Animals.** Only domesticated indoor pets may be kept in Etowah's Reach. Pets may not be commercially bred. Pets shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odour, unsanitary conditions, or other nuisance. Whenever such pet leaves the lot, then the pet must be restrained by a leash and any animal droppings which occur during such time must be immediately collected by the owner. Felines are an exception to the preceding 'pets must be restrained by a leash' condition, however, when outside the residence, felines must wear a collar fitted with an audible bell. Service animals for persons with disabilities are the exception.

**Section 6.7 Subdividing.** No Lot may be divided or subdivided into smaller lots, nor any portion thereof sold or otherwise transferred.

**Section 6.8 Nuisances.** No nuisances shall be allowed in Etowah's Reach and no person shall engage in any use, practice, or activity upon such Lot which is noxious, offensive, or a source of annoyance to owners and occupants of other Lots or which reasonably interferes with the peaceful possession and proper use of any Lot. All parts of Etowah's Reach shall be kept in a clean and non hazardous condition. Any lot owner (or his family, tenants, guests or agents) who dumps or places trash or debris upon any portion of Etowah's Reach shall be liable for its removal and damage correction.

**Section 6.9 Lawful Use.** No immoral, improper, or unlawful use shall be made of Etowah's Reach nor any part thereof. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

**Section 6.10 Rules and Regulations.** The Board may from time to time put into effect reasonable rules and regulations consistent with the covenants set out in this Article after consulting with their appropriate committee(s). Rules and regulations shall be binding upon owners and occupants of all Lots until cancelled. Changes, additions or modifications must first be published in the ERPOA Monthly Newsletter and approved by the Board at the following scheduled monthly meeting after publication. Cancelling or modifying requires a majority of lot owners (50). Such rules and regulations shall be enforced by the Board in accordance with the *Declaration* and *Bylaws* to include, but not be limited to, the imposition of penalties.



Section 6.11 **Leasing.** Leasing of a house on any Lot shall be conducted as set forth in Article 12 of this *Declaration* (page 13).

Section 6.12 **Time-Sharing.** Time-sharing and time shares in Etowah's Reach and any activity defined by G.S. 47A Unit Ownership is prohibited.

Section 6.13 **Water Flow.** The control of water flow by way of inlets, culverts, ditches, swales, surface gradients, and the like that were provided during the development of Etowah's Reach shall not be altered in any manner which will cause such water to be unnaturally retained on an adjacent lot or which will cause water to flow on to an adjacent lot at a different place or in a different manner. Lot owners may alter the existing control of water flow only when affected lot owners fully agree on the alteration and only when it can be guaranteed that the alteration will not change the situations on streets and lots upstream and downstream from their lots. Etowah's Reach is not in a flood plain.

Section 6.14 **Political Signs.** A single rectangular political sign with maximum dimensions of 24 inches by 24 inches may be placed on the lot providing it is not displayed earlier than 45 days before the day of the applicable election nor later than 7 days after the applicable election. Political signs of any type shall not be displayed at any time in any window or on the exterior of any residence.

## **Article 7**

### **Insurance**

Section 7.1 **Coverage.** The Association shall obtain and maintain insurance coverage as a common expense for, but not limited to, damage and destruction to common elements and structures thereon and legal liabilities of the Association and its representatives.

## **Article 8**

### **Damage, Repair and Reconstruction of Common Elements**

Section 8.1 **Duty to Repair.** In the event that all or any part of the Common Elements of Etowah's Reach shall be damaged or destroyed, the common elements shall be repaired or replaced and proceeds of insurance shall be used for that purpose.

Section 8.2 **Repair and Reconstruction.** The Board or its duly authorized agents shall arrange for the prompt repair and reconstruction of all damaged Common Elements and structures thereon. The procedure for repair and construction shall be as follows:

- a) Cost Estimates. Immediately after a fire or other casualty causing damage to the common elements, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring any structures to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary. Any contract awarded to a contractor shall require that the contractor be licensed, be bonded, and have liability insurance.
- b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the said estimated costs of reconstruction and repair, 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, the Association may elect to use available monies in the Reserve Funds provided replacement is accomplished one (1) year prior to when the obligated reserve fund monies are needed. If borrowing from the Reserve Funds does not provide sufficient monies, assessments shall be made against all Lots. Such assessments require Association approval. This approval requires a majority of lot owners (50). If, after repair and reconstruction is completed, there is a surplus of funds, such funds shall be returned to the lot owners who were assessed.
- c) Reconstruction Fund. The net proceeds of the insurance collected on account of a casualty and the funds from assessments shall constitute a reconstruction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.
- d) Method of Disbursement. The reconstruction fund shall be disbursed by the Board in appropriate progress payments to such contractor(s) performing the work or supplying materials or services for the repair and reconstruction of the buildings and grounds. All contracts shall include lien waivers.

