

Prepared by and return to: Lori P. Jones, P.O. Box 10669, Raleigh, NC 27605

STATE OF NORTH CAROLINA

**DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR FOREST ON FRANKLIN
TOWNHOMES**

COUNTY OF WAKE

**THIS DOCUMENT REGULATES AND/OR PROHIBITS THE
DISPLAY OF POLITICAL SIGNS AND THE FLAGS OF THE UNITED STATES
OF AMERICA AND NORTH CAROLINA**

Forest on Franklin, LLC, a North Carolina limited liability company ("Declarant"), does hereby make, declare and establish this Declaration of Covenants, Conditions, and Restrictions for Forest on Franklin Townhomes ("Declaration"), and hereby subjects the Property hereinafter defined to the terms of this Declaration. The Property is further subjected to Chapter 47F of the North Carolina General Statutes, commonly known as the North Carolina Planned Community Act.

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property located in Wake County, North Carolina, which is more particularly described in Article I of this Declaration and is further shown upon the Plat as defined herein (the "Property"); and,

WHEREAS, Declarant intends to impose on the Property mutually beneficial restrictions under a general plan of development for the benefit of the owners of each portion of the

Property, and to establish a procedure for the overall development, administration, maintenance, and preservation of the Property; and,

WHEREAS, in furtherance of such plan, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, Forest on Franklin Townhomes Owners Association, Inc., to own, operate, maintain and/or manage, as may be applicable, any Common Areas as are defined herein, and to administer and enforce the covenants and restrictions imposed herein; and,

WHEREAS, Declarant executes this Declaration for the purpose of submitting the Property to the North Carolina Planned Community Act and the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, and conveyed subject to Chapter 47F of the North Carolina General Statutes and the easements, restrictions, covenants, uses, limitations, liens, and obligations set forth below, which shall run with the land and be binding on all parties having any rights, title, or interest in the land or any part thereof, their heirs, successors and assigns.

ARTICLE I PROPERTY SUBJECT TO THIS DECLARATION

The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described as being all that property shown on the Plat entitled "Final Subdivision Plat for The Forest on Franklin" recorded in Book of Maps 2022, Page 1503, Wake County Registry.

ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to Forest on Franklin Townhomes Owners Association, Inc., its successors and assigns.

Section 2. "Board" or "Board of Directors" shall mean and refer to the body responsible for administration of the Association, elected as provided for in the Bylaws.

Section 3. "Builder" shall mean and refer to a person or entity other than Declarant who purchases or becomes the Owner of one or more Lots within Forest on Franklin for the purpose of constructing a residential dwelling thereon for sale to a third party.

Section 4. "Bylaws" shall mean and refer to the Bylaws for Forest on Franklin Townhomes Owners Association, Inc. as they may be amended from time to time.

Section 5. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Members, including any area designated as "open space" on the Plat.

Section 6. “Common Expenses” shall mean and include: (i) all sums lawfully assessed by the Association against its Members; (ii) expenses related to the administration, maintenance, repair or replacement of the Common Area, stormwater control devices, and any other property for which the Association bears maintenance responsibility per the terms of this Declaration; (iii) expenses declared to be common expenses by the provisions of this Declaration or the Bylaws; (iv) expenses agreed by the Members to be common expenses of the Association; (v) ad valorem taxes and public assessments charges lawfully levied against Common Areas; (vi) utilities used in connection with the Common Area; and (vii) hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase.

Section 7. “Declarant” shall mean and refer to Forest on Franklin, LLC, a North Carolina limited liability company, its successors and assigns to whom the rights of Declarant hereunder are expressly assigned in writing, in whole or in part.

Section 8. “Declarant Control Period” shall mean and refer to that period during which Declarant retains sole authority to appoint, remove and replace members of the Board of Directors. Unless Declarant voluntarily surrenders in writing its authority, the Declarant Control Period shall terminate upon the earlier of the following events: (i) when all the Lots have certificates of occupancy issued thereon and have been conveyed to persons other than a Builder or Declarant; or (ii) on December 31, 2030. Provided, however, that if Declarant subsequently annexes additional property pursuant to the provisions of this Declaration, the Declarant Control Period shall be revived and shall not terminate until all of the Lots in the annexed property have certificates of occupancy issued thereon and have been conveyed to persons other than a Builder or Declarant.

Section 9. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Forest on Franklin Townhomes, as it may be amended from time to time.

Section 10. “Lot” shall mean and refer to any plot of land shown upon a Plat, whether or not improvements are constructed thereon, which is intended for residential development, use and occupancy.

Section 11. “Member” shall mean and refer to a person subject to membership in the Association per the terms of this Declaration.

Section 12. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13. “Plat” shall mean and refer collectively to that plat recorded in Book of Maps 2022, Page 1503 in the Wake County Registry, and any other plats recorded by Declarant with respect to the Property.

Section 14. “Property” shall mean and refer to that certain real property described in Article I together with such additional property as may be made subject to this Declaration.

