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**Type of Document:** Third Amendment To Declaration For Woodcreek

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NORTH CAROLINA

**THIRD AMENDMENT TO DECLARATION OF  
PROTECTIVE COVENANTS AND EASEMENTS FOR  
WOODCREEK**

WAKE COUNTY

**THIS THIRD AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS AND EASEMENTS FOR WOODCREEK**, also referred to herein as the "Third Amendment", is made and effective this 29<sup>th</sup> day of May, 2014 (the "date of execution"), by and between Holly Springs Residential Properties LLC, a North Carolina limited liability company, also referred to herein as "Declarant", and JW Homes, LLC, a Delaware limited liability company, also referred to herein as "JW".

**BACKGROUND**

1. Holly Springs Residential Properties LLC is the "Declarant" under the "Declaration Of Protective Covenants And Easements For Woodcreek" (the "Original Declaration") recorded in the Wake County, North Carolina Registry in Book 12453, Page 786, and re-recorded in the Wake County, North Carolina Registry in Book 12456, Page 852, as amended by a "First Amendment" recorded in the Wake County, North Carolina Registry in Book 12570, Page 481, an amendment also known as "Withdrawal Declaration 1" recorded in the Wake County, North Carolina Registry in Book 14278, Page 1242, and a "Second Amendment" recorded in the Wake County, North Carolina Registry in Book 14347, Page 2558, the Original Declaration, First Amendment, Withdrawal Declaration 1, and Second Amendment being referred to herein together as the "Declaration" and being incorporated by reference as if fully set out herein.

2. Pursuant to an "Assignment Of Approved Developer's Rights" recorded in the Wake County, North Carolina Registry in Book 15023, Page 1044, JW now is the "Approved Developer" and "Wieland" as that term and word are defined in the Declaration.

3. Article XIII, Section 4 of the Declaration, after specifying certain matters with respect to which Declarant, with Wieland's consent in certain specified circumstances, has the right to amend the Declaration at any time and from time to time, states the following: "Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may, with the consent of Wieland so long as Wieland owns any property for development or sale in the Community or has the right unilaterally to annex additional property to the Community, amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owner hereunder, nor shall it adversely affect title to any Unit without the consent of the affected Unit Owner".

Submitted electronically by Morris, Russell, Eagle, Worley, PLLC in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Wake County Register of Deeds.

4. Article X, Section 1(a) of the Declaration provides that Declarant has the unilateral right, privilege and option from time to time at any time until fifteen (15) years after the recording of the Declaration to subject to the Declaration all or any portion of the real property described in Exhibit "C" to the Declaration.

5. Article X, Section 1(b) of the Declaration provides that Wieland has the unilateral right, privilege and option from time to time at any time until fifteen (15) years after the recording of the Wieland to subject to the Declaration all or any portion of the real property described in Exhibit "C" to the Declaration.

6. The Declaration first was recorded on March 20, 2007.

7. Declarant and JW desire to amend the Declaration as provided herein, which amendments do not materially adversely affect the substantive rights of any Unit Owner hereunder and do not adversely affect title to any Unit.

### THIRD AMENDMENT

NOW, THEREFORE, by mutual desire and consent, Declarant and JW hereby amend the Declaration as follows:

1. Numbered paragraph 2 in the "Background" Section of Withdrawal Declaration 1 is amended by changing Page 792 to Page 786 in the reference to Book 12453, Page 792.

2. Numbered paragraph 9 in the "Second Amendment" section of the Second Amendment is amended by changing the reference to "Article III, Section 2 of these Bylaws" on the third line to "Article III. A., Section 2 of these Bylaws".

3. Article II, Section 3 of the Declaration is deleted and is replaced with the following:

"(a) Declarant, with the written consent or voted approval of the Board of Directors, may modify the applicability of the covenants, restrictions and easements contained in this Declaration to real property owned by Declarant that is subject to this Declaration. Such modifications shall be evidenced by the recording in the Registry of a Supplementary Declaration or other document executed by Declarant and the President or Vice President of the Association or other Person authorized by the Board of Directors. Any such Supplementary Declaration or other document recorded in the Registry without the consent of the Board of Directors shall be void and of no force and effect unless subsequently approved by the Board of Directors as evidenced by a document executed by an authorized official of the Association and recorded in the Registry.