## **Article 9**

### **Easements and Additional Rights**

**Section 9.1 Enjoyment of Common Elements.** Every owner of a Lot shall have a right and easement of enjoyment in, to, and over the Common Elements, and the easement granted herein shall be an addition to and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Association to suspend the voting rights and rights to use of the Common Elements by an owner of a Lot for any period during which any Assessment against that Lot remains unpaid for a period of sixty (60) days or more or for any infraction of its published rules and regulations (Appendix A, Section 47F-03-102, Items 11&12, page 23)

- b) The right of the Association to limit the number of guests on the Common Elements;
- c) The right of the Association to determine the time and manner of use of the Common Elements by owners of Lots.
- d) If the owner of a Lot leases his/her residence, that owner shall transfer and assign to the lessee for the term of the lease any and all rights and privileges that the owner has to use the Common Elements. That owner, shall during the term of such lease, have no rights to the use of the Common Elements unless invited as a guest.

Section 9.2 Utility Easements. Should any utility company request a specific easement on the Common Elements, the Board, with guidance from the members of Association, shall have the right to grant such easement.

## **Article 10**

### **Assessment and Collection of Common Expenses**

Section 10.1 Purpose of Assessments. The assessments for common expenses shall be for those common expenses as described in Section 47F-3-115 of the *North Carolina Planned Community Act* and as otherwise provided for in the Documents.

Section 10.2 Apportionment of Expenses. Except as set forth in this Article, common expenses of the Association shall be assessed against all Lots in accordance with the allocated interests in the common expenses as set forth in this *Declaration*.

#### **Section 10.3 Expenses Attributable to Fewer than All Lots.**

- a) If any common expense is caused by the negligence or misconduct of any lot owner(s) or lot occupant(s), the Association may assess that expense exclusively against those Lot(s).
- b) Fees, charges, late charges, fines, all collection costs, including reasonable attorney's fees actually incurred and interest charged against a Lot Owner pursuant to *Declaration*, the *Bylaws* and the *Rules and Regulations* are enforceable as common expense assessments.

Section 10.4 Lien for Assessments. Liens for assessments are as described in Section 47F-3-116 of the *North Carolina Planned Community Act* and as otherwise provided for in the Documents.

Section 10.5 Annual Assessment. The annual assessment covering the estimated operating costs of the Association for the coming calendar year shall be determined prior to December 31 of the year preceding the year for which the assessment has been made.

Section 10.6 Liability of Lots. At the time any Lot common expense assessment or

portion thereof is due and payable, the lot owner is personally liable for such assessment, for any interest, if applicable, and for all costs of collection including, but not limited to, reasonable attorney's fees actually incurred.

**Section 10.7 Liability for Common Expenses.** No Lot shall be exempt from liability for payment of the common expenses by the lot owner's waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the assessments are made.

**Section 10.8 Special Assessments.** The Board may request special assessments for the repair of and/or construction on the Common Elements. Such assessments shall require Association approval. This approval requires a ***majority of lot owners (50.)***

## **Article 11**

### **Fiscal Responsibility**

The Board is charged with the responsibility of the financial well being of the Association. This responsibility shall be discharged by annually submitting to the Members of the Association for their approval of the following:

- a) A calendar year operating budget.
- b) A calendar year capital budget.

The Board shall maintain a reserve fund that is funded by an end-of-fiscal-year transfer. The amount of the transfer shall be the sum of the calculated contributions needed to build the fund to a level estimated to be adequate at the time of need.

The Board shall provide the Members with monthly fiscal reports.

## **Article 12**

### **Leases and Sales**

In order to protect the value of all the Lots, the sale or leasing of a residence on a Lot shall be subject to the following provisions:

**Section 12.1 Renting or Leasing of a Residence.** Residences may be rented only in their entirety and only to a single family; no fraction or portion may be rented. Residences may not be rented for terms less than six (6) consecutive months. All leases and lessees are subject to the provisions of the Declaration, Bylaws, and Rules and Regulations. The lot owner must make available to the tenant copies of the Declaration, Bylaws, and Rules and Regulations. The lot owner (or their agent) is required to notify the Board that the residence has been leased/rented and to provide the name of the tenant. This is to be done within 15 days of consummating the lease/rental agreement but not later than when the tenant takes up residence. Similarly,

when the tenant departs, the lot owner is required to notify the Board.