ARTICLE III PROPERTY RIGHTS

Section 1. **Owner’s Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area and any sidewalks within the subdivision for access, ingress and egress from and to public streets, walkways and parking areas, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions set forth in this Declaration, as well as the following provisions:

- a. for any period during which any assessment against his Lot remains unpaid for thirty (30) days or longer, the right of the Association to suspend the voting rights of an Owner and to suspend other privileges or services provided by the Association, including use of recreational amenities, if any;
- b. for violation of the Declaration, Bylaws, rules or regulations of the Association, the right of the Association to suspend other privileges or services provided by the Association, including use of recreational amenities, for a period not to exceed sixty (60) days, and after notice and an opportunity to be heard, to impose fines;
- c. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Members;
- d. the right of the Association to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage the Property, and the rights of such mortgagee in said Property shall be subordinate to the rights of the homeowners hereunder; and
- e. the right of the Association to adopt, publish and enforce rules and regulations as provided in this Declaration.

Section 2. **Delegation of Use.** Any Owner may delegate the Owner’s right of enjoyment in and to the Common Area to the Owner’s family members, tenants or contract purchasers who reside on the Owner’s Lot.

Section 3. **Title to the Common Area.** The Declarant hereby covenants for itself, its successors and assigns that prior to the conveyance of the last Lot, the Declarant will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except utility and storm drainage easements and other easements of record.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

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

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

- a. **Class A Members.** Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.
- b. **Class B Member.** The Declarant shall be the sole Class B Member and shall be entitled to ten (10) votes for each unoccupied Lot owned. The Class B Membership shall terminate as of the date Declarant no longer has the unilateral right to annex property to the subdivision. Upon such termination, the Declarant shall become a Class A Member and shall have Class A votes with respect to any Lot owned by it. Declarant shall be entitled to one (1) vote for each occupied Lot owned.

Section 3. **Appointment of Board.** During the Declarant Control Period, the Declarant shall have the right to appoint all members of the Board of Directors.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** The Declarant for each Lot owned within the Property hereby covenants, and each Owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments and other assessments for those purposes outlined below and elsewhere in this Declaration, such assessments to be established and collected as hereinafter provided. The annual and special and other assessments, together with interest, costs and reasonable attorney fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot when each assessment was made, and such assessments shall not pass to his successors in title unless expressly assumed by them.

Notwithstanding anything herein to the contrary, for as long as Declarant is in control of the Association, Declarant and Builders shall be exempt from paying annual or special

assessments for any unoccupied Lot owned by them, provided that Declarant funds any deficit in operating expenses of the Association, exclusive of reserves, cost of capital improvements, and non-budgeted repairs or replacement. For the purposes hereof, a deficit shall be computed by subtraction from said operating expenses (exclusive of the items described in the foregoing sentence) all assessments, contributions and other sums received or receivable by the Association. Declarant may at any time commence to pay assessments as to the Lots that it or a Builder owns and thereby automatically terminate its obligation to fund a deficit in the operating expenses of the Association, or any time or from time to time elect again to fund deficits as aforesaid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Property and, in particular, for (i) the payment of Common Expenses; (ii) the acquisition, improvement and maintenance of Common Area; (iii) the maintenance, repair and reconstruction of the entrance signs (and associated irrigation, lighting and landscaping), stormwater detention devices, retaining walls installed by Declarant, private streets and parking areas, and the community mail kiosk; (iv) the cutting and removal of weeds and grass and the removal of trash and rubbish and any other maintenance necessary for the use and enjoyment of the Common Area, including but not limited to, cost of repairs, replacement and additions; (v) the cost of labor, equipment, materials, management and supervision; (vi) the payment of taxes and public assessments assessed against the Common Area; (vii) the procurement and maintenance of insurance in accordance with this Declaration; (viii) the employment of attorneys and other professionals to represent and advise the Association when necessary; (ix) the provision of adequate reserves for the replacement of capital improvements including, without limitation, signs, landscaping and any other major expense for which the Association is responsible; and (x) such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Area and of other items which the Association is obligated to maintain per this Declaration.

Section 4. Maximum Annual Assessment. As of the date of recording of this Declaration, the maximum annual assessment shall be Three Thousand One Hundred Twenty and 00/100 Dollars (\$3,120.00) per Lot, which amount shall be subject to annual review and adjustment by the Association.

- a. Beginning January 1, 2024, and for each year thereafter, the maximum annual assessment may be increased effective January 1 of such year without vote of membership by up to ten percent (10%) of the previous year's maximum annual assessment.
- b. The maximum annual assessment may be increased above the increase permitted in Section 4(a) above only with the approval of sixty-seven percent (67%) of the votes of each class of Members who are present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all

Members not less than 10 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

- c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of acquisition and improvement of any Common Area or any maintenance, construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or the Lots, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class Members who are present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 10 days nor more than 60 in advance of the meeting setting forth the purpose of the meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected at least on an annual basis. However, the Declarant and Builders shall be exempt from paying annual or special assessments on any non-occupied Lot owned by them.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The assessments provided for herein shall commence as to a Lot when such Lot is conveyed by Declarant or a Builder to a third party, or when such Lot is occupied for residential purposes, whichever occurs first. Assessments shall be due and payable in a manner and on a schedule as the Board may provide. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein.