(b) Declarant may subject any portion of the real property owned by Declarant and subject to this Declaration to additional covenants, restrictions and easements that are set forth in a Supplementary Declaration or a separate declaration of protective covenants, declaration of condominium or other document recorded in the Registry either concurrently with or after the annexation of the subject property to this Declaration. No document recorded pursuant to this sub-section, may conflict with the Declaration, Bylaws or Articles.

(c) Wieland, with the written consent or voted approval of the Board of Directors, may modify the applicability of the covenants, restrictions and easements contained in this Declaration to real property owned by Wieland that is subject to this Declaration. Such modifications shall be evidenced by the recording in the Registry of a Supplementary Declaration or other document executed by Wieland and the President or Vice President of the Association or other Person authorized by the Board of Directors. Any such Supplementary Declaration or other document recorded in the Registry without the consent of the Board of Directors shall be void and of no force and effect unless subsequently approved by the Board of Directors as evidenced by a document executed by an authorized official of the Association and recorded in the Registry.

(d) Wieland may subject any portion of the real property owned by Wieland and subject to this Declaration to additional covenants, restrictions and easements that are set forth in a Supplementary Declaration or a separate declaration of protective covenants, declaration of condominium or other document recorded in the Registry either concurrently with or after the annexation of the subject property to this Declaration. No document recorded pursuant to this sub-section, may conflict with the Declaration, Bylaws or Articles.

(e) Any Person other than Declarant or Wieland, with the written consent or voted approval of the Board of Directors, may modify the applicability of the covenants, restrictions and easements contained in this Declaration to real property owned by such Person that is subject to this Declaration. Such modifications shall be evidenced by the recording in the Registry of a Supplementary Declaration or other document executed by such Person and the President or Vice President of the Association or other Person authorized by the Board of Directors. Any such Supplementary Declaration or other document recorded in the Registry without the consent of the Board of Directors shall be void and of no force and effect unless subsequently approved by the Board of Directors as evidenced by a document executed by an authorized official of the Association and recorded in the Registry.

(f) Any Person other than Declarant or Wieland may subject any portion of the real property owned by such Person and subject to this Declaration to additional covenants, restrictions and easements that are set forth in a Supplementary Declaration or a separate declaration of protective covenants, declaration of condominium or other document recorded in the Registry either concurrently with or after the annexation of the subject property to this Declaration, subject to the following:

(i) If such Person or a prior owner of such real property acquired such real property from either Declarant or Wieland, and Declarant or Wieland, whichever one previously owned such real property, owns any real property subject to this Declaration on the date of the recording of such Supplementary Declaration or other document in the Registry, then such Supplementary Declaration or other document shall not be effective unless consented to in writing by Declarant or Wieland, as applicable, as evidenced by the execution of such Supplementary Declaration or other document by Declarant or Wieland, as applicable.

(ii) If Declarant or Wieland, whichever one previously owned such real property, does not own any real property subject to this Declaration at the time of the recording of such Supplementary Declaration or other document in the Registry, then such Supplemental Declaration or other document shall not be effective unless it has the written consent or voted approval of the Board of Directors, as evidenced by the execution of such Supplementary Declaration or other document by the President or Vice President of the Association or other Person authorized by the Board of Directors. Provided, however, and notwithstanding the foregoing requirement of Board of Directors written consent or voted approval, if such real property was owned by either Declarant or Wieland at any time during the one (1) year immediately preceding the recording of such Supplementary Declaration or other document in the Registry, then such Supplementary Declaration or other document may be effective if consented to in writing by Declarant or Wieland, as applicable, as evidenced by the execution of such Supplementary Declaration or other document by Declarant or Wieland, as applicable.

(iii) No document recorded pursuant to this sub-section, may conflict with the Declaration, Bylaws or Articles."

4. Article V, Section 1 of the Declaration is amended by adding the following at the end of the first paragraph thereof: "Notwithstanding the foregoing, or anything else to the contrary in this Declaration, the Association shall have the right, but not the obligation, to maintain and keep in good repair property in the Community that is owned by a Neighborhood Association. The Board of Directors is authorized to determine whether or not, and to what extent, the Association maintains any such property owned by a Neighborhood Association. The costs for any such maintenance undertaken by the Association shall be reimbursed to the Association by the Neighborhood Association promptly upon demand from the Association. With respect to such maintenance and reimbursement of costs, the Association shall have all rights and remedies against the

applicable Neighborhood Association and the Owners of Units in the applicable Neighborhood that are provided in this Declaration, the applicable Neighborhood Declaration, and the North Carolina Planned Community Act or North Carolina Condominium Act, as applicable, for the collection of assessments and other amounts owed to the Association or the applicable Neighborhood Association.”