"Leasing" for purposes of this *Declaration* is defined as regular occupancy of a residence on a Lot by any person other than the lot owner for which the lot owner receives any consideration or benefit, including a fee, service, gratuity, or gain.

Any lease of a residence in Etowah's Reach shall be deemed to contain the following provisions, whether or not expressly therein stated, and each lot owner covenants and agrees that any lease of a residence shall contain the following language and agrees that if such language is not incorporated into a lease such covenants nevertheless apply to the residence through the existence of this covenant. Any lessee, by occupancy in a residence, agrees to the applicability of this covenant and incorporation of the following language into the lease:

- a) Liability for Assessments. All unpaid common expense assessments, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee shall be the responsibility of the owner of the Lot.
- b) Compliance with the *Declaration, Bylaws and Rules and Regulations*. Lessee agrees to abide by and comply with all provisions of the *Declaration, Bylaws*, and *Rules and Regulations* adopted pursuant thereto. Lot owner agrees to cause all occupants of the Lot to comply with the *Declaration, Bylaws*, and *Rules and Regulations* adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the residence are fully liable and may be sanctioned for any violation of the *Declaration, Bylaws*, and *Rules and Regulations* adopted pursuant thereto.

Any violation of the adopted Documents is deemed to be a violation of the terms of the lease. Should the violations impact the well-being of the community, the Association may take action against the owner of the Lot in accordance with Article 15 of this *Declaration* (page 15).

**Section 12.2 Sale of a Residence.** When a residence is sold, the Lot owner shall:

- a) Provide the Association Secretary and the Association Treasurer with the sale date and the buyer name.
- b) Convey to the buyer the binder containing the current Etowah's Reach governance documents.
- c) Have paid the operating assessment up to and including the month of the sale, any unpaid special assessments, and any unpaid fees, fines, etc.

## **Article 13**

### **Architectural Standards and Control**

Lot owners may replace or make exterior changes subject to the provisions of this Article, the *Rules and Regulations* of the Association, and applicable laws and ordinances.

**Section 13.1 Dwelling Type.** Only single family dwellings with a basic heated living area of 1350 sq. ft. or more shall be constructed.

**Section 13.2 Dwelling Height.** Dwelling height shall be limited to two living area stories and no more than one story shall face the highest elevation street.

**Section 13.3 Dwelling Appearance.** Dwellings shall be constructed consistent with existing dwellings by means of exterior shape and building materials.

**Section 13.4 Dwelling Exterior.** No dwelling shall have exposed unfinished concrete or block construction.

**Section 13.5 Dwelling Location.** The closest side of a dwelling or attached structure shall be at least 15 feet from the nearest street right-of-way line, at least 10 feet from the rear property line, and at least 8 feet from a side property line.

**Section 13.6 Antennas.**

- a) Satellite dishes one (1) meter (39 inches) or less in diameter are permitted.
- b) Television antennas are permitted pursuant to the 1996 FCC adoption of the OTARD rule.
- c) All other exterior antennas for radio, citizen band, ham radio, or any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals on a Lot, whether attached to a building or free standing are prohibited.

**Section 13.7 Approval.** Prior to exterior construction or reconstruction of any dwelling, portion thereof, or attachment, plans must be submitted through the Architectural Review Committee for Board approval.

**Section 13.8 Solar Collectors.** Roof mounted solar collectors are permitted, but location and aesthetics must be approved by the Architectural Review Committee.

## **Article 14**

### **Maintenance Responsibility**

**Section 14.1 By the Association.** The Association shall maintain and keep in good repair, as a common expense, all Common Element facilities and areas.

**Section 14.2 Restrictions on Lot Owners.** No lot owner shall perform or cause to be performed any maintenance, repair, or replacement work upon his or her Lot which disturbs the rights of the other lot owners. No Lot or residence thereon shall be devalued by deed.

**Section 14.3 Responsibility for Damages.** If damage for which a lot owner is legally responsible is inflicted on the property of another lot owner, the lot owner responsible for the damage shall repair such damage.

If damage is inflicted on any Lot by an agent of the Association in the scope of his/her activities as such agent, the Association is liable to repair such damage or to reimburse the lot owner for the cost of repairing such damages. The Association shall also be liable for any losses to the lot owner.

