

**FRANKLIN COUNTY**  
**SPECIAL USE PERMIT APPLICATION**

I/We Dan Kovarik as Owner(s), Contract Purchasers, or Owner's Authorized Agent of the property described below, hereby apply to the Franklin County Board of Supervisors for a special use permit on the property described below:

Petitioner's Name: Dan Kovarik  
Petitioner's Address: 108 Pennsylvania Ave, Union Hall, VA 24176  
Petitioner's Phone Number: ██████████  
Petitioner's Email Address: ██████████  
Property Owner's Name: RDK Property, LLC  
Property Owner's Address: 2005 Cedar View Dr, Greensboro NC 27455  
Property Owner's Phone Number: ██████████  
Property Owner's Email Address: ██████████

**Property Information:**

- A. Proposed Property Address: 108 Pennsylvania Ave  
Union Hall, VA 24176
- B. Tax Map and Parcel Number: 0512005800
- C. Election District: Union Hall
- D. Size of Property: 1 Acre
- E. Existing Zoning: A1
- F. Existing Land Use: Residential
- G. Is the property located within any of the following overlay zoning districts:  
 Corridor District    Westlake Overlay District    Smith Mountain Lake Surface District
- H. Is any land submerged under water or part of Smith Mountain Lake?    YES    NO
- I. If yes, please explain:  

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Proposed Special Use Permit Information:

- J. Proposed Land Use: Short Term Rental of Dwelling  
and Residential
- K. Size of Proposed Use: 1 Acre

L. Other Details of Proposed Use: This use is a good fit  
for the neighborhood and is permitted  
in the covenants.

Checklist for Completed Items:

- Application Form
- Letter of Application
- Concept Plan
- Application Fee

I certify that this application for a special use permit and the information submitted is herein complete and accurate.

Petitioner's Name (Printed): Dan Kovarik

Petitioner's Signature: Dan Kovarik

Date: Oct 27, 2025

Mailing Address: 2005 Cedar View Dr  
Greensboro, NC 27455

Phone Number: [REDACTED]

Email Address: [REDACTED]

Owner's consent, if petitioner is not property owner:

Owner's Name: \_\_\_\_\_

Owner's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date Received by Planning Staff: \_\_\_\_\_

October 27, 2025

Franklin County  
Planning and Community Development  
1255 Franklin Street  
Suite 103  
Rocky Mount, VA 24151  
Attention Tina Franklin

Ms. Franklin,

Attached is my application for a Short-Term Rental Permit for my house at 108 Pennsylvania Avenue, Union Hall VA 24176. It is within the Kennedy Shores development, Lot #58 Parcel 0512005800.

I have also attached a copy of page 15 of the Declaration of Restrictions, Covenants and Conditions for Kennedy Shores Subdivision. Under Section IX, Item P on page 15, Short Term Rentals are expressly permitted.

I have also been in contact with Mr. Mark McGee, President of the Kennedy Shores HOA and assured him that I am committed to maintaining the peace and quiet enjoyment of the neighborhood.

If you need anything further, please contact me by email or phone.

Thank you,



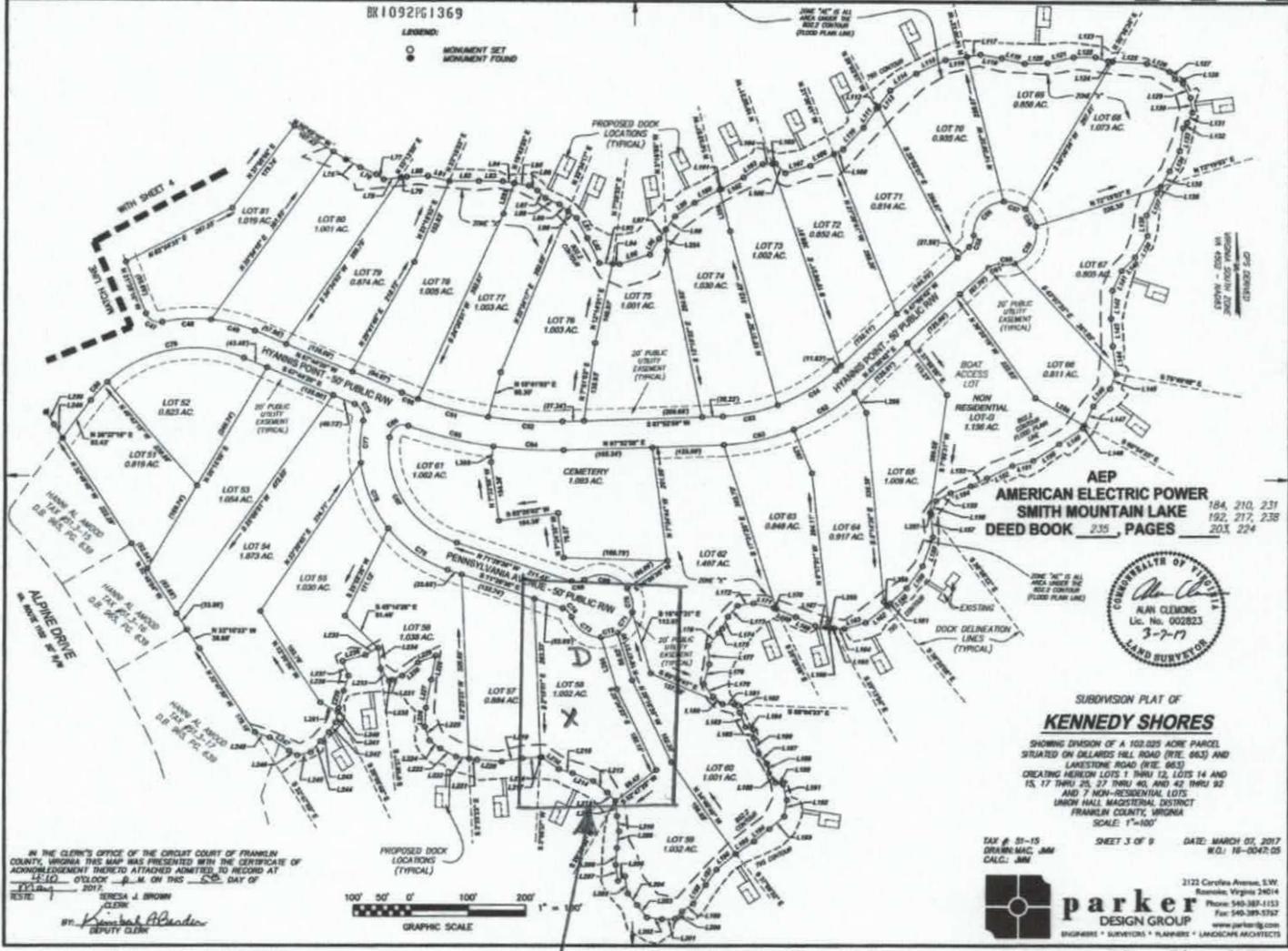
Dan Kovarik



BR 1092 PG 1369

LEGEND:

