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STATE OF NORTH CAROLINA

COUNTY OF WAKE

AMENDMENT TO DECLARATION
OF PROTECTIVE COVENANTS FOR
BARTON PARK

THIS AMENDMENT to the Declaration of Protective Covenants for Barton Park, is made this 3rd day of October, 2023 by the Lot Owners and members of Barton Park Neighborhood Association, Inc. (hereinafter, "the Association") after procuring the affirmative vote of no less than sixty-seven percent (67%).

WITNESSETH:

WHEREAS, the Association was incorporated on or about 15 September 2000 to administer the affairs of the property identified in the Declaration of Protective Covenants for Barton Park recorded at book 8694, page 1477 of the Wake County Registry ("Declaration");

WHEREAS, Article XII, Section 4 of the Declaration for the Association and N.C.G.S. §47F-2-117 provides that the Declaration may be amended by the affirmative vote of at least sixty-seven percent (67%) of Owners of the Units; and

WHEREAS, Article VII of the Declaration required the Association to procure blanket insurance on the townhome Units;

WHEREAS, no less than sixty-seven percent (67%) of Owners of the Units, have approved this amendment relating to casualty insurance after being duly noticed of such action; and

WHEREAS, the requisite number of Owners have voted to remove the obligation of the Association to provide casualty insurance on the Units and make the Owners responsible for insuring their own Units;

NOW THEREFORE, the undersigned does hereby declare that the Declaration of Protective Covenants for the Barton Park Neighborhood Association, Inc. shall be amended as follows:

1. To amend Article VII of the Declaration by deleting this section in its entirety and inserting in lieu thereof the following:

“Section 1. Casualty Insurance on the Common Property. The Association’s Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount of sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase “all-risk” coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury cause by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors’ and officers’ liability insurance.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement of cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective parties which may be benefitted by such insurance as their interest may appear. Such interest shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association’s Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association’s Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement

and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified Persons.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;
- (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying the case;
- (iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;
- (iv) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or cease the conduct and the allowance of a reasonable time thereafter within such a cure may be affected by the Association, its manager, any Owner or Mortgagee;
- (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (vi) that no policy may be canceled, subjected to nonrenewal or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subjected to cancellation, nonrenewal or substantial modification without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD").

Section 2. Casualty Insurance on the Townhomes. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his or her townhome situated on a Unit ("Townhome") except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid.

Section 3. Damage and Destruction.

(a) In General, immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Reconstruction of Common Property. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Association Vote not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Units owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

(c) Repair and Reconstruction of the Townhomes. Repair and reconstruction of the townhomes shall be as provided for in Article in Article IV, Section 11.

Section 4. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall be a common expense.”

2. To amend Article V, Section 4 (a), of the Declaration by deleting this section in its entirety and inserting in lieu thereof the following:

Section 4. Measures Related to Insurance Coverage.

(a) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Community that are the maintenance responsibility of the Unit Owner which will, in the Board’s sole discretion, decrease the possibility of fire or other damage to any improvements located in the Community. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventative measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner’s Unit; and such other measures as the Board may be reasonably require, so long as the cost of work does not exceed One Thousand Dollars (\$1000.00) per Unit in any twelve (12) month period.

3. To add a new Article IV, Section 11 of the Declaration as follows:

Section 5. Special Assessments for the Purchase and Reconstruction of Townhomes. If any Townhome located on the Property is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association within thirty (30) days following such destruction of whether he intends to repair or reconstruct the Townhome; and if the Owner fails to give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the Townhome. For the purposes of this section "substantially destroyed" shall mean that the costs of replacement or repair equals at least fifty percent (50%) of the appraised value of the improvements on the Lot before they were damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such Unit in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the Owner's election not to repair or reconstruct.

(a) **Exercise of Option.** The Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Property. The committee may employ such persons, including, but not limited to, real estate appraisers, realtors, architects, and engineers as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent but shall contain estimates of the pecuniary injury and diminution in value along with an estimate of

the cost of purchase and reconstruction of the Townhome.