**Section 14.4 Insurance Deductibles.** If repair of the common elements is required as a result of an insured loss, the amount of the deductible shall be paid by the Association. However, if such repair is required because of an act or omission of a lot owner, or his or her immediate family member(s), guest(s), tenant(s) or lessee(s), the lot owner shall pay the amount of the deductible.

## **Article 15**

### **Enforcement Procedures**

**Section 15.1 Violation Identification.** The Hearing committee shall review the violation form to determine if a hearing is needed. This review shall take place within fifteen (10) days from the receipt of the form by the committee chair.

**Section 15.2 Hearing.** If a property owner believes there is a possible violation of ERPOA Governing Documents, a hearing shall be held no later than twenty five (25) days from the receipt of the Violation Identification Form. If the Hearing Committee determines a violation has occurred, it presents its findings and recommendations to the Board of Directors (BOD) at a private meeting before notifying the alleged violator. The BOD has authority to accept the Hearing Committee's recommendations or present an alternative course of action. If ruled against, within ten (10) days of notice, the violator may request from the BOD an appeals hearing and shall be given an opportunity to present statements, evidence, and witnesses. The BOD will set the date for the hearing. The BOD shall render its decision no later than five (5) days after the appeals hearing, (reference Hearing Committee SOP.)

**Section 15.3 Demand Letter.** Upon determining that there is a violation, a written demand to cease and desist shall be served to the property owner within ten (10) days

of the Hearing. The Letter shall be signed by the BOD and will be delivered by certified mail. This written demand shall specify: (i) description of the violation referencing the section(s) in the governing documents that have been violated; (ii) the action required to abate the violation; (iii) a time period, not less than ten (10) days and not more than thirty (30) days during which the violation must be abated without sanction. However, should the violation persist, a sanction will be imposed. Once a violation has been filed, the property owner cannot file for a waiver per Article 17, Section 3, *Waiver*.

**Section 15.4 Sanction.** If the violation(s) continue past the period allowed in the written Demand Letter for abatement, the Board will impose a fine by giving the property owner written notice of such within one (1) month of the termination of the period stated in the Demand Letter. Upon the decision of a majority of the BOD, fines will be imposed per the following guidelines.

**Section 15.5 Sanction Guidelines.** Fines imposed by the Board of Directors for violations to ERPOA Declarations, Bylaws, and Rules and Regulations will be levied as follows:

**Level 1 Fine:** a fine of \$25.00 per month compounded monthly.

**Level 2 Fine:** a fine of \$50.00 per month compounded monthly.

**Level 3 Fine:** a fine of \$100.00 per month compounded monthly.

Compounded is defined as the amount of the fine added to itself each month it is unpaid. Example: a **Level 1 Fine of \$25.00** is due by the first day of the following month of the unsatisfied correction of violation. Thereafter, on the first day of each successive month of nonpayment and uncorrected violation, the fine is added to its previous month's balance; i.e. the first day of the second month the balance of fine becomes \$50.00, the first day of the third month the fine balance becomes \$75.00.

- Fines will begin at **Level 1 (\$25.00 per month)** for three (3) successive months.
- If unpaid and the violation is not corrected, the fine will advance to **Level 2 (\$50.00 per month)** beginning on the forth month and proceed at this level for an additional three (3) months.
- If unpaid and the violation is not corrected, the fine will advance to **Level 3 (\$100.00 per month)** on the seventh (7) month and proceed at this level for six months.
- At the end of 12 months that fines have been imposed, if the balance of fines have not been paid and the violation has not been corrected, the BOD will proceed to place a lien on the property owner's residence. The property owner will be responsible for all court filing fees, attorney fees, and all other fees that may be imposed regarding the said property.
- After the lien has been imposed and filed with the county, fines continue to accrue at **Level 3 (\$100.00 per month)**. Fines will continue over the life of the unpaid balance and uncorrected violation. Upon surrender of the resident's property, (example; selling the property to a new owner or property becomes an asset in an estate and a new deed is filed), the lien becomes satisfied from the financial transaction.



## **Article 16**

### **Condemnation**

If part or all of the Common Elements of Etowah's Reach are taken by eminent domain, all compensation and damages for and on account of the taking shall be distributed to the Lots in equal parts.

## **Article 17**

### **Miscellaneous Provisions**

**Section 17.1 Gender.** The use of the masculine gender also refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so requires.