Section 8. Capital Contribution. Upon the initial conveyance of a Lot to the first Owner thereof other than a Builder or Declarant, the purchaser shall pay to the Association the amount of Five Hundred Twenty and 00/100 Dollars (\$520.00) which shall be transferred upon closing of the Lot to the Association and held as a working capital fund, to be used in the discretion of the Board. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 9. Effect on Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate per annum. The Association may bring an action at law against the

Owner personally obligated to pay the same or may foreclose the lien against the Lot in the same manner in which a Deed of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the North Carolina General Statutes, or in accordance with Chapter 47F of the North Carolina General Statutes, or pursuant to any other applicable statute. Interests, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may give or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of the Owner's Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 10. Subordination. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the filing of a claim of lien under this Article and to ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Common Area, all property dedicated to and accepted by a local public authority, all property owned by a public or private utility for the purpose of providing water or sewer to the Lots, and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from these assessments.

Section 12. Fines. The Board may impose fines of up to \$100.00 per day (or any higher amount allowed by law) for each violation of this Declaration, the Bylaws of the Association, or any rules and regulations promulgated by the Association, provided that the Association shall not impose any fines without first notifying the Owner of the offending residential Lot in writing of the specific violation. Before imposing any fine, the Association shall also provide the offending Owner with an opportunity to be heard regarding the violation. Any fines imposed thereafter shall be a lien against the Owner's Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of fines. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may otherwise be legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset any damages that the Association might otherwise be entitled to recover by law from such Owner.

ARTICLE VI ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. General Provisions.

- a. Declarant shall retain control of the Architectural Review Committee until a certificate of occupancy has been issued on the last Lot in the subdivision unless, prior to that time, Declarant shall voluntarily assign in writing the rights, powers, duties and obligations of the Architectural Review Committee to the Association.

When the final certificate of occupancy has been issued on the last Lot in the subdivision, the rights, powers, duties and obligations of the Architectural Review Committee shall automatically transfer to the Association; except that if Declarant exercises its right to unilaterally annex property to the subdivision, Declarant shall automatically reacquire architectural review authority over all new construction within the annexed property that might otherwise have been vested in the Association. It is the intent of this section that Declarant retain all architectural review authority over new construction in annexed properties unless that right is voluntarily relinquished to the Association.

- b. During Declarant's control of the Architectural Review Committee, the Architectural Review Committee shall consist of one (1) or more person designated by the Declarant. At such time as the rights, powers, duties and obligations of the Architectural Review Committee shall be transferred or assigned to the Association:
 - i. The Board may elect to either serve as the Architectural Review Committee or to designate the number of and appoint the members of the Architectural Review Committee on an annual basis, and such appointed members of the Architectural Review Committee may be members of the Board.
 - ii. The Board may remove members of the Architectural Review Committee appointed by the Board at any time with or without cause.
 - iii. In the event of the death, resignation or removal by the Board of any member of the Architectural Review Committee, the Board shall have full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member.
- c. No building, sign, fence, hedge, wall, walk, landscaping, ornaments, statues, flags, playsets, recreational structures, grading, site improvement or other improvements or structures shall be constructed, erected, placed upon or planted on a Lot, nor shall any alteration of a Lot or improvement take place, until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished product have been approved by the Architectural Review Committee, in writing, as to conformity and harmony of external design with the existing structures in the subdivision, including, without limitation, with respect to topography and finished ground elevation. The Architectural Review Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for appearance, aesthetic or any other reasons, provided such approval is not unreasonable withheld. In approving or disapproving such plans and applications, the Architectural Review Committee shall consider the suitability of the proposed building, improvement, structure or landscaping and

materials in relation to the surrounding area and the effect thereof on adjacent or neighboring property. The Architectural Review Committee may establish and amend standards and guidelines which may establish, define, and expressly limit what structures or improvements will be approved within the Property, including, but limited to, architectural style and exterior color or finish.

- d. In the event the Architectural Review Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within sixty (60) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved.
- e. There is specifically reserved unto the Architectural Review Committee and the Board, the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any improvement which violates the terms of any applicable covenants, conditions, or restrictions. The Board of Directors is empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expense, and reasonable attorney's fees in connection therewith.
- f. The Association, Declarant, Architectural Review Committee or any other officer, employee, director, or member thereof shall not be liable for damage to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or Architectural Review Committee or any other officer, employee, director, or member thereof to recover any such damages.
- g. Members of the Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to this Article.

Section 2. Maintenance of the Common Area. The Association shall maintain all Common Area and improvements thereon. The Association's maintenance responsibility shall also include, but is not limited to, maintenance, repair and replacement of the entrance signs and any associated landscaping, irrigation or lighting; all stormwater control devices; private streets and parking areas; the central mailbox unit serving the Property; any retaining wall installed by Declarant; and the street lights and electricity to said lights to the extent not maintained by a public utility or local government. The Association shall have no maintenance or repair responsibility related to any Lot, including any improvements thereon, unless such responsibility is specifically assumed in writing by the Association or set forth in this Declaration. The Association shall have the right, but not the obligation, to maintain other property not owned by the

Association, whether within or without the subdivision, where the Board has determined that such maintenance would benefit all Owners.