5. The word “Properties” in the definition of the word “Unit” in Exhibit A, paragraph (v) of the Declaration is amended by changing the “Properties” to “Community”.

6. Article XII, Section 1 of the Declaration is amended by adding the following at the end of that Section: “Provided, however, with respect to a building that contains more than one Unit (for example, a building that contains townhouse Units or condominium Units), the easements for encroachment and overhang onto the Common Property shall be for the building in which the Units are contained, and such easements shall not apply as between Units in the same building.”

7. Article XII, Section 5 of the Declaration is amended by adding the following at the end of that Section: “Provided, however, easements for maintenance and repair for adjacent attached Units (for example, townhouse Units and condominium Units) also shall be governed by the provisions of the applicable Neighborhood Declaration and by applicable laws relating to party walls.”

8. Article XII, Section 11 of the Declaration is rewritten to read as follows:

**“Section 11. Easement for Private Street, Sidewalks and Signs.** Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, nonexclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets, alleys and drives as depicted on the recorded subdivision plats for the Community. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants, subject to the right of a Neighborhood Association that owns private streets, alleys and drives to regulate and restrict the use thereof as it determines from time to time. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any such easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional nonexclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to Approved Developer, Approved Builder and to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across the private streets, alleys and drives for the installation, maintenance, and use of such streets, alleys, drives, sidewalks, traffic directional signs, grading for proper drainage, and related activities and improvements.”

9. Exhibit “A” is amended by adding the following definition:

“(x) ‘Registry’ shall mean the office in which deeds and other documents affecting title to land subject to this Declaration or to become subject to this Declaration are recorded. At the time of the recording of this Third Amendment, such office is the office of the Register of Deeds for Wake County, North Carolina.”

This Third Amendment shall be effective upon its recording in the Wake County, North Carolina Registry. Provided, however, the amendments to Article II, Section 3 of the Declaration are applicable to documents that comply with the requirements thereof whether recorded before or after the recording of this Third Amendment in the Wake County, North Carolina Registry. Except as amended by this Third Amendment, the Declaration shall be and remain in full force and effect as written. The date of execution of this Third Amendment is the later of the dates on which it is executed by the parties.

IN WITNESS WHEREOF, the parties have executed this Third Amendment in legal and binding form on the dates indicated in the respective acknowledgments of their executions.

Holly Springs Residential Properties LLC,  
a North Carolina limited liability company

By: Timothy R. Smith  
Printed Name: Timothy R. Smith  
Title: Manager

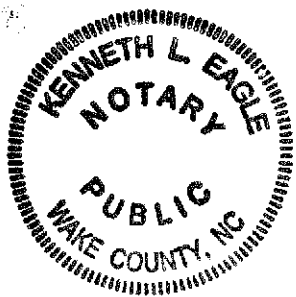
State of North Carolina, County of Wake

I certify that the following person personally appeared before me this day and acknowledged to me that he executed the foregoing document in the capacity indicated: Timothy R. Smith

Date: May 29, 2014

Kenneth L. Eagle  
Notary Public  
Printed/Typed Name: Kenneth L. Eagle  
My Commission Expires: July 10, 2015

(affix seal or stamp here)



JW Homes, LLC,  
a Delaware limited liability company

By: [Signature]  
Printed Name: JOEL S REED  
Title: SENIOR VICE PRESIDENT &  
CHIEF LEGAL OFFICER

State of Georgia, County ~~or~~ City of Cobb

I certify that the following person personally appeared before me this day and acknowledged to me that he/she executed the foregoing document in the capacity indicated: Senior Vice President & Chief  
Joel S. Reed Legal Officer

Date: May 27, 2014

[Signature]  
Notary Public  
Printed/Typed Name: Jennifer Bojda  
My Commission Expires: 3/10/15

(affix seal or stamp here)