**Section 17.2 Captions.** The captions used in the Documents are used only for convenience and reference and in no way define, limit, or describe the scope of a particular Document or the intent of any provision thereof.

**Section 17.3 Waiver.**

- a) No provision contained in the Documents is abolished or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- b) A waiver may be granted when a lot owner can show that a strict interpretation of a restriction or rule is not appropriate for the identified situation. A request for a waiver will be accepted only if the *Waiver Request* form is submitted.

A waiver will not be based on the existence of any non-conforming situations in Etowah's Reach.

The granting of a waiver shall not serve to waive any of the restrictions or provisions of the Etowah's Reach governance documents for any purpose except as to the particular Lot and the particular provision covered by the waiver.

The decision to grant a waiver shall be made by a Waiver Committee of five (5) residents appointed by the Board of Directors; none of whom are a member of the Board of Directors, the Architectural Review Committee, or the Hearing Committee.

**Section 17.4 Invalidity.** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforcement, or effect of the remainder, and in such event, all of the other provisions of the Documents shall continue in full force and effect.

**Section 17.5 Conflict.** The Documents are intended to comply with applicable requirements of the *North Carolina Planned Community Act* and of the *North Carolina Non-profit Corporation Act (N.C. Gen. Stat., Chapter 55-A)*. In the event of any conflict

between the Documents and the provisions of the statutes, the provisions of the statutes shall control. In the event of any conflict between this *Declaration* and any other document, this *Declaration* shall control. In the event of any conflict between the *Bylaws* and the Association's *Rules and Regulations*, the *Bylaws* shall prevail.

Section 17.6 Disputes. Lot owners and their family members, tenants and their family members, or guests claiming a right of action against the Association shall agree to mediate the issue.

Section 17.7 Grandfathering. When these documents go into effect:

- a) Existing non-compliance situations affecting other lot owners must be identified within three (3) months and brought into compliance within nine (9) months after identification.
- b) Existing non-compliance situations not affecting other lot owners are allowed to remain. However, when a change is proposed for such a non-compliance situation, the change must bring the situation into compliance.

Section 17.8 Appeals. An appeal may be made in the following situations;

- 1. If a lot owner accused of violating a restriction feels that the Hearing Committee did not properly consider all facts.
- 2. If a lot owner feels that their request waiver was not properly considered by the Waiver Committee.
- 3. If a lot owner feels that their proposal for change in the Architecture Committee was not properly considered.
- 4. The Hearing body for such appeals shall be the Board of Directors. The appeal must be filed within fifteen (15) days of the issuance of the committee response.

## **Article 18**

### **Amendments**

This *Declaration* of Etowah's Reach may be amended only by the Eligible Voters Approval to amend requires a majority of lot owners (50). Notice of the Special Meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. Amendments shall become effective upon being recorded in the office of the Register of Deeds of Henderson County, North Carolina.

## **Article 19**

### **Renewal and Termination**

This *Declaration* shall run for twenty-five (25) years from the date of adoption and shall automatically renew for periods of twenty-five (25) years or until such time that an amendment, a new *Declaration*, or termination shall occur.

Termination of Etowah's Reach (the Planned Community) shall require Association approval. This approval requires a North Carolina Mandated Voting Majority.

## **Article 20**

### **Definitions**

The following terms as used in the *Declaration* and *Bylaws* for Etowah's Reach (the Planned Community) shall have the following meanings:

Section 20.1 **Declaration** means this restated *Declaration* for Etowah's Reach, and including any duly recorded future amendments to the *Declaration*.

Section 20.2 **Bylaws** means the restated Bylaws of Etowah's Reach Property Owners Association, Inc. attached hereto and any future amendments.

Section 20.3 **Documents** mean the *Declaration*, Plats and/or Deeds recorded and filed for real property making up Etowah's Reach, the *Articles of Incorporation of Etowah's Reach Property Owners Association, Inc.*, the *Bylaws*, and the *Rules and Regulations* as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Document is part of that Document.

Section 20.4 **Association** means Etowah's Reach Property Owners Association, Inc., a North Carolina non-profit corporation and its successors.

Section 20.5 **Board** means the Board of Directors of Etowah's Reach Property Owners Association, Inc. which is the governing body on behalf of and for the Association.

Section 20.6 **Agenda** means the list of items of business to be brought before a meeting. Once accepted after the opportunity for agenda revisions, it shall not be changed.