Section 3. Maintenance of Lots. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, and landscaping (hereinafter the "Yard Improvements") installed by the Declarant or Association on a Lot, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping). However, the Association's responsibility shall not include maintenance, repair or replacement of Yard Improvements located inside a fence; any maintenance, repair or replacement of Yard Improvements necessitated by work done by or at the request of any Owner or any utility company or governmental entity; or replacing any plant, shrub or tree or other planting for any reason. The Association shall provide the foregoing yard maintenance services on a schedule approved by the Board, in the Board's sole discretion.

The Association shall also be responsible for certain exterior maintenance and repair of the residences located on a Lot which is necessitated by ordinary wear and tear, as follows: the power-washing, painting, repair and replacement of exterior building surfaces (such as hardiplank or cement siding); the painting and/or staining of exterior trim; and the repair and replacement of roofs, gutters, and downspouts. It is the specific intent of this Section that the Association's maintenance responsibilities should extend only to maintenance and repair necessary to prevent and repair damage caused by normal wear and tear and aging, and not to reconstruct or repair damage caused by casualty losses, negligent or intentional acts, acts of God, or similar events.

Except for the maintenance responsibilities allocated to the Association above, the Owner of each Lot shall have the duty and responsibility, at such Owner's sole cost and expense, to keep the Owner's Lot, including buildings and structures thereon, in a well-maintained, safe, clean and attractive condition at all times, including, but not limited to, maintenance, repair and replacement of the following:

- a. Prompt removal of all litter, trash, refuse and waste from the Lot;
- b. For any space on the Lot located inside a fence: mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for such area; pruning and trimming of all trees, hedges and shrubbery; removal of dead or diseased trees, shrubs and other plant material; and maintenance of flower and plant gardens;
- c. Maintenance, repair and replacement of exterior lighting, mechanical facilities, heating and air equipment, fixtures, utility lines, pipes, wires, conduits, and other similar systems exclusively serving the Lot, whether or not located within the boundary of the Lot;

- d. Repairing, painting and otherwise caring for all windows, window glass, other glass surfaces, exterior doors, trim (excluding painting), screens, window and door fixtures and hardware;
- e. Repairing, painting, maintaining, and otherwise caring for the interiors of all building and structures or other improvements located on the Lot, including, without limitation, all interior portions of the dwelling and all structural components of the dwelling and the foundation;
- f. Repairing, painting, maintaining, and otherwise caring for all fences, decks, patios, stoops, porches, stairs, steps, balconies and all other exterior improvements located on the Lot;
- g. Preventing and correcting unclean, unsightly or unkempt conditions of Lots and all improvements thereon clean and free of garbage, junk, trash, debris, non-operable vehicles and apparatus, and any substance or conditions that might contribute to an unsightly condition, health hazard or the breeding and habitation of snakes, rats, insects or other wildlife or pests; and
- h. Repairing, painting, and maintaining improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements.

The Board of Directors may adopt and enforce additional rules and regulations related to required maintenance upon the Lots.

Section 4. Additional Maintenance Provisions. In the event that the Association determines that any maintenance which is the responsibility of the Association is caused through the willful or negligent act of an Owner, or the occupant of the Lot, or the family, guest, invitee or lessee of an Owner or occupant, then the Association may perform such maintenance and all costs thereof may be assessed to the Owner as an individual assessment which shall be a lien against the Lot and may be collected as set forth in Article V. If the Board of Directors determines that any Owner has failed or refused to discharge properly any of Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be an individual assessment which shall become a lien against the Lot and may be collected as set forth in Article V. The Board shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, if such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. The remedies provided in this Section shall be in addition to,

and not in lieu of, other remedies provided in this Declaration or by law for a violation of the Declaration.

Section 5. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat or as otherwise set forth in recorded easement agreements. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage channels in the easements. Such easement areas of each Lot and all improvements on it shall be maintained continuously by the owner of the Lot except as specifically provided for in this Declaration.

Section 6. Walks, Drives, Parking Areas, and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for driveways, alleys, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 7. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same.

Section 8. Additional Easements. The Lots shall be subject to, and Declarant does hereby grant, the following non-exclusive perpetual and temporary easements for the enjoyment of Declarant, the Association, and subcontractors authorized by Declarant, the Association, the Members and the successors-in-title of each:

- a. **Easements Shown on Plat.** Each Lot shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plat as affecting and burdening such Lot.
- b. **Entry.** Each Lot shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration and for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or structure on another Lot or on the Common Area.

- c. Surface Water Drainage. Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under or across such Lot, including any runoff or carryover of water from one Lot to another, provided that such cross-Lot drainage condition was created by Declarant.
- d. Street Lighting. Declarant reserves the right to subject the property to installation of street lighting, which cost for such operation, maintenance and repair of said lighting may be a Common Expense or may be charged by the applicable utility directly to Owners as determined by the utility.
- e. Common Area Easements. The Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it such further easements as are requisite for the convenience, use and enjoyment of the Property. In addition, there is hereby reserved unto the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Common Area now or hereafter owned by the Association for the purpose of construction of improvements within the Properties.

ARTICLE VII USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area.