JOHN "PET" IS ALL  
ABOUT GREENING THE  
BUDGET CONTINUED  
*(Please Turn Page)*



**CONCEPT PLAN  
DATED 10/28/2025  
PREPARED BY: DAN KOVARIK,  
OWNER**

LOT 58  
X = SEPTIC  
D = DRIVEWAY

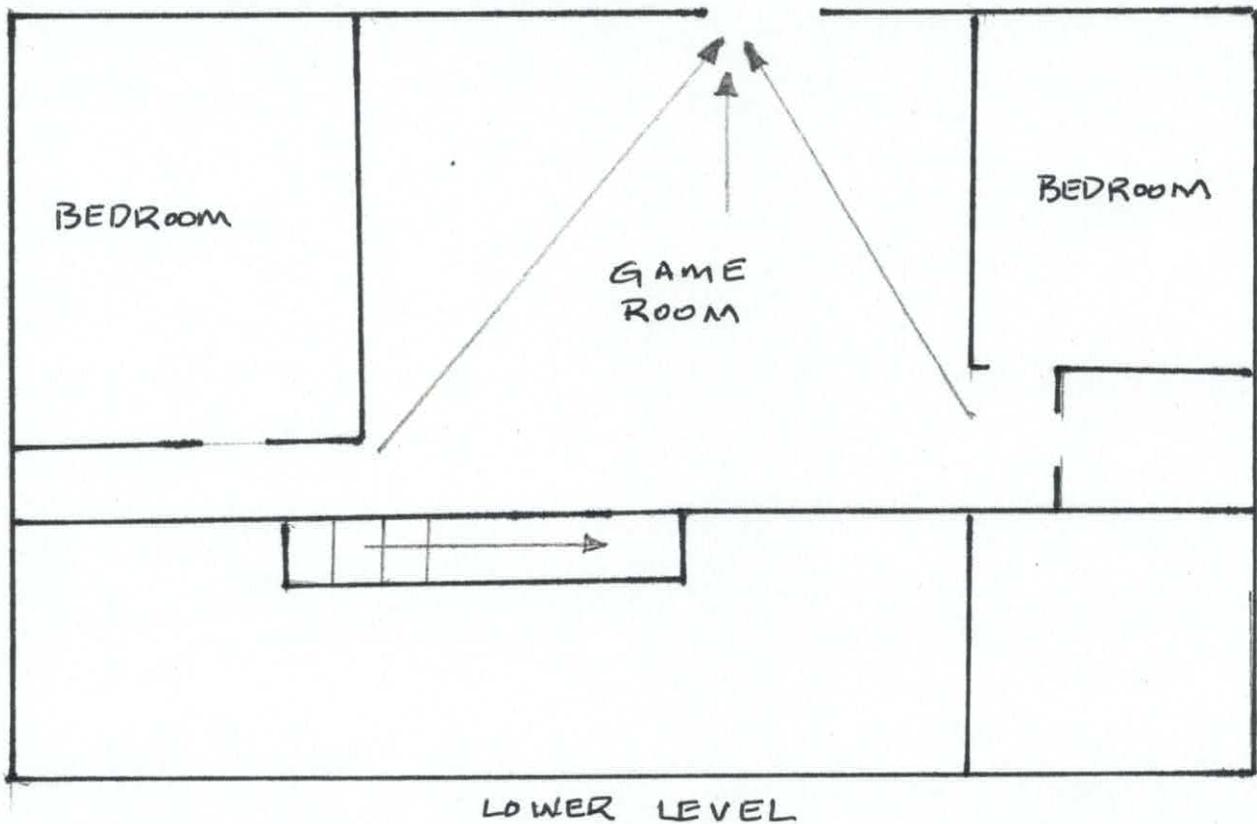
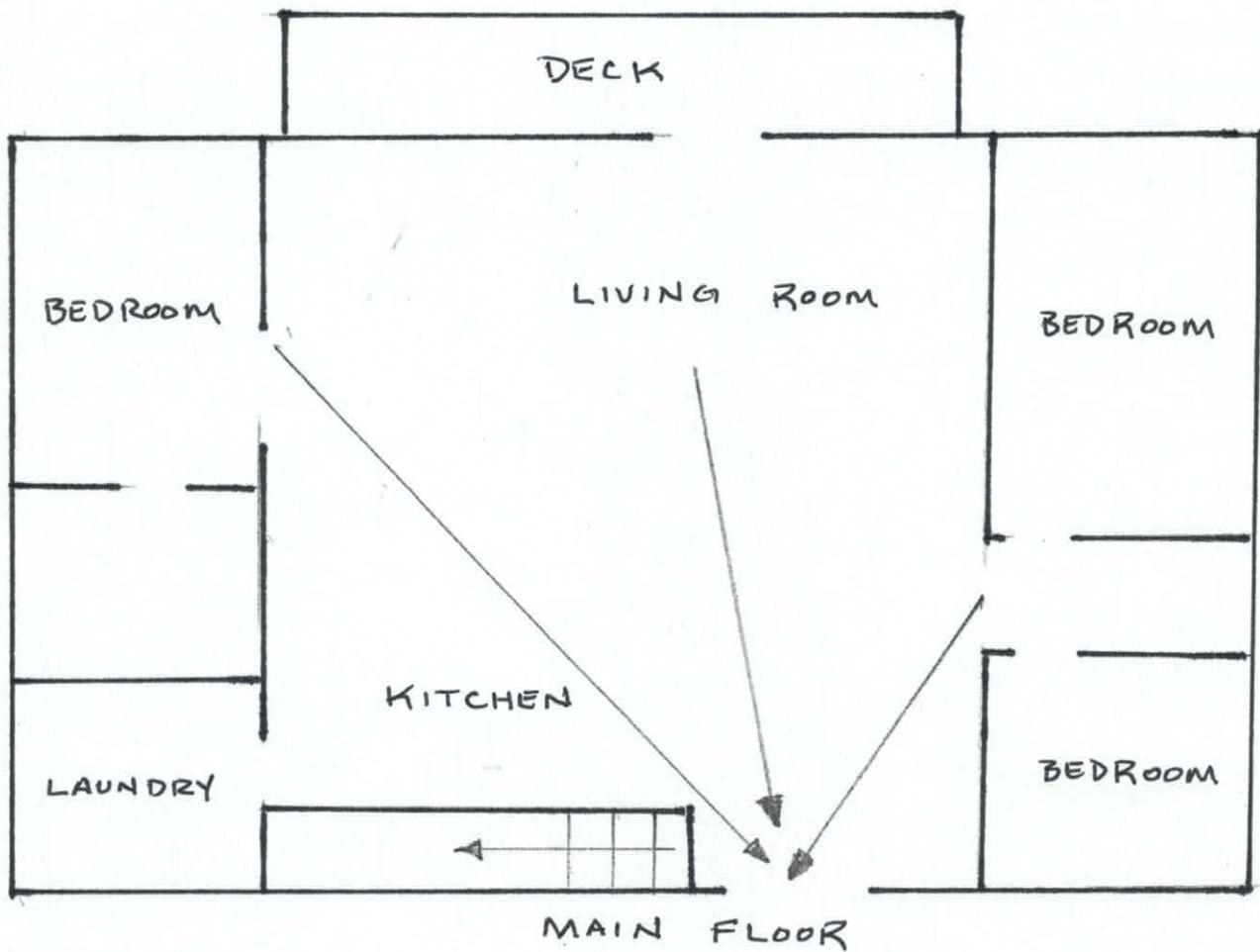
P.B. , PG. , SLIDE

PG. SLIDE

2122 Carolina Avenue, S.W.  
Roanoke, Virginia 24014  
**F** Phone: 540-387-1153  
**JP** Fax: 540-389-5767  
 www.parkerslg.com  
 PARKERS • LANDSCAPE ARCHITECTS

SCALE: 1"=800'  
SHEET 3 OF 9 DATE: MARCH 07, 2017  
N.D. - 16 - 000100





O. Fences. No fence other than a fence approved by the ARC shall be erected on any Lot.

P. Short Term Rentals. Short term rentals of homes in Kennedy Shores are expressly permitted subject to the Lot owner obtaining a special use permit as may be required by the zoning ordinance, provided the Association may implement procedures to require Lot owners to provide Association with such information as Association may reasonably require for security purposes and/or acknowledgment of and consent to any rules and regulations of the Association.

#### X. MISCELLANEOUS PROVISIONS

A. Amendments. Except as otherwise set forth in this Declaration and subject to the Association bylaws, this Declaration may be amended or amended and restated only (i) during the period of Declarant control by Declarant, or (ii) with the approval of 67% of the Class A members (including Declarant as to Class A votes held by Declarant) voting in person or by proxy at a duly called meeting and the written consent of Declarant during the period of Declarant control. Notwithstanding the foregoing, Declarant shall also have the right from time to time and at any time without the consent of any other owners to amend this Declaration and any other Project Documents in any respect as may be necessary or appropriate, in Declarant's sole judgment, (i) in order for this Declaration or the Subdivision to comply with the Virginia Property Owners' Association Act, the zoning ordinance or other applicable laws now or hereafter enacted, as the same may be amended from time to time (including without limitation the adoption of defined terms for use herein and in the Association articles of incorporation and bylaws), (ii) in order to correct a mathematical mistake, an inconsistency or ambiguity with respect to an objectively verifiable fact in or among this Declaration, the Association's articles and bylaws, and/or a scrivener's error; provided that no such amendment may materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred, (iii) in order to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration or other governmental or quasi-governmental entities, with respect to their purchase, guarantee or insurance of loans secured by Lots or (iv) in any other respect only to the extent the amendment does not materially and adversely affect the rights and obligations of the members in Association or the rights and obligations of the owners under this Declaration.

Notwithstanding anything contained in this Declaration to the contrary, no amendment may be made to this Declaration without the Declarant's consent if such amendment would eliminate or materially and adversely affect any of the rights, exemptions, interests or privileges expressly reserved or granted to the Declarant (as the "Declarant" or "Class B Member" and not as an Owner generally), except to the extent that such rights expressly expire upon the termination of the Period of Declarant Control or that would result in treating Declarant or the Lots still owned by Declarant differently from other Owners or Lots. If the Members vote to amend or amend and restate this Declaration, the Association and, during the Period of Declarant Control, the Declarant shall execute and record in the Clerk's Office an instrument setting forth the amendment or restatement and shall certify therein that the vote of Members approving the amendment was taken at a Duly Called Meeting and that at least two thirds of the Class A votes present in person or by proxy were cast in favor of the amendment or restatement. If the Declarant amends this Declaration without the consent of any other Owners as provided in this Section or elsewhere in this Declaration, the Declarant shall execute and record in the Clerk's Office an instrument setting forth the amendment and shall certify therein that the amendment was authorized as provided herein and that if during the Period of Declarant Control, Declarant consented to the amendment or restatement. The foregoing certification in any amendment or restatement may be relied upon by third parties for the correctness of the facts stated therein.

B. Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association. Each such assignment shall be evidenced by an instrument which shall be recorded in the Clerk's Office. The

Prepared by and return to: Consideration: \$2,148,962.00  
George I. Vogel, III  
VSB# 47503 Assessed Value: \$857,364.00  
204 McClanahan Street, SW  
Roanoke, VA 24014 Grantees address:  
  
Title Insurance: Fidelity National  
Title Insurance Company 2005 Cedar View Drive  
  
Tax Map# 0512005800 Greensboro NC 27455

THIS DEED, made and entered into this 25<sup>th</sup> day of June, 2025,  
by and between CRAIG A. CARON and NICOLE M. CARON, husband and  
wife, Grantors; and RDK PROPERTY, LLC, a North Carolina limited  
liability company, Grantee.