Section 20.7 **Voting Requirements** means the minimum number of affirmative votes needed for decisions to have legal standing. There are two voting categories:

- a. Majority of lot owners (50)
- b. North Carolina Mandated requiring 79 lot owners voting and a minimum of 67 affirmative votes

Section 20.8 **Ballot** means a confidential form used by eligible voters of the Association to cast their vote.

Section 20.9 **Voting** means the act of voting on Association business by eligible voters.

Section 20.10 **Eligible Voter** means the person authorized to cast a vote for a Lot whose voting right has not been suspended in accordance with Article 9, Section 9.1, Paragraph (a) of this *Declaration* (page 10).

Section 20.11 **Lot** means the physical portion of Etowah's Reach designated for separate ownership and occupancy.

Section 20.12 **Lot Owner** means the legal owner of a lot, but does not include a person having an interest in a lot solely as security for an obligation.

Section 20.13 **Association Member** means Etowah's Reach lot owners and family members permanently living with them. Membership in the Association for each person is automatic.

Section 20.14 **Renter** means a person or a single family renting a home in Etowah's Reach. The renter has, if the Lot assessments are paid, the use of the common elements and may participate in all Association social activities. A renter does not have Association voting privileges.

Section 20.15 **Common Expenses** mean expenditures made by or financial liabilities incurred for the operation of or connected in any way with Etowah's Reach. These include:

- a) Expenses of administration, maintenance, repair or replacement of the common elements;
- b) Expenses defined, referred to, or declared to be common expenses by the Documents;
- c) Expenses agreed upon as common expenses by the Association; and
- d) Such reasonable reserves as may be established or allocated by the Association, whether held in trust or by the Association, for repair, replacement or addition to the common elements or any other real or personal property acquired or held by the Association.

Section 20.16 **Operating Budget** means a budget that covers reoccurring and necessary expenditures and revenues that allow the Association to function during the fiscal year as required by the Documents.

Section 20.17 **Capital Budget** means a budget that covers Common Expenses (See Section 20.15) categorized as capital expenditure projects (replacement, acquisition, and construction) expected to be undertaken within the fiscal year.

Section 20.18 **Operating Fund** means monies available to pay for day-to-day expenses, emergency expenses, and unexpected expenses. The Operating Fund consists of all monies not in the Reserve Fund.

Section 20.19 **Reserve Fund** means monies held in reserve for specific purposes. See *Bylaws*, Article VII, Section 8.

Section 20.20 **Contingency** means a classification of budgeted funds for a necessary expense that results from an unforeseen occurrence.

Section 20.21 **Assessments** means any and all sums levied by the Association against any Lot and its Owner as common expenses or other charges to include but not be limited to common expense liabilities, special assessments, specific assessments, fines, late charges, interest and attorney fees as set forth in the *Declaration* and *Bylaws*.

Section 20.22 **Reasonable Attorney Fees** means attorney fees reasonably incurred without regard to any limitations on attorney fees which otherwise may be allowed by law.

Section 20.23 **Political Sign** means a sign that supports or opposes a named issue on a ballot or a candidate or candidates seeking election.

Certification of Documents

IN WITNESS WHEREOF, the undersigned President of Etowah's Reach Property Owners Association, Inc. hereby certifies that the above restated Declaration for the Planned Community of Etowah's Reach and the following restated Bylaws along with attached appendices were duly adopted by the Association and its membership after a community vote in August 2024, conducted in accordance with and pursuant to the Planned Community Act and the Declaration and Bylaws of the Association.

This \_\_\_\_\_ day of September 2024.

Etowah's Reach Property Owners Association, Inc.  
PO Box 433, Etowah, NC 28729

By: \_\_\_\_\_  
President: Diane Jankowski

Attest: \_\_\_\_\_  
Secretary: John McNiff

STATE OF NORTH CAROLINA  
HENDERSON COUNTY

I, \_\_\_\_\_, Notary Public for said County and State, certify  
that \_\_\_\_\_

personally came before me this day and acknowledged that he/she is Secretary of Etowah's Reach Property Owners Association, Inc., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

Witness my hand and official seal, this the \_\_\_\_\_ day of September 2024

\_\_\_\_\_  
Notary Public

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

## APPENDIX A

**NORTH CAROLINA PLANNED COMMUNITY ACT** is available at  
[http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter\\_47F.pdf](http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByChapter/Chapter_47F.pdf)

## APPENDIX B

### **DESCRIPTION OF THE PROPERTY KNOWN AS ETOWAH'S REACH**

Available on the Association's Website: ([www.etowahsreach.org](http://www.etowahsreach.org))