Section 2. Use of Property. No portion of the Property (except for temporary offices of the Declarant and/or any model used by Declarant) shall be used except for single family residential purposes and for purposes incidental or accessory thereto. No trade or business or commercial activity shall be carried on, in, or upon any Lot at any time except with the written approval of the Board, which the Board may grant so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or any rules and regulations, does not create a disturbance, does not involve employees or clients regularly visiting the Lot, and does not unduly increase traffic flow or parking congestion. The Board may promulgate rules and regulations regarding permitted business activities. Leasing of a Lot in accordance with the provisions of this Article shall not be considered a business or business activity.

Section 3. Condition of Property. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot, and the Board of Directors shall have the authority to establish community standards regarding the same. No portion of the Property, including any Lot, shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might

disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property.

Section 4. Animals. No animals, insects, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that up to three (3) dogs, cats or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes. Owners are limited to having a maximum of three (3) pets at any one time. At no time shall any household pet be allowed to run free. All pets shall be leashed when off the Owner's Lot. Pets shall not at any time be left tied or chained on any Lot. No doghouses, kennels, or runs are allowed. Owners are responsible for promptly removing any pet waste deposited in the Common Area or on any Lot. The Association shall have the right to promulgate additional rules and regulations governing pet ownership, including those that may limit the size and conduct of pets. For purposes of this section, the term "household pet" or "pet" shall not include any exotic animal or animal for which a permit must be obtained from a local, state or federal government to legally keep such animal, nor shall the term include chickens, pigs, horses, goats, sheep, cows, or other type of traditional livestock of any size, including pygmy and miniature varieties, whether or not the same are considered to be a pet by the owner thereof.

Section 5. Accessory Buildings. Detached accessory buildings, including storage sheds, are not permitted.

Section 6. Subdivision and Recombination. No Lot shall be subdivided or recombined without the express consent of the Board of Directors and the applicable local government authority.

Section 7. Leasing. All lease agreements shall be in writing and shall incorporate the requirements of the Declaration, Bylaws, and rules and regulations of the Association, and shall require any lessee to abide by all the obligations set forth in those documents as a condition of the lease agreement. Owners are required to provide lessees with a copy of the Declaration, Bylaws, and rules and regulation of the Association. No interest in any Unit may be subjected to a time share program.

Section 8. Temporary Structures. Except as otherwise set forth herein, no trailer, tent, shack, pod, barn, outbuilding, storage container or other temporary structure shall be erected or placed on any Lot governed by these covenants; provided however, this section shall not apply to the activities of Declarant or a Builder during the development and construction period.

Section 9. Fences. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Property, including any Lot, without the prior written consent of the Architectural Review Committee. The Architectural Review Committee is specifically granted the authority to enact standards governing where fences may and may not be located within a Lot; minimum and maximum fence heights; and approved and

prohibited fence materials and styles. However, no chain link, chicken wire, barbed wire or any other wire fence is permitted on any Lot. Owners are advised that some Lots may not be conducive to the presence of a fence, and approval to install a fence is not guaranteed.

Section 10. Signs. No signs of any kind are permitted except for the following:

- a. One (1) “For Sale” sign may be posted on the Owner’s Lot during any period in which the Lot is being marketed for sale. No sign can be more than twenty-four (24) inches by thirty (30) inches and must be placed at a maximum height of two (2) feet above ground level. Signs should be professionally made of metal or composite material. Homemade or handwritten signs of any type are not to be allowed.;
- b. Professional security signs may be posted on the Owner’s Lot or in a window;
- c. Signs required by legal proceedings may be posted on a Lot;
- d. Temporary signs may be posted in the front yard space of a Lot, or alternatively, in a window, to announce special events such as birthday parties and other social events, but such signs may be erected no more than 24 hours before the event takes place and must be removed immediately upon the conclusion of such event; and
- e. One (1) political sign with maximum dimensions of 24 inches by 24 inches may be posted in the front yard space of a Lot, or alternatively, in a window, but such sign may not be posted earlier than 45 days before the day of the election and must be removed within seven days after election day. For the purposes of this section, “political sign” means a sign that attempts to influence the outcome of an election for which citizens residing in Wake County are generally entitled to vote, such as a national, state, or local election, and including supporting or opposing an issue on the election ballot.

No signs of any type may be posted on the Common Area, except with permission of the Board. The Architectural Review Committee shall have the right to enact reasonable rules and regulations governing the style, number, or size of permitted signs, as well as defining those events for which temporary signs may be utilized. Notwithstanding the foregoing, the Declarant and/or Declarant’s assigns or Builders as authorized by Declarant shall be authorized to erect and maintain temporary signs for the sale and construction offices and for marketing of Lots.

Section 11. Outdoor Structures and Equipment. No outside clotheslines, supplies or equipment are allowed on a Lot. Transformers, air conditioning, and other alternative energy devices shall either be concealed behind screening or integrated into the building design so as to be inconspicuous. No window air conditioning units may be installed. No artificial vegetation shall be permitted on the exterior of any Lot.

Section 12. Flags. No flags, banners, or similar item may be displayed on a Lot without approval of the Architectural Review Committee, except that Owners may display the flag of the United States of America not exceeding 4 foot x 6 foot in size as long as the flag is displayed in accordance with federal law regarding the same.

Section 13. Trees. No trees located on a Lot shall be removed without the prior written consent of the Architectural Review Committee except trees removed during the construction of the original dwelling on a Lot.