W I T N E S S E T H:

THAT FOR AND IN CONSIDERATION of the sum of TEN DOLLARS  
(\$10.00) cash and other good and valuable consideration paid by the  
Grantee unto the Grantors, the receipt whereof is hereby  
acknowledged, the said Grantors do hereby BARGAIN, SELL, GRANT and  
CONVEY, with GENERAL WARRANTY and MODERN ENGLISH COVENANTS OF  
TITLE, unto the Grantee, RDK PROPERTY, LLC, a North Carolina  
limited liability company, all of that certain lot or parcel of  
land, located in the COUNTY OF FRANKLIN, VIRGINIA, and more  
particularly described as follows, to-wit:

Lot 58, KENNEDY SHORES, CONTAINING 1.002 ACRES, being  
more particularly shown and described according to plat  
of survey prepared by Parker Design Group, Alan Clemons,  
L.S., dated March 7, 2017, of record in the Clerk's  
Office of the Circuit Court of Franklin County, Virginia,  
in Deed Book 1092 at Pages 1366 thru 1375, with this  
reference being made for a more complete and particular  
description of the subject property and as a means of  
incorporation by this reference thereto;

TOGETHER WITH all such easements, benefits and rights,  
appurtenant or in any way appertaining or belonging unto  
the said lot including without limitation, the right and

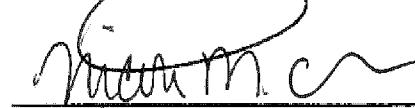
non-exclusive easement to cross the 800 foot contour line immediately adjacent to the subject lot and within an extension of the side lot lines as shown on the subdivision plat (the said Clemons survey) in and unto the impounded waters of Smith Mountain Lake for recreational use and enjoyment of same.

Being the same property conveyed unto the Grantors, by deed from Kristopher D. Vess and Sarah F. Vess, dated May 30, 2024, recorded in the aforesaid Clerk's Office in Deed Book 1213, Page 2805.

This conveyance is made subject to all recorded easements, reservations, restrictions and conditions affecting the conveyed property.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

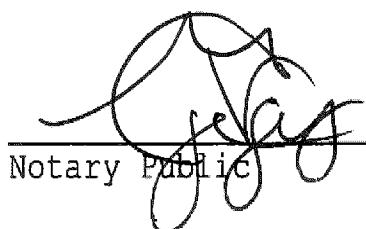
  
CRAIG A. CARON

  
NICOLE M. CARON

STATE OF Virginia

COUNTY OF Franklin, TO-WIT:

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of June, 2025, by CRAIG A. CARON and NICOLE M. CARON, husband and wife.

  
Notary Public

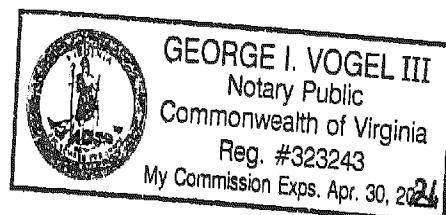
Vogel Law  
Group, P.L.C.  
Roanoke VA

My commission expires:

4/30/26

Reg. No. 323243

(NOTARY AFFIX SEAL)



INSTRUMENT 250004139  
RECORDED IN THE CLERK'S OFFICE OF  
FRANKLIN COUNTY CIRCUIT ON  
JULY 1, 2025 AT 08:38 AM  
\$2149.00 GRANTOR TAX WAS PAID AS  
REQUIRED BY SEC 58.1-802 OF THE VA. CODE  
STATE: \$1074.50 LOCAL: \$1074.50  
TERESA J. BROWN, CLERK  
RECORDED BY: KYB

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Franklin County Health Department  
365 Pell Ave.  
Rocky Mount, Virginia 24151  
(540) 484-0292 Voice (540) 483-1483 Fax

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***OSE Construction Permit***

**Well and Sewage Contractors:** Please notify Health Department and OSE or PE 48 hours prior to installation to arrange for inspection.

June 3, 2024

Nicole Caron  
PO Box 759  
Hardy, VA 24101

**RE: Kennedy Shores, Lot 58**

**Tax Map/GPIN:** 0512005800  
**HDID:** 133 24 0177  
**System Design:** 5 Bedrooms or 750 Gallons/Day

Dear: Nicole Caron

This letter and the attached drawings, specifications, and calculations ( 7 pages) dated 05/09/24, constitute your permit to install a septic system and private well(if applicable) on the property referenced above. Your application for a permit was submitted pursuant to §32.1-163.5 of the Code of Virginia, which requires the Health Department to accept private soil evaluations and designs from an Onsite Soil Evaluator (OSE) or a Professional Engineer working in consultation with an OSE for residential development. VDH is not required to perform a field check to verify the private evaluations of OSE's or PE's and such a field check may not have been conducted for the issuance of this permit.

The soil absorption area ("site") and sewage system design were certified by Tim Parker, OSE as substantially complying with the Board of Health's regulations (and local ordinances if the locality has authorized the local health department to accept private evaluations for compliance with local ordinances). This permit is issued in reliance upon that certification. VDH hereby recognizes that the soil and site conditions acknowledged by this permit are suitable for the installation of an onsite sewage system. The attached plat shows the approved area for the sewage disposal system; there are additional records on file with the Franklin County Health Department pertaining to this permit, including the Site and Soil Evaluation Report. This construction permit is null and void if any substantial physical change in the soil or site conditions occurs where a sewage disposal system is to be located.

If modifications or revisions are necessary between now and when you construct your dwelling, please contact the OSE/PE who performed the evaluation and design on which this permit is based.

Should revisions be necessary during construction, your contractor should consult with the OSE/PE that submitted the site evaluation or site evaluation and design. The OSE/PE is authorized to make minor adjustments in the location or design of the system at the time of construction provided adequate documentation is provided to the Franklin County Health Department.

The OSE/PE that submitted the certified design for this permit is required to conduct a final inspection of this sewage system and well when it is installed and to submit an inspection report and completion statement. As the owner, you are responsible for giving reasonable notice to the OSE/PE of the need for a final inspection. If the designer is unable to perform the required inspection, you may provide an inspection report and completion statement executed by another OSE/PE.

The Franklin County Health Department is not required to inspect the installation but may perform an inspection at its sole discretion. No part of this installation shall be covered until it has been inspected by the OSE/PE as noted herein. The sewage system may not be placed into operation until you have obtained an Operation Permit from the Franklin County Health Department.

This Construction Permit is null and void if conditions are changed from those shown on your application or if conditions are changed from those shown on the Site and Soil Evaluation Report and the attached construction drawings, specifications, and calculations. VDH may revoke or modify any permit if, at a later date, it finds that the site and soil conditions and/or design do not substantially comply with the Sewage Handling and Disposal Regulations, 12 VAC 5-610-20 et seq., or if the system would threaten public health or the environment.

This permit approval has been issued in accordance with applicable regulations based on the information and materials provided at the time of application. There may be other local, state, or federal laws or regulations that apply to the proposed construction of this onsite sewage system. The owner is responsible at all times for complying with all applicable local, state, and federal laws and regulations. If you have any questions, please contact me.

This permit expires: December 3, 2025  
This permit is not transferable to another location.



Environmental Health Specialist  
West Piedmont Health District

CC: Tim Parker, OSE

## **WHAT YOU WILL NEED TO GET YOUR SEPTIC SYSTEM OPERATION PERMIT**

- Your system must have a satisfactory inspection at the time of installation. This will be done by either a representative of the local Health Department, a private OSE, or a PE, depending on the designer of your permitted system. If your system is designed/inspected by an OSE or PE, they must submit a copy of the inspection results, complete with an as-built diagram, to the Health Department.
- Please ensure that your contractor turns in a Completion Statement to the local Health Department after installation.

## **IF YOUR PERMIT IS FOR BOTH A SEPTIC SYSTEM AND WELL YOU WILL ALSO NEED**

- Your well must have satisfactory inspection results after installation. Please give the Health Department several days notice to schedule this inspection before your Operation Permit will be requested.
- The Health Department must receive a copy of your water sample test result being negative/satisfactory for coliform bacteria. You are responsible for performing this test and ensuring the results are received at the Health Department
- Please ensure that your Well Driller submits a Uniform Water Well Completion Statement or GW-2 to the Health Department, including documentation of a proper well abandonment if required by permit
- Allow 5 business days after the last piece of documentation is received for the Operation Permit to be issued. To avoid delays, clearly label each piece of documentation with the property Tax Map/GPIN number and HDID number shown above and on your construction permit. Please note that due to the individual circumstances of your permit there may be additional required items not covered by this checklist.

If you have any questions about any of the items on this list, please do not hesitate to contact the Franklin County Health Department at (540) 484-0292.

Franklin Co. Tax No.:  
Prepared by and return to:

51-15  
Garrett M. Smith, Esq.  
Frontier Land Development, LLC  
P.O. Box 7505  
Charlottesville, VA 22901

BK 1092 PG 2242

2017 MAY 12 PM 3:53

10002941

## DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS FOR KENNEDY SHORES SUBDIVISION

THIS DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS FOR THE "KENNEDY SHORES" SUBDIVISION ("Declaration") made and entered into this 8th day of May, 2017, by and between FRONTIER LAND DEVELOPMENT, LLC, hereinafter referred to as the "Declarant" and/or "Developer".