If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the Townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within seven (7) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least sixty-seven percent (67%) of the Members present in person or by proxy and voting, the Board will be authorized to purchase and reconstruct the Townhome and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the Townhome. The Board may require that the assessment be paid in a lump sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine to be appropriate. Such an assessment shall be in addition to, and not in lieu of, the annual assessments.

(b) Determination of Value. The Owner of the Townhome shall convey marketable title to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these three appraisers shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board and the Owner agree upon a single appraiser, each shall pay one-half (1/2) the cost of the appraisal.

(c) Insurance Proceeds. The Owner of the Townhome, prior to conveyance to the Association, shall apply or cause to be applied so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes, and encumbrances upon the Lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances, and obligations upon the Lot, the purchase price shall be reduced by an amount adequate to pay any such deficiency.

(d) Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family Townhome unit. The reconstructed or repaired Townhome unit shall be substantially identical to the destroyed Townhome unit, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

(e) Retention by Owner. If a Townhome is not habitable by reason of damage, and the Owner gives notice of his election to repair or reconstruct the Townhome, the obligation of the Owner to pay annual assessment installments shall not be suspended. In the event a Townhome is damaged or destroyed, or the Owner does not begin repair or reconstruction within thirty (30) days following

the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Townhome and its Lot until paid by the Owner, unless the Lot is thereafter acquired by the Association.

(f) Upon acquisition of title to the Townhome, the Association is authorized to arrange such financing and execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of the Townhome; however, only that Townhome which is to be reconstructed shall stand as security for any liens, mortgages, or obligations arising out of the purchase or reconstruction of the Townhome, and no other portion of the Property, including the Common Area and facilities, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase or reconstruction, and no Member shall be required to become personally obligated therefor. The Association shall hold title to the Lot and improvements for the benefit of all Members. The Board may lease or sell the Lot and improvements upon such terms and conditions as it, in its discretion, deems most advantageous to the Members. The lease rental shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to the maintenance, upkeep, and repair of the Townhome; (3) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Townhome; and (4) to the general expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Townhome; and (3) to the general expenses of the Association. Any payment or repayment to Members of the special assessment may be in cash or may be applied to the annual assessment due or to become due.

(g) Any Townhome which has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, shall be subject to the provisions of this Declaration and to the Bylaws of the Association.”

4. This amendment shall be effective at 12:00 a.m. on January 1, 2024 with the Wake County Register of Deeds.

5. Except as amended hereinabove, the remaining portions of the Declaration as originally existed are hereby restated and re-acknowledged.

WHEREFORE, the President and Secretary of the Association have hereunto affixed the corporate certification for the purpose of enacting the foregoing amendment.

CERTIFICATION OF VALIDITY OF AMENDMENT TO THE DECLARATION OF
PROTECTIVE COVENANTS FOR BARTON PARK

By authority of its Board of Directors, the undersigned hereby certify that the foregoing instrument has been duly approved by the affirmative vote of no less than sixty-seven percent (67%) of the Members and is, therefore, a valid amendment to the existing Declaration of Protective Covenants for Barton Park pursuant to the requirements of Article XII, Section 4 of the Declaration.

BARTON PARK NEIGHBORHOOD
ASSOCIATION, INC.

By: Thomas I. Boggs
President

ATTEST:

Kurt R.
Secretary

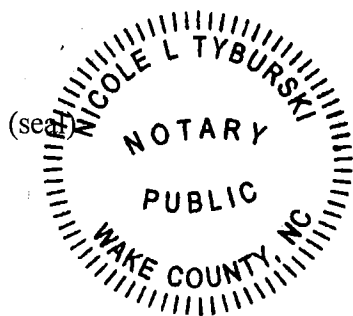
STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF WAKE

I, Nicole L. Tyburski, a Notary Public of the County and State aforesaid, certify that ~~Thomas I. Boggs~~ Kermit Rainman, personally came before me this day and acknowledged that he/she is Secretary/Assistant Secretary of Barton Park Neighborhood Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by as its Secretary/Assistant Secretary.

Witness my hand and official stamp or seal, this 3rd day of October, 2023.



Notary Public Signature: Nicole L. Tyburski
My commission expires: 7-25-2026