Section 14. Parking. Each dwelling shall contain two (2) garage parking spaces for use of the Lot. There shall be no parking of automobiles on the streets within the Property. No boats, trailers, commercial vehicles, campers, motor homes, tractors, golf carts, recreational vehicles or other similar items may be parked on the Property. No inoperative, abandoned, or unlicensed vehicle or any vehicle displaying an invalid inspection sticker shall be parked or stored on the Property. No tractor trailer or tractor cab may be parked anywhere within the Property at any time. The Board of Directors may promulgate additional rules and regulations governing parking and operation of vehicles, conveyances and equipment within the Property. The foregoing parking restrictions shall not apply to the development or construction activities of Declarant or any Builder approved by Declarant.

Section 15. Antennas and Satellite Dishes. No radio, television or other antenna, aerial or satellite dish is permitted, except as follows:

- a. **Satellite Dishes:** Satellite dishes that are one meter or less in diameter and are designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, may be installed without pre-approval. As long as adequate reception is available, satellite dishes must be located on the rear exterior wall or rear roof of the residence, or the rear yard behind the residence, and to the extent possible must not be visible from adjoining lots, streets, or Common Area.
- b. **Other Antennas:** Antennas that are one meter or less in diameter or diagonal measurement and are designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite and antennas that are designed to receive local television broadcast signals may be installed without pre-approval. As long as adequate reception is available, such antennas must be located on the rear roof of the residence, or the rear yard behind the residence, and to the extent possible must not be visible from adjoining lots, streets, or common area.

Dishes and other antennas and accompanying equipment should be painted to the extent possible to match the exterior of the residence or to blend in with the surrounding area where located and must be screened from view where possible. The Architectural Review Committee may enact requirements regarding screening and plantings as may be necessary to ensure that dishes and antennas are screened from view. Owners are solely responsible for (1) maintaining satellite

dishes, antennas, and all related equipment and (2) any damage arising from the installation of a satellite dish or other antenna. Owners are not permitted to install satellite dishes or antennas of any type on the Common Area.

Section 16. Solar Collectors. Solar collectors may be installed only after approval of the Architectural Review Committee. Applications must include the type of solar collector, a photo of the same if available, and a drawing detailing the proposed location. Solar collectors may not be placed in the following locations if visible by a person on the ground: (1) on the façade of a structure that faces areas open to common or public access; (2) on a roof surface that slopes downward toward the same areas open to common or public access that the façade of the structure faces; or (3) within the area set off by a line running across the façade of the structure extending to the property boundaries. The Architectural Review Committee may require screening of solar collectors depending upon the type and placement desired. All supports, wires, mounting hardware and other portions of the solar collector, to the extent possible, must be painted to match the color of the roof or wall to which they are attached.

Section 17. Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each dwelling or deposited in appropriate trash collection bins for pickup. No trash or garbage shall be kept or stored on balconies, porches, patios, or decks.

Section 18. Mailboxes. No curb side mailboxes or other mail or newspaper receptacle shall be installed by any Owner within the Property. A central mailbox unit sufficient to allocate one mail receptacle per Lot shall be installed by Declarant on the Property, and shall be maintained, repaired, and replaced by the Association. No Owner may move, deface, damage or otherwise alter said central mailbox unit.

Section 19. Pools. No swimming pools of any kind are allowed on the Lots, except for a small, temporary wading pool that must be removed from view and stored out of sight when not in use.

Section 20. Windows, Blinds, Doors, and Awnings. No foil or other reflective materials shall be used on any windows for any purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white, off-white or neutral in color, or, in the event of wooden blinds or shutters, natural or lightly stained wood. No “burglar bars,” steel or wrought iron bars, or similar fixtures shall be installed on the exterior of any windows or doors of any dwelling or structure on a Lot.

Section 21. Governmental Regulations. All laws, ordinances, buildings codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provisions of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 22. Tanks. Above-ground and sub-surface fuel tanks (i.e., gasoline, diesel, propane, etc.) are prohibited, except for standard sized tanks typically used with a residential grill.

Section 23. Tree Conservation; Buffer Areas; Protection Setbacks; Wetlands.

There shall be no grading, excavation or other land-disturbing activity, nor any disturbance or removal of trees or vegetation, in any tree conservation area, buffer, or wetland area depicted on the Plat unless permitted by applicable governmental authorities and the Architectural Review Committee.

Section 24. Play Equipment. Installation of temporary or permanent play equipment (e.g., tree houses, playhouses, swing sets, sandboxes, and basketball goals) requires architectural approval. Trampolines are not permitted. Where possible, equipment should be constructed principally of wood or composite materials. Play equipment should be shielded from the view of neighbors by appropriate landscape screening such as tall plants and shrubs. All play equipment must be maintained in good condition and repair. All portable play equipment must be stored out of site when not in use.

Section 25. Garden Ornaments. Unless approved by the Architectural Review Committee exterior sculptures, ornaments, fountains, bird baths/feeders or similar items are prohibited in the front and/or side yards of a Lot, including on front porches or stoops. Such items may be placed in the rear yard space of a Lot, but the Architectural Review Committee reserves the right to require removal of any such items if the same are visible to neighboring Lots, Common Area, or to the street, or are not felt to be in keeping with the scheme and plan of development of the community.