### RECITALS:

1. WHEREAS Declarant by deed recorded in the Office of the Clerk of Court of the Circuit Court for Franklin County, Virginia ("Clerk's Office") on April 8, 2016 in Deed Book 1075 at page 1422 ("Declarant's Deed") acquired fee simple title to "102.082 Acres" and "0.696 AC." of real property as shown on the plat entitled "Plat of Property to be Acquired by Frontier Land Development, LLC Located in Union Hall Magisterial District Franklin County, Virginia" dated December 24, 2015, prepared by Robert C. Jeans, recorded in the Clerk's Office on February 9, 2016, in Deed Book 1073, pages 569-571 (the "Property"); and
2. WHEREAS, the aforementioned Property was subjected to a Declaration of Restrictive Covenants recorded in the Clerk's Office in Deed Book 1074, page 84 ("Original Covenants"), which was superseded by that certain Corrective Declaration of Restrictive Covenants recorded in the Clerk's Office on April 8, 2016 in Deed Book 1075 at page 1408 ("Corrective Covenants"); and
3. WHEREAS, the Property when contracted for at auction was proposed to be subdivided as Lots or tracts 1-13, being the majority of the Lots or tracts enumerated as Lots 1-24 on Exhibit A attached to Declarant's Deed, and by virtue of paragraph 2 of the Corrective Covenants, Developer is authorized to amend the Corrective Covenants with respect to its contiguous tracts which constitute the Property; and
4. WHEREAS, Declarant has subdivided the Property into 87 Lots (each a "Lot", collectively the "Lots") comprising and to be referred to as Kennedy Shores subdivision ("Kennedy Shores" or "Subdivision"), as shown and described more particularly on that certain set of plats of survey prepared by Parker Design Group, Sheldon R. Bower, L.S., dated March 7, 2017 recorded on May 7, 2017 in the Clerk's Office in Deed Book 1092 at page 1366 hereafter referred to as the "Plat"; and
5. WHEREAS, Developer is preparing to sell and convey the said 87 lots, but before doing so desires to subject and impose upon each and every said Lot the following mutual and beneficial restrictions, covenants and conditions, herein set forth, which are deemed by the Declarant to complement all of the land of the Subdivision, and for the purpose of encouraging the most appropriate development of said Subdivision as a first-class residential subdivision, to protect owners of property in Kennedy Shores against improper use of subdivision lots, to encourage the development of attractive homes thereon, and to enhance the value of each lot;

NOW, THEREFORE, the Developer does hereby (1) vacate the Original Covenants and the Corrective Covenants described above rendering them null, void and of no effect, and (2) declare that all the Lots described in the Plat referenced above shall be held, owned, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following restrictions, covenants and conditions all of which are declared and agreed to be in furtherance of a common plan for the Subdivision's improvement and the sale of its Lots,

and are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Lots described in the Plat and of the Subdivision as a whole, and which shall run with the land and be binding upon all parties having or acquiring any right, title or interest in and unto the Property or any part or parts thereof.

### I. MUTUALITY OF BENEFIT AND OBLIGATION

Developer, for each Lot owned within the Subdivision, hereby covenants, and each owner of any Lot whether or not it shall be so expressed in such owner's deed, is deemed to covenant and agree to all of the terms and provisions of this Declaration, and any supplemental declaration(s). The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Subdivision and are intended to create mutual, equitable servitudes upon each of said Lots in favor of each and all of the other Lots herein; to create reciprocal rights between the respective owners of all of said Lots; to create a privity of contract and estate between the grantees of said Lots, their heirs, successors, and assigns, and shall, as to the owner of each such Lot, owner's heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other Lots in Subdivision and their respective owners.

### II. TERM

This Declaration shall continue in force and effect for a period of thirty-five (35) years from the date of recordation of this Declaration, and after which time the same shall be automatically extended for successive periods of ten (10) years by operation of law; provided, however, that the Developer, for so long as it owns a Lot for sale in Kennedy Shores, shall retain the right to change, amend, alter, expand, update and correct the contents of this Declaration or any amendments hereto, without permission of any party, for the purpose of advancing as determined in the Developer's sole opinion the development goals listed 2 above. After the Developer no longer owns a Lot for sale at Kennedy Shores, this Declaration as amended may be further changed amended, altered, expanded, updated, corrected, released, or terminated at any time by an appropriate instrument signed by at least two-thirds (2/3) of the Lot owners, and duly executed, acknowledged and recorded in the Clerk's Office of the Circuit Court of Franklin County, Virginia.

### III. RESIDENTIAL USE AND CONSTRUCTION

A. Use of Residential Lots. No Lot shall be used for any purpose other than for residential purposes. Only one single-family residential dwelling shall be erected on any individual Lot with approved accessory buildings and docks.

B. ARC Approval Required to Construct or Modify. No improvement or landscaping shall be constructed, erected, installed or maintained on any lot, nor shall any improvement be altered, enlarged, demolished or removed in a manner that alters the exterior appearance (including paint color) of the improvement or of the Lot on which it is situated, unless or until complete plans therefore have been approved in writing by Developer, or the Architectural Review Committee ("ARC") if extant. (Developer and any extant ARC are referred to collectively as "Developer/ARC"). Submissions of plans must be made in accordance with Developer/ARC's then-current instructions. For residences, such plans shall include (1) elevations showing grade and color scheme (and if requested, material samples and/or specifications); (2) a plat showing easements, setbacks, impervious area dimensions and footprints, finished square feet and total square feet of all buildings; (3) a general landscape plan showing rain gardens as well as any plantings related thereto compliant with Franklin County's Kennedy Shores-Stormwater Management Construction Guide recorded at the Clerk's Office in Deed Book 1092 at p. 139 and attached hereto as **Exhibit A**, other plantings, fences, driveways, patios and the materials they will be constructed from; and (4) waterfront improvement plans including all materials required to be submitted to Appalachian Power Company ("Appalachian") for a Use Permit for the improvements.

C. Minimum Size. No dwellings shall be erected on any Lot having a minimum enclosed livable floor area of less than the following: i) a single-story residence: 1,800 square feet; ii); a one and one-half story residence: 2,200 square feet of which at least 1,800 shall be on the first floor; and iii) a two-story residence: 2,600 square feet. The following areas shall not be included in tabulation of the previously mentioned minimum livable floor area requirements: any breezeway, garage, dock area, unattached building, porch, basement, and/or unfinished area(s). All homes shall have a minimum two-car garage attached to the main dwelling. All detached garages, out-buildings, sheds or dependencies must be approved by the ARC prior to construction.

D. Siding. Sidings must be brick, natural wood, natural stone, or high quality fabricated materials like Dryvit, Masonite, HardiePlank and comparable materials approved by the ARC. Vinyl and metal sidings are prohibited, except for premium quality materials approved by the Developer/ARC. No visible exposed concrete or cinder block foundations are permitted. Sidings must meet grade, unless siding is installed within eight (8) inches of grade, in which case another siding listed above, stucco or other good quality siding approved by the Developer/ARC may be used between the siding and grade. Roof pitch shall be a minimum of 6/12 and roof shingles shall be architectural grade as approved by the Developer/ARC.

E. Water Hookup. The residence on a Lot shall be connected to the subdivision's central water system. Each Lot owner who constructs a residence must pay to Western Virginia Water Authority ("WVWA") an availability fee and a meter installation fee. Lot owners may not use the water from the central water system for watering lawns or plantings without approval in writing by the Developer/Association or WVWA.

F. Erosion Control. Erosion silt fences and effective erosion control measures are required for all land disturbances including roads, construction of homes, and other construction to control the erosion of sediments into Smith Mountain Lake and adjoining properties. All disturbed areas must be seeded or sodded and mulched within 30 days of completing clearing and grading.

G. Driveways and Parking. All driveway culverts shall be designed to VDOT standards and installed prior to home construction. Prior to home construction, Lot owners shall install gravel on the driveway from the Subdivision road to the construction site to prevent mud and dirt from being carried on the Subdivision roads during construction. If any damage occurs to the Subdivision roads the offending Lot owner will be liable to the Developer/Association for the cost of the repair of such damage. Final driveway materials shall be subject to ARC approval.

H. Completion of Dwelling Units. Each dwelling unit and any modification on a Lot shall be completed so that a certificate of occupancy is issued within twelve (12) months after construction thereof is commenced, subject only to delays caused by strikes, acts of God and other causes beyond the owner's reasonable control; provided, however that nothing herein shall be construed to require any owner to commence construction within a certain time from purchasing any Lot. The failure to complete the exterior of any house, or any other structure within the time limit set forth in this Section above shall constitute a violation and breach of this Declaration and these covenants. The Declarant hereby reserves unto itself, its successors and assigns, a right on, over, and under all Lots for the purpose of taking any action necessary to effect compliance with this section, including, but not limited to the right to enter upon any property for the purpose of completing the exterior of a dwelling unit or any other structure which is in violation of this Section thirty (30) days after the owner of the property has been notified in writing of the violation, and if failed to complete said exterior within said thirty (30) day period. The cost of such corrective action, when performed by the Declarant, the Kennedy Shores Property Owner's Association, Inc. ("Association") or their agents, shall be paid by the owner of the Lot on which the corrective action is performed, and such payment shall be secured by an Association lien if applicable. The provisions of this section shall not create any obligation on the part of the Declarant to take any action to effect compliance with this Section.

I. Manufactured Homes. No trailers, manufactured homes (i.e., single-wide, or double-wide), mobile homes, shacks, campers, modular homes or camping trailers and tents shall be placed or erected on any Lot and

used for living quarters, temporarily or permanently.

BK 1092 PG 2245

#### IV. SEPTIC SYSTEM DESIGN AND MAINTENANCE

A. Septic System Design. Each property owner shall submit prior to the commencement of construction, all design materials submitted to the Department of Health and the approval for the system. Each system shall be constructed to facilitate sanitary pump-outs (such as the tank's removable cover to be accessible within six (6) inches below the final surface grade or other such approved installation).

B. County Approval. Lot owners shall first apply to the Franklin County Health Department for the drain field as approved on the recorded subdivision plat (unless otherwise approved by the Developer) and the septic field must be installed in this location unless otherwise approved by the County Health Department and the Developer. No Lot owner shall cause, permit, or suffer any garbage, sewage, refuse or waste or other contaminating matter to be cast, drained or discharged from the Lot into the impounded waters of Smith Mountain Lake.

C. Easements. The Developer retains the right to grant easements within all P.U.E. areas designated on the subdivision plat to provide for septic lines to run to off-site septic fields.

D. Coordination of Off-Site Drain Field Construction. In instances where a lot's septic drain field is located off-site on another lot, in order to minimize surface disturbance on the Lot upon which the offsite easement is located, the owner of the Lot benefitted by the off-site easement shall install his or her drain field before or concurrently with the on-site lot's drain field installation, if possible.

E. As Built Plan. Upon completion of home construction, the Lot owner shall submit to the Developer/ARC, a plat showing the "as built" locations of the septic tank(s), distribution box, drain fields with reference to a corner of the home or other identifiable survey marker, such as a Lot corner.

#### V. ARCHITECTURAL CONTROL

A. Architectural Review Committee Formed. There is hereby established a committee (collectively the "Architectural Review Committee" or "ARC") for the purpose of reviewing and, as appropriate, approving or disapproving all plans submitted by owners for compliance with this Declaration and any additional applicable design criteria, standards and guidelines (collectively, the "AR Guidelines" discussed below) promulgated, amended or supplemented by the Declarant, the ARC or the Board of Directors of the Association from time to time. The Committee shall be composed of three (3) members to be appointed by Declarant or by the Board of Directors of the Association but only from and after the date on which Declarant delegates this responsibility to the Association, which the Declarant shall not be required by the Association or the Board of Directors to do until after the Declarant is no longer an owner of any lot. Committee members shall be subject to removal by Declarant, and any vacancies from time to time existing shall be filled by appointment of Declarant; provided, however, that at any time hereafter the Declarant may, at its sole option, relinquish in writing to the Board of Directors of the Association the power of appointment and removal reserved herein to the Declarant; and provided further, however, that Declarant reserves the right, in lieu of the Architectural Review Committee and for so long as Declarant still owns a Lot in the Subdivision, to review, approve or disapprove all plans for the construction of improvements and landscaping on lots, and if Declarant exercises such right, all references in this Declaration and in the other Subdivision project documents to the "Architectural Review Committee" or "ARC" shall mean Declarant. The members of the ARC shall serve for such terms as may be determined by Declarant or the Board of Directors of the Association. In addition to the responsibilities and authority provided in this Article, the Architectural Review Committee shall have such other rights, authority and responsibilities as may be provided elsewhere.

B. ARC Discretion. The Architectural Review Committee shall not knowingly approve the plans for any improvement or landscaping that would clearly violate any of the applicable provisions of this Declaration or of

any zoning ordinance applicable thereto. In all other respects, the ARC may exercise its sole discretion in determining whether to approve or disapprove any plans, including, without limitation, the location of an improvement on a lot.

The Committee shall have the right to disapprove any plans, specifications, or details submitted to it in the event the same are not in accordance with all of the provisions of the AR Guidelines; if the plans and specifications submitted are incomplete or inaccurate; or in the event the Committee deems, in the exercise of its sole but reasonable discretion, that the plans, specifications, or details, or any part thereof, to be contrary to the interests, welfare, or rights of all or any part of the real property subject hereto or the owners thereof, including if the design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such Lot or with the adjacent buildings or structures. The decisions of the Committee shall be final. If the ARC does not approve or disapprove, or approve subject to conditions, any Plans or proposed construction schedule within 60 days after it receives the same in compliance herewith and any fees to which it is entitled, such plans (or construction schedule, as the case may be) shall be deemed approved.

The Committee may allow reasonable variances and adjustments of restrictions and the AR Guidelines in order to overcome practical difficulties and to prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent and purposes hereof, and provided also that in every instance such variance or adjustment will not be materially detrimental or injurious to other property or improvements in the neighborhood, the Section, or the Subdivision.

**DECLARANT CONTROLS THE ARCHITECTURAL REVIEW COMMITTEE AND UNLESS AND UNTIL DECLARANT DELEGATES ITS FUNCTIONS TO THE ASSOCIATION, THE ASSOCIATION HAS NOTHING TO DO WITH THE DECISIONS OF THE ARC. SO LONG AS THE ARC IS CONTROLLED BY DECLARANT AND SO LONG AS DECLARANT HAS AUTHORITY TO APPROVE PLANS FOR AN IMPROVEMENT OR MODIFICATION THEREOF, DECLARANT AND THE ARC HAVE NO OBLIGATION OR DUTY WHATSOEVER TO ANY OTHER OWNER OR TO THE ASSOCIATION EXCEPT AS PROVIDED IN THIS ARTICLE.**

C. Consultation with Architects, etc...: Administrative Fee. In connection with its discharge of its responsibilities, the Architectural Review Committee may engage or consult with architects, engineers, planners, surveyors, attorneys and others. Any person seeking the approval of the Architectural Review Committee agrees to pay all fees thus incurred by the ARC and further agrees to pay a new construction design review fee of \$225.00 established to compensate an architect employed by the Committee, or such other amount as the ARC may from time to time establish. The payment of all such fees is a condition to the approval or disapproval by the ARC of any plans, and the commencement of review of any plans may be conditioned upon the payment of the ARC's estimate of all fees.

D. Guidelines May Be Established. The Architectural Review Committee may, in its discretion, determine and publish criteria, standards and guidelines including and in addition to those contained in this Declaration ("AR Guidelines") to be used in considering whether to approve or disapprove plans and to authorize in advance certain improvements or alterations to improvements or landscaping without requiring specific approval. However, nothing contained in this Declaration shall require the ARC to approve the plans for improvements or landscaping on a Lot on the grounds that the layout, design and other aspects of such improvements or landscaping are the same or substantially the same as the layout, design and other aspects of improvements or landscaping approved by the ARC for another Lot. The ARC may grant variances from the AR Guidelines to any owner in its sole discretion. The AR Guidelines may include without limitation, uniform standards for signage and mailboxes and mailbox supports, construction rules and procedures, landscaping guidelines, dock construction guidelines, erosion control requirements, rules and regulations concerning the location and screening of wood piles, hot tubs, compressors, and the extent to which exterior holiday and other decoration is permitted and the time(s) when same may be displayed.

E. Limitation of Liability. The approval by the Architectural Review Committee of any plans and any

requirement by the ARC that the plans be modified shall not constitute a warranty or representation by the ARC of the adequacy, technical sufficiency, safety or compliance with the zoning ordinance or other applicable laws governing the improvements described in such plans, as the same may be modified; and the Declarant and the ARC shall have no liability whatsoever for the failure of the plans or the improvements to comply with applicable building codes, laws and ordinances or to comply with sound engineering, architectural or construction practices. In addition, in no event shall the Declarant and the ARC have any liability whatsoever to any owner, mortgagee, contractor or other party for any costs or damages (consequential or otherwise) that may be incurred or suffered on account of the ARC's approval, disapproval or conditional approval of any plans.

## VI. KENNEDY SHORES HOMEOWNERS' ASSOCIATION

A. Owners as Members. The term "owner" herein shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot in Kennedy Shores, including contract sellers but excluding those having such interest merely as security for the performance of an obligation. The person or persons who acquire title, legal or equitable, to any Lot in the Kennedy Shores Subdivision are a single owner and shall have a single membership and vote in Kennedy Shores Homeowners' Association, Inc., a Virginia nonprofit corporation to be formed in accordance with the Virginia Property Owner's Association Act (the "Act"), herein referred to as the "Association"; provided, however, that such membership shall not to apply to those persons who hold an interest in any such Lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchasers unless such person should realize upon its security and become the real owner of a Lot within the Subdivision, in which case it will then be subject to all the requirements and limitations imposed in these Restrictions on owners of Lots within the Subdivision and on members of the Association, including those provisions with respect to alienation and payment of an annual charge.

B. Purpose. The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivision. Except as otherwise set forth in this Declaration, the Association shall continue in existence and shall not be dissolved or dispose of any of the common areas, by sale or otherwise, unless a successor organization is established with the same duties and responsibilities as the Association under this Declaration and such successor organization acquires all of the common areas to carry out such duties and responsibilities. The Association shall be responsible for the maintenance, repair, and upkeep of the streets until such time as they are accepted into the State road system, common areas within the Subdivision and any appurtenant easements reserved to the Association by Declarant. The Association shall also be the means for the promulgation and enforcement of all regulations necessary to the governing of the use and enjoyment of such roads and common areas within the Subdivision as it may from time to time own. After the period of Developer control ends, all common area management and enforcement responsibilities of "Developer" or "Declarant" that necessarily survive Developer's departure shall be assumed by and deemed to refer to, the Association.

C. Classes of Membership. The Association shall have two classes of voting membership:

1. Class A. Class A Members shall be all owners including Declarant. The Class A membership shall not terminate for so long as the Association continues in existence. Class A Members shall be entitled to cast a single vote for each Lot owned.