Section 26. Generators. Portable generators are permitted for temporary use only in the event of a power outage or construction project, unless otherwise approved by the Board. The Board may enact reasonable rules and regulations regarding the placement of portable generators as well as approved hours of operation. Installation of permanent generators must be approved in writing by the Architectural Review Committee and may be used only in the event of a power outage.

Section 27. Fires. No open fires are permitted on the Property. No trash, rubbish, debris, or material of any type may be burned anywhere on the Property.

ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTIES

Annexation of additional property shall require approval from the appropriate governmental authority and shall be required to occur within twenty-five (25) years from the date of recording of this instrument; provided, however, that no annexation of additional property shall have the effect of placing the original development in violation of the appropriate governmental ordinances. Annexation of additional property shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully

setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation. In the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation. Otherwise, approval of a majority of the Members present in person or by proxy at a meeting duly called for such purpose shall be required to annex additional property. Prior to the conveyance of the last Lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Common Area within the lands annexed.

ARTICLE IX INSURANCE

Section 1. Association Insurance. Insurance coverage obtained by the Association on the Property shall be governed by the following provisions:

- a. Ownership of Policies. All insurance policies on the Common Area shall be purchased by the Association for the benefit of the Association and the Owners.
- b. Coverage. All buildings and improvements owned by the Association and located on the Common Area, and all personal property owned by the Association, shall be insured in an amount of not less than eighty percent (80%) of the replacement cost after application of any deductible, as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
 - i. Loss or damage by fire and other hazards covered by the standard coverage endorsement, and
 - ii. Such other risks as from time to time shall be customarily covered with respect to improvements on the land, if any.

Such policies shall contain clauses providing for waiver of subrogation.

- c. Liability and Other Insurance. Public liability insurance shall be secured by the Association with limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, officer and director's liability coverage.
- d. Premiums. Premiums for insurance policies purchased by the Association shall be a Common Expense.

- e. Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees.
- f. Distribution. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner: (i) all expenses of the insurance trustee shall be first paid or provisions made therefore and (ii) the remaining proceeds shall be paid to defray the cost of repairs.

Section 2. Owner Insurance. Each Owner of a Lot shall maintain property or casualty insurance on its Lot insuring against loss or damage by fire and other hazards commonly insured under an “all-risk” policy, and such coverage shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of the dwelling as well as all other improvements on the Lot in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, each Owner shall maintain at a minimum, fire and extended coverage. In addition to the above insurance coverage, Owners of Lots that are being leased shall require their tenants to obtain a policy of insurance sometimes referred to as “renters insurance” or “tenant insurance” which provides liability coverage and protection for the personal property of the tenant in the event of a covered peril. The Board of Directors may require on an annual basis, or at such other times as the Board deems appropriate, that Owners submit proof that the insurance coverage required under this section is in force.

Section 3. Obligation to Rebuild. Should any dwelling or portion of a dwelling be damaged or destroyed, the Owner shall utilize any applicable insurance proceeds to repair or replace it promptly in accordance with the original construction plans and specifications unless (i) the community is terminated as a planned community under the provisions of the Act, or (ii) repair or replacement would be illegal under any applicable law. If no insurance proceeds are available repair or replacement shall be at the Owner’s expense. All plans and specifications required in connection with any repair or restoration shall be subject to review and approval by the Architectural Review Committee. The Lot shall be kept in a neat and well-maintained state to a standard acceptable to the Board of Directors following any casualty event and during the rebuild process.

Section 4. Obligation to Pay Assessments. If a dwelling is not habitable by reason of damage or destruction, the obligation of the Owner to pay assessments shall be not reduced, delayed, abated or suspended pending the rebuilding of the dwelling.

ARTICLE X PARTY WALL

Section 1. General Rules of Law to Apply. Each wall on a Lot which is built as a part of the original construction of the dwelling and placed on the dividing line between the townhome dwellings and all reconstruction or extensions of such walls shall constitute party walls. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support, in belowground construction and of liability for property damage due to negligence or willful acts or omissions shall apply.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it. If other Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Construction or Reconstruction. The Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Owner shall restore, as is reasonably practicable, the adjoining Lot to as near the same condition which prevailed on or before the commencement of the construction.

Section 5. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who, by his negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against those elements.

Section 6. The Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to the Owners' successors in title.

ARTICLE XI DECLARANT RIGHTS

Section 1. Declarant Rights. During the Declarant Control Period, the Declarant shall have the following rights and privileges:

- a. All Special Declarant Rights as defined in the Act.
- b. The right to appoint and remove members of the Board of Directors and officers.