2. Class B. The Class B Member shall be Declarant. The Class B Member shall be required and entitled to vote in all Association membership decisions including the election of Directors, and accordingly, any decision made by the membership under this Declaration or the Association's articles of incorporation or bylaws or elsewhere must receive the one Class B Member vote to be effective. Notwithstanding anything set forth herein to the contrary, the Class B Member shall have the right to appoint or remove any Director by written notice to the Board of Directors during the period of Declarant control.

a) The Class B membership shall terminate on the earliest of the following:

- (1) the date on which Declarant ceases a Lot in the Subdivision;
- (2) the date on which Declarant executes and records in the Clerk's Office an amendment to this Declaration terminating the Class B membership (which amendment shall not require the consent of any other owners); or
- (3) ten (10) years from the date hereof.

The period of time from the date of recordation of this Declaration until the Class B membership in the Association terminates is referred to herein as the "period of Declarant control".

D. Articles and Bylaws to Govern; Property Owners' Association Act. Except to the extent expressly provided in this Declaration and any supplemental declaration, all of the rights, powers and duties of the Association and its members, shall be governed by the Articles and the Bylaws. In addition to all of the rights, powers and duties of the Association provided herein and in the articles and bylaws of the Association, the Association shall have all of the rights, powers and duties provided in the Virginia Property Owners' Association Act, Section 55-508 *et seq.* of the Virginia Code, including without limitation the right (subject to Section 55-513(B) of the Virginia Code) to assess charges against Members for any violation of the Project Documents or the rules and regulations of the Association.

E. Powers; Assessments. The Association shall have all the powers that are set out in its articles of incorporation and herein, and all other powers that belong to it by operation of law, including, but not limited to, the power to levy against every member of the Association a uniform annual charge per single-family residential Lot within the Subdivision, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than Five Hundred Dollars (\$500.00) per Lot and provided further that no such charge shall ever be made against, or be payable by, the Developer and/or the Association itself. Every such charge so made shall be paid by the member to the Association at closing on the initial sale of the Lot and thereafter on the first day of June of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per Lot by the first day of April of each year, and written notice of the charge so fixed shall be sent to each member.

F. Special Assessments. In addition to the regular assessments, the Board of Directors of the Association may levy, for any fiscal year, a special assessment applicable to that year if the purpose in doing so is found by the Board of Directors to be in the best interests of the Association, provided that no such charge shall ever be made against, or be payable by, the Developer and/or the Association itself.

G. Purpose of Assessments. The assessments levied by the Association shall be used for the management, maintenance, improvement, care, operation, renovation, repair and replacement of the roads and other common areas and improvements thereon and other property owned or acquired by the Association of whatsoever nature, for the discharge of all real estate taxes and other levies and assessments against the common areas and improvements thereon and other property owned or acquired by the Association, for the procurement of insurance by the Association as more particularly described in the bylaws, for the establishment of reserves with respect to the Association's obligations, for the discharge of such other obligations as may lawfully be imposed upon or assumed by the Association, for monitoring and enforcement of these restrictions, covenants and conditions and such other enforcement and monitoring activities pertaining to Kennedy Shores as may be lawfully assumed or imposed on the Association by public authorities, and for such other purposes as may be authorized by law.

H. Reserve Fund. The Association shall establish a reserve fund from its regular annual assessments as may be required by law to be held in reserve in an interest drawing account or investments as a reserve maintenance of road and common areas and capital improvements thereon.

I. Enforcement of Declaration. The Association or any party to whose benefit this Declaration inures may proceed at law or in equity to prevent the occurrence, continuation, or violation of this Declaration or of AR Guidelines, and the court in any such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees. In the event an owner of any Lot in the Subdivision shall fail to maintain the premises and the improvements situated thereon, the Association shall have the right upon receipt from the ARC of information that the owner was notified of the violation, was granted an opportunity to be heard as required by law, was found liable for a violation, and the violation remains uncorrected after a reasonable opportunity having been given to cure it, the Association may enter upon said Lot through its agents and employees, and repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements erected thereon. Such right shall not be exercised unless two-thirds of such Board of Directors shall have voted in favor of its being exercised. The cost of such exterior maintenance shall be added to and become part of the annual charge to which such Lot is subject.

J. Unpaid Assessments; Lien. If any charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six percent (6%) per annum. Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot whether or not it shall be so expressed in his deed, is deemed to covenant and agree to promise to pay to the Association assessments as set forth herein.

The assessments, together with interest thereon, late charges and costs of collection including attorney's fees, shall be a continuing lien upon the Lot against which each such assessment is made in order to secure payment thereof and shall also be the personal obligation of the party who was the owner of the Lot at the time the assessment fell due. No owner may waive or otherwise avoid liability for the assessments provided herein by nonuse of the common areas or abandonment of his Lot. The Association may file a notice that it is the owner of a lien to secure payment of the unpaid charge plus costs and reasonable attorney's fees, which lien shall encumber the Lot or Lots in respect of which the charge shall have been made, and which notice shall be filed in the Office of the Clerk of the Circuit Court of Franklin County, Virginia. Every such lien may be enforced in accordance with Virginia Code § 55-516. In addition to the remedy of the enforcement of the lien, the Association shall have the right to sue for such unpaid charges, interest, costs, and reasonable attorney's fees in any court of competent jurisdiction as for a debt owed by the delinquent member or members to the Association. Every person who shall become the owner of the title (legal or equitable) to any Lot in the Subdivision by any means is hereby notified that, by the act of acquiring such title, such person will be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to any paragraph or subparagraph of this Declaration.

The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified Lot have been paid or that certain charges against said Lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any charges therein stated to have been paid.

K. Suspension of Rights. The Board of Directors of the Association may suspend the voting rights and rights of access and use of common areas of any Class A Member subject to assessment under this Declaration during the period when any such assessment shall be delinquent or when such member is in violation of this Declaration, any AR Guideline, or other applicable law, ordinance or rule affecting the Association's property and interests of its members, but upon payment of such assessment or the remedy of such violation, the rights of such member shall automatically be restored.

L. Cumulative Remedies. These remedies are cumulative, and this specification of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law, in equity, or under any statute. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available

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to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

## VII. COMMON AREAS AND ROADS

A. Title to Common Area and Roads. At or before the end of the period of Developer control, Declarant shall convey the common areas in the Subdivision to the Association, and the roads in the Subdivision to the appropriate public authority free and clear of all liens (except real estate taxes not yet due and payable but subject to the this Declaration and all other easements, conditions and restrictions of record, as Declarant deems advisable. Until such conveyance is made, the owners and the Association shall have all the rights conferred hereby with respect to the common areas and roads. The Association shall not refuse the conveyance to it of any common area or road at such time as the Declarant, in its sole discretion, deems it advisable to convey such property to Association.

B. Obligations of the Association. Upon the release of any bonds securing their completion, the Association, subject to the rights of the owners set forth in this Declaration, shall be responsible for the taxes, insurance, maintenance, management, operation and control of the common areas and all other improvements and utility easements thereon to the extent maintained by the Association and shall keep the same in good, clean and attractive condition, order, and repair.

C. Maintenance of Roads. After initial construction of the roads by the Declarant which shall conform to standards suitable for acceptance into the public road system, the Association shall maintain and be financially responsible for all roads in Kennedy Shores other than roads both dedicated and accepted into the public road system, including all repair, improvements, snow removal and other work as necessary to properly maintain the roads in good condition. Cost of construction, maintenance, or upkeep or replacement of the private roads will not be borne by the County, the Commonwealth of Virginia, or any other public agency, unless and until said private roads are accepted into the state road system.

D. Owners' Rights of Enjoyment and Use of Common Areas. Every owner shall have a right of enjoyment in and to the common areas which shall be appurtenant to and shall pass with the title to every Lot. The common areas shall be used by owners only for the purpose or purposes for which the common areas may have been improved by Declarant. Any common area which has not been improved for a particular use is intended to remain in its natural condition until so improved, and any use thereof by an owner shall not damage or disturb such natural condition or the enjoyment thereof by other owners.

E. Delegation of Use. Any owner may delegate this right of enjoyment in the common area to members of owner's family living on the owner's lot, to guests and to tenants and their families and guests, subject to such rules and regulations and fees as may be established from time to time by the Association.

F. General Limitations on Owners' Rights. The owners' rights of enjoyment in the common areas shall be subject to:

1. the right of the Association to establish reasonable rules and regulations for the use of the common areas, including to charge reasonable access or other fees for the use of any improved recreational common areas;
2. the right of Association to mortgage any or all the common areas for the purpose of making improvements or repairs thereto;
3. the right of the Declarant or Association to grant permits, licenses, and easements across the common areas for utilities, roads, and other purposes;
4. the right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as may be desired by the Association;
5. all the other easements, covenants, and restrictions applicable to the common areas;

6. the right of the Declarant or the Association to give, sell or dedicate to public use by conveyance or dedication to any governmental agency or entity, or public or quasi-public entity all or any part of the common areas, including the roads, and including lease-hold interests, subject to (i) the limitations and restrictions, imposed by this Declaration and (ii) all other restrictions and limitations of record at the time of conveyance, to any public agency, authority, public service district, utility, or private concern for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that, except for the conveyance or dedication of any and all roads to a governmental agency or entity, or public or quasi-public entity which may be accomplished by Declarant in Declarant's discretion during the period of declarant control, no such gift or sale of any parcel of land and improvements thereon, or determination as to the purposes or as to the conditions thereof, shall be effective unless such dedication, transfers, and determinations as to purposes and conditions shall be authorized by the affirmative vote of two-thirds (2/3) of the votes cast at a duly called meeting of the Association.

7. Notwithstanding the foregoing, Declarant or the Association shall be permitted to convey or subject the common areas to conservation easements, preservation areas, utility, storm water and/or similar or related easements or such other area with similar designation without the foregoing duly called meeting or vote of the Association. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer of any parcel of land and improvements thereon affecting the common areas prior to the recording thereto. Such certificates shall be conclusive evidence of authorization by the membership.

8. Notwithstanding the foregoing, the gift or sale of any personal property owned by the Association shall be determined by the Board of Directors in its sole and uncontrolled discretion.

9. Notwithstanding the foregoing, the Declarant or the Association shall have the right, in its sole discretion, to cause the Association to grant minor conveyances of common areas to resolve setback problems, or to grant easements for the encroachment of initial improvements constructed on parcels adjoining the common areas to the extent that such improvements actually encroach on such properties, including but not limited to overhanging eaves, gutters and down spouts, and walls, such easements to continue only so long as such improvements exist.

G. Damage or Destruction of Common Area by Owner. In the event any common area or road improvement thereon is damaged or destroyed by an owner, or owner's tenants, guests, licensees, agents or members of owner's family, the Association may repair such damage at the owner's expense. The cost of such repairs, to the extent the owner would be liable therefor under applicable laws of the Commonwealth of Virginia, shall become an individual assessment upon the Lot of such owner and shall constitute a lien upon such owner's Lot and be collectible in the same manner as other assessments set forth herein. The foregoing obligation is not absolute in that the owner shall be released of liability for such costs to the extent that the costs are covered by the proceeds of the Association's insurance policies (but only if such release of liability will not invalidate such insurance).

H. Rights in Common Areas Reserved by Declarant. Until such time as Declarant conveys a parcel of real estate constituting common area to the Association, Declarant shall have the right, as to that parcel, but not the obligation (i) to construct such improvements thereon as it deems appropriate for the common use and enjoyment of owners, including without limitation, storm water and/or erosion control facilities, roads, directional signs, boat ramps, paths or trails, and other recreational facilities and to convey any conservation easements and/or utility easements, (ii) to maintain such common area in neat condition and repair, including mowing and removing underbrush and weeds at Association expense, (iii) to use the common area for other

purposes not inconsistent with this Declaration and the Subdivision's development plans (iv) subject to the zoning ordinance, to grant permanent or temporary rights-of-way and easements for utilities and access easements to any third party or other entity, including but not limited to the utility easements, provided, however, that notwithstanding any provision to the contrary, the Declaration has created certain blanket utility easements in the Subdivision. When the Association assumes responsibility for upkeep of a portion of the common area, the Association shall cooperate to obtain release of County bonds, if any. Declarant shall have the right but not the obligation, to retain operational use and control of common area that is conveyed until the County of Franklin releases any bonds secured by it.

The Declarant during the period of Declarant control, and thereafter the Association with the approval of the Members set forth below in this Section, may at any time dedicate or transfer all or a part of the common areas, including roads, to any public agency, authority, or entity including, without limitation, Franklin County, Virginia Department of Transportation, or to any nonprofit organization upon such terms and conditions shall be agreed upon by such agency, authority, entity, or organization, and after the period of Declarant control the Board of Directors, including without limitation, terms and conditions providing for the use of such common areas by the public in general and terms and conditions pertaining to the maintenance and repair of such common areas and the assessments of owners for the costs of such maintenance and repair. This right shall not be construed as a warranty or representation that public roads constructed by Declarant within the Subdivision shall meet the Virginia Department of Transportation's standards for public roads. After the period of Declarant control, no such dedication or transfer shall be effective, however, unless an instrument agreeing to such dedication or transfer is approved by two-thirds of the member votes, and during the period of Declarant control, by the Class B Member only. Any such dedication or transfer shall be further subject to applicable laws and regulations governing Virginia nonstock corporations.

### VIII. EASEMENTS

A. General Easement. The Declarant reserves the right and easement to the use of all areas owned or to be owned by the Association, and any Lot or any portion thereof, as may be needed for repair, maintenance or construction on such Lot or any Lot or any common area or the repair, maintenance, or construction of any utility easement, including but not limited to those easement areas shown on recorded subdivision plats or in a supplemental declaration.

B. Roads. As an appurtenance to each of the lots, common areas and other parcels of land located in Kennedy Shores Subdivision, there is hereby created a perpetual, but nonexclusive, easement for purposes of ingress and egress by owners over all roads, shown or hereinafter designated, constructed or set apart by the Plats or other instruments of record for the Subdivision. Subject to the use of others, as set forth herein, the fee simple ownership of the Roads will be conveyed to the Association just as common areas shall be.

C. Erosion Control. Declarant reserves a perpetual easement, right and privilege to enter upon any Lot or common area, and the Association is granted a perpetual easement, right and privilege to enter upon any lot, either before or after a building has been constructed thereon or during such construction, for the purpose of taking such erosion control measures as Declarant or the Association deems necessary to prevent or correct water flow, soil erosion or siltation thereon; provided however, except in the case of an emergency threatening property or giving rise to a violation of law (for which no notice or opportunity to cure is required), Declarant or the Association shall not exercise such right as to any Lot unless it has given the Owner of the Lot or the Association (as to the common area) except in an emergency at least ten (10) days' prior notice of the problem thereof and the owner or the Association, as the case may be, has failed to take appropriate action to correct or prevent the water flow, erosion or siltation problem. The cost incurred by the Declarant or the Association in undertaking such drainage, erosion and siltation control measures on any Lot shall become an individual assessment upon the Lot and shall constitute a lien against the Lot and shall be collectible in the manner

provided herein for the payment of assessments. This section shall not apply to Lots owned by Declarant.

D. Maintenance of Lots. Declarant reserves the perpetual easement, right and privilege, and the Association is granted the perpetual easement, right and privilege, to enter upon any Lot, after at least ten (10) days' notice to the Owner thereof, for the purpose of (i) mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth; (ii) dispensing pesticides, herbicides and fertilizer and grass seed; (iii) removing trash; and (iv) taking such other action as the Declarant or the Association may consider necessary to correct any condition which detracts from the overall beauty of the Subdivision or which may constitute a hazard or nuisance. The cost incurred by the Declarant or the Association in taking such action shall constitute an individual assessment upon the Lot and shall be collectible in the manner provided herein for the payment of assessments. This section shall not apply to Lots owned by Declarant.

E. Easement and Right of Entry of Law Enforcement Officials, Etc. An easement and right of entry through and upon the Property and Lots is hereby granted to law enforcement officers, rescue squad personnel, fire-fighting and emergency personnel, and to vehicles operated by such personnel while in the pursuit of their duties.

F. Enforcement of Motor Vehicle Code. The Declarant, during the period of Declarant control, may in its sole discretion, and thereafter the Board of Directors may in its discretion, establish speed limits for roads and other rules governing their use. Appropriate postings of these speed limits shall be made. Developer and Association may also petition the County or any other appropriate governmental agency or authority, (a) for the acceptance and designation of the roads as public roads, as set forth in the Code, by ordinance adopted by the County or any other appropriate governmental agency, and/or (b) seek and obtain, by all means set forth in the Code, the enforcement of the motor vehicle code as set forth in the Code by law enforcement officers.

G. Utilities. The Declarant hereby creates, and there is hereby reserved to the Declarant and its successors and assigns including Association, the exclusive right to grant, blanket public and private utility easements upon, across, over, and under all of the Subdivision and to create perpetual easements, rights and privileges to install, maintain, repair, replace and remove poles, wires, cables, conduits, pipes, mains, wells, pumping stations, siltation basins, tanks and other facilities, systems and equipment for the conveyance and use of electricity, telephone service, security service, sanitary and storm sewer, water, gas, cable television, telecommunications and other technological advances that may or may not now be in general use, irrigation, for the use and maintenance of drainage courses of all kinds and other public conveniences or utilities, upon, in or over those portions of the Subdivision (including lots, roads and common areas) (i) as the Declarant or its assigns may consider to be reasonably necessary (ii) as set forth on recorded subdivision plats or in a supplemental declaration and (iii) an area (a) twenty feet (20') in width along all front Lot lines and (b) as otherwise shown and/or noted on the Plat or in an amendment thereto or to this Declaration, including, but not limited to those areas designated on the Plat as drainage easement, sanitary sewer easement, variable width drainage easement, water meter easement, fire hydrant easement and other easement areas with similar notation(s); and Developer further retains and shall have the right and privilege to grant drainage easements along any Lot lines as may be required by VDOT, or access easements as required by Franklin County Health and Safety Department for fire access, and to grant any side line easements needed to allow access for installation of any underground water line for the home on the adjacent lot, and for access, maintenance and permanent stabilization control of slopes (collectively the "Utility Easements"). However, no Utility Easements shall be placed on the portion of a Lot on which is already located a building which was approved by the ARC or on which a building is to be located pursuant to plans approved by the ARC or, except for clause (i) above, on any portion of a Lot which is not otherwise noted, described or shown as an easement or easement area on a recorded subdivision plat or supplemental declaration applicable to such Lot. The Utility Easements shall include the right to cut trees, bushes or shrubbery and such other rights as Declarant or the governmental authority or utility company providing the utility service may require. The utility lines and equipment installed

pursuant to the Utility Easements shall be installed below ground, except as otherwise provided in this Declaration or in any supplemental declaration. If an owner receives permission to construct or constructs without first receiving permission an improvement within a Utility Easement, neither the Declarant, ARC, or Association shall have any liability to repair or replace any such improvement following damage thereto as the consequence of the exercise of easement rights under this section. Declarant shall have the right to convey Utility Easements to other owners, to governmental authorities or utility companies, to the Association and to any other party or parties. DECLARANT AND THE ASSOCIATION DO NOT WARRANT THE OPERATION OR EFFECTIVENESS OF ANY SYSTEM DESCRIBED ABOVE AND WILL NOT BE LIABLE FOR ANY FAILURE THEREOF TO PERFORM AS EXPECTED.