- c. The right to appoint and remove members of the Architectural Review Committee.
- d. The right to use all Common Areas for sales and marketing events and to assign such rights as it deems appropriate to Builders or other third parties.
- e. The right to use any and all dwellings as a model or sales office and to authorize such use by others.
- f. The right to subject the Property to contracts for the provision of utilities including water, sewer, electric service, gas, cable, telephone, broadband and internet or other similar services.
- g. The right to unilaterally amend this Declaration as well as the plats and plans for the community unless doing so would materially impair the rights of a Lot Owner.
- h. The right to assign its rights as declarant, in whole or in part, as it deems advisable and upon such assignment to be released from any and all liability for actions of declarant as to rights so assigned.
- i. The right to convey real and personal property to the Association upon terms and conditions as it deems appropriate and to require the Association to accept such conveyances.
- j. The right to use all easements and rights of ways within the Property, whether for ingress and egress, drainage or utilities or for utilities and to grant easements to third parties.
- k. The right to withdraw portions of the Property from this Declaration or any Supplemental Declaration for any purpose.
- l. The right to enter into cross-access easement agreements or shared use agreements with respect to properties located adjacent to the community, which may obligate the Association to contribute to maintenance of property or improvements located outside the community.
- m. Such other rights as are set forth herein.

Section 2. Prohibited Actions. During the Declarant Control Period, neither the Board nor the Members shall have authority to undertake any action, without the prior written consent of the Declarant or its agent expressly authorized for such purpose, that would:

- a. Prohibit or restrict in any manner the sales and marketing program of the Declarant or any such program authorized by Declarant or restrict or limit in any

manner the use by the Declarant of any portion of the Property for the sale and/or resale of Lots;

- b. Decrease the level of maintenance services of the Association provided by the Board so long as Class B voting rights exist;
- c. Make any special or annual or other assessment or impose any fine upon the Declarant's Lots or the Declarant;
- d. Modify, amend or alter the recorded plats of the Property;
- e. Terminate or cancel any contracts of the Association entered into by the Board during the period which any Class B voting membership exists;
- f. Terminate or waive any rights of the Association under this Declaration;
- g. Convey, lease, mortgage, alienate or pledge any easements or any part of the Common Area;
- h. Accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;
- i. Terminate or cancel any easements granted hereunder or by the Association;
- j. Terminate or impair in any fashion any easements, powers, or rights of the Declarant hereunder;
- k. Restrict the Declarant's right of the use, access, and enjoyment of any of the Property;
- l. Cause the Association to default on any obligation under any contract or this Declaration; and
- m. Restrict in any respect the use by the Declarant of any office or other facility on the Property for any purpose, including managing or operating the Association.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The court may award the prevailing party its reasonable attorneys' fees incurred in such enforcement action.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. These covenants and restrictions shall run with, burden and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. During the Declarant Control Period, this Declaration may be unilaterally amended by the Declarant without the need for membership approval. Otherwise, this Declaration may be amended by the affirmative vote or written agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, except that during the Declarant Control Period no amendment shall be effective without the written consent of Declarant. If only one of the multiple Owners of a Lot casts a vote or executes written agreement to a proposed amendment, said vote or written agreement shall be binding on all record owners. Majority agreement is conclusively presumed if any one of the multiple owners casts the votes allocated to that Unit or executes a written agreement without protest being made by other record owners prior to the recording of the amendment

Section 4. Management and Contract Rights of Association. Declarant may enter into a contract with a management company for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Property.

Section 5. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

ARTICLE XIII ELECTRICAL SERVICE

Declarant reserves the right to subject the above-described Property to a contract with any provider for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment by the Owners of Lots within the Property.

IN WITNESS WHEREOF, Declarant has hereunto caused this instrument to be executed by its Manager, as an act and deed of the Declarant this the 17 day of April, 2023.

FOREST ON FRANKLIN, LLC

By: 
Manager

STATE OF North Carolina

ACKNOWLEDGEMENT

COUNTY OF Wake

I, Starla I Sampson, a Notary Public of the County and State aforesaid, certify that Johnny Chappell of whose identity I have personal knowledge, personally appeared before me and acknowledged that the signature on the record presented is his/her signature and that he/she voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

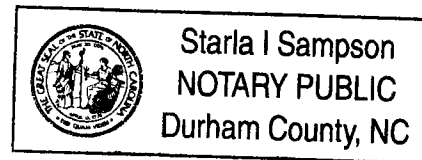
Witness my hand and official stamp or seal, this 17 day of April, 2023.


Notary Public

Starla I Sampson
Printed Name

My Commission Expires:

3/14/2024



CONSENT OF LENDER

HomeTrust Bank, being the Beneficiary under those Construction Deeds of Trust recorded in Book 19123, Pages 515, 533, and 551 of the Wake County Registry, conveying the property described in Article I of this Declaration, consents to the recordation of this Declaration and the imposition of the provisions hereof and the provisions of the North Carolina Planned Community Act to the real property described in Article I of the Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and the Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties, or obligations of Declarant under the Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above.

BENEFICIARY:**HomeTrust Bank**By: *Darrian Williams*Name: DARRIN WILLIAMSTitle: SVPSTATE OF NCCOUNTY OF Johnston**ACKNOWLEDGEMENT**

I, Jennifer A. Klein, a Notary Public of the County and State aforesaid, certify that Darrian Williams of whose identity I have personal knowledge, personally appeared before me and acknowledged that the signature on the record presented is his/her signature and that he/she voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

Witness my hand and official stamp or seal, this 18th day of April, 2023.

Jennifer A. Klein
Notary Public
Jennifer A. Klein
Printed Name

My Commission Expires: 7.23.2023