H. Maintenance. On each Lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the owner, but no structures, plantings, or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which may damage or interfere with established slope ratios or create erosion or sliding problems; provided, however, that where the existing location of a drainage channel would hinder the orderly development of a Lot, the drainage channel may be relocated as shown on the recorded plat by drainage arrows, provided such relocation does not cause an encroachment on any other Lot. Improvements within such areas shall also be maintained by the respective Lot owner except for those for which a public authority or utility company is responsible.

I. Other Easements of Record. The Lots in the Subdivision are also be burdened by such additional easements as may be shown on the Plat and instruments of record in the Clerk's Office, including without limitation the terms, provisions, easements and rights granted to Appalachian Power Company as contained in the Flowage Right and Easement Deed Smith Mountain Combination Hydro Electric Project Upper Reservoir, dated November 1, 1962, recorded in Deed Book 202, Page 47, granting the right to overflow and impound the waters of the river or tributaries onto the Subdivision; to enter upon, cut, clear and burn on that portion of Kennedy Shores below the 800 foot contour mark; to construct and operate a dam and hydro-electric station and appurtenant facilities so impounded waters, except on very rare occasions, will not exceed 800 feet.

#### IX. LOT IMPROVEMENT, MAINTENANCE, AND USE

- A. Quiet Enjoyment. In the sole determination of the Board of Directors of the Association, no obnoxious or offensive activity shall be carried on upon a Lot in the Subdivision nor shall anything be done which may become a health hazard, nuisance, or unreasonable annoyance to other owners.
- B. Appearance. All Lots and the improvements thereon shall at all times be maintained in a good, clean, attractive condition, order and state of repair consistent with a high-quality development. All Lot owners with an open grassed area shall mow and maintain such area to prevent grass from exceeding five inches in height and/or any other unsightly conditions detrimental to the attractiveness of the Kennedy Shores community.
- C. Clothes Lines. No clothes lines or other clothes drying apparatus shall be installed or placed outside of any building on a lot, nor shall any clothes or other wash be placed or allowed to remain outside of any building.
- D. Off Street Parking. Each owner shall provide adequate space for the parking of automobiles on owner's Lot rather than on the street or road on which the Lot fronts. Each owner shall comply with such parking restrictions as may apply to any public or private road within the subdivision.
- E. Model Homes and Sales Office Notwithstanding anything contained in this Declaration to the contrary, Declarant may use any improvements on a Lot as a model home and/or as a sale, construction or administrative

office and may grant permission to any builder to use any improvements on a Lot for similar purposes, subject to such rules and regulations as Declarant may impose in its sole discretion.

F. No Commercial Use. Lots shall not be used for commercial purposes except as permitted by Virginia Code §55-513.2. A private office may be maintained in any dwelling unit or accessory building on a Lot, but no such office may be open to the public unless it complies with the zoning ordinance applicable thereto and is expressly authorized in writing by the Board of Directors of the Association after giving consideration to the residential character of the Property and the traffic such office may generate. No Lot shall be used for storage of vehicles without current county and state licenses, or large commercial vehicle(s) such as semi-trucks, box trucks, dump trucks, motor coaches, busses, junk hauling vehicles, trailers, commercial equipment, vehicles with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater. "Storage" in this instance is defined as being in view on the property more than 10 days without being in use in construction on that Lot.

G. Screened Garbage and Fuel Tanks. All garbage and trash shall be kept in sanitary containers, screened from view. Fuel tanks may be maintained on any Lot provided the same shall be screened from view.

H. Trees. Except in approved construction areas and septic fields, no trees four (4) inches in caliber or larger, measured twenty-four (24) inches from the ground, shall be removed from the property without approval of the Developer, its successors or assigns. Except as approved by the Developer, no Lot owner may plant trees or other flora so as to screen or impede the view of the waters of Smith Mountain Lake from the homes or decks or proposed home sites, on adjacent lots.

I. Mail and Mailboxes. Declarant (in consultation with the U.S. Postal Service) shall have the sole right to determine how mail will be delivered to Lot in the Subdivision. All mailbox posts shall be painted or stained a color approved by the Developer.

J. Satellite Dishes. Only small (18-inch diameter or less) type exterior satellite dish antenna will be allowed to be placed on any Lot unless permission is otherwise obtained from the Developer, Association or ARC.

K. Pets. No animals of any kind except domestic dogs, cats and other non-exotic pets approved by the ARC and quartered at night within the residence may be kept on any Lot. No animals shall be allowed to run at large. Animals may not be left unattended outside in a run, or chain or to allowed to bark or otherwise annoy or disturb the neighbors.

L. No Camping. Camping or the use of tents for any purpose shall be prohibited on all Lots at all times including land abutting such Lots below the 800-foot contour line.

M. Boats, RV's Large Vehicles. Boats and personal watercraft shall be maintained at dock areas in the water, on a boatlift or in a boat house. No trailer, bus, camper, recreational vehicle, utility trailer, commercial vehicle (other than automobiles, light weight vans, pickup trucks and similar vehicles which are used for personal as well as commercial purposes and which do not bear any sign, logo or lettering), oversized vehicle or any vehicle with more than two (2) axels or that weighs more than two (2) tons or such other maximum weight as the ARC shall determine shall be parked or maintained on any street, common area, or Lot except within a garage or other structure approved by the ARC. Motor homes may be temporarily parked in driveways after the main residence has been built. If the Association permits any such vehicle permanently on a Lot, it shall be kept within a garage or an enclosed or screened area such that the vehicle shall not be visible from any street or other Lots. The plans for the enclosed or screened area shall be submitted to the Architectural Review Committee for its approval.

N. Signs. Until termination of the period of developer control, all signs are prohibited. This provision does not apply to the developer in its normal course of business promoting Lot sales in Kennedy Shores and the sale of its inventory of developed and undeveloped Lots therein. After the period of developer control has ended, customary real estate "for sale" signs and "builder" signs shall be permitted.

O. Fences. No fence other than a fence approved by the ARC shall be erected on any Lot.

P. Short Term Rentals. Short term rentals of homes in Kennedy Shores are expressly permitted subject to the Lot owner obtaining a special use permit as may be required by the zoning ordinance, provided the Association may implement procedures to require Lot owners to provide Association with such information as Association may reasonably require for security purposes and/or acknowledgment of and consent to any rules and regulations of the Association.

#### X. X. MISCELLANEOUS PROVISIONS

A. Amendments. Except as otherwise set forth in this Declaration and subject to the Association bylaws, this Declaration may be amended or amended and restated only (i) during the period of Declarant control by Declarant, or (ii) with the approval of 67% of the Class A members (including Declarant as to Class A votes held by Declarant) voting in person or by proxy at a duly called meeting and the written consent of Declarant during the period of Declarant control. Notwithstanding the foregoing, Declarant shall also have the right from time to time and at any time without the consent of any other owners to amend this Declaration and any other Project Documents in any respect as may be necessary or appropriate, in Declarant's sole judgment, (i) in order for this Declaration or the Subdivision to comply with the Virginia Property Owners' Association Act, the zoning ordinance or other applicable laws now or hereafter enacted, as the same may be amended from time to time (including without limitation the adoption of defined terms for use herein and in the Association articles of incorporation and bylaws), (ii) in order to correct a mathematical mistake, an inconsistency or ambiguity with respect to an objectively verifiable fact in or among this Declaration, the Association's articles and bylaws, and/or a scrivener's error; provided that no such amendment may materially reduce what the obligations of the Declarant would have been if the mistake, inconsistency, error or ambiguity had not occurred, (iii) in order to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration or other governmental or quasi-governmental entities, with respect to their purchase, guarantee or insurance of loans secured by Lots or (iv) in any other respect only to the extent the amendment does not materially and adversely affect the rights and obligations of the members in Association or the rights and obligations of the owners under this Declaration.

Notwithstanding anything contained in this Declaration to the contrary, no amendment may be made to this Declaration without the Declarant's consent if such amendment would eliminate or materially and adversely affect any of the rights, exemptions, interests or privileges expressly reserved or granted to the Declarant (as the "Declarant" or "Class B Member" and not as an Owner generally), except to the extent that such rights expressly expire upon the termination of the Period of Declarant Control or that would result in treating Declarant or the Lots still owned by Declarant differently from other Owners or Lots. If the Members vote to amend or amend and restate this Declaration, the Association and, during the Period of Declarant Control, the Declarant shall execute and record in the Clerk's Office an instrument setting forth the amendment or restatement and shall certify therein that the vote of Members approving the amendment was taken at a Duly Called Meeting and that at least two thirds of the Class A votes present in person or by proxy were cast in favor of the amendment or restatement. If the Declarant amends this Declaration without the consent of any other Owners as provided in this Section or elsewhere in this Declaration, the Declarant shall execute and record in the Clerk's Office an instrument setting forth the amendment and shall certify therein that the amendment was authorized as provided herein and that if during the Period of Declarant Control, Declarant consented to the amendment or restatement. The foregoing certification in any amendment or restatement may be relied upon by third parties for the correctness of the facts stated therein.

B. Assignment of Declarant's Rights. Any and all rights, powers, easements and reservations of Declarant set forth herein may be assigned in whole or in part, at any time or from time to time, to the Association. Each such assignment shall be evidenced by an instrument which shall be recorded in the Clerk's Office. The