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Bk:RB6295 Pg:1
04/27/2017 08:40:17 AM 1/24

FILED Mark Chilton
Register of Deeds, Orange Co., NC
Recording Fee: \$62.00
NC Real Estate TX: \$.00

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SEE BOOK 6294 PAGE 586

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF HENDERSON WOODS**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE
FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA**

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STATE OF NORTH CAROLINA :

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF HENDERSON WOODS

COUNTY OF ORANGE :

THIS AMENDED AND RESTATED DECLARATION ("Amended and Restated Declaration" or "Declaration") made the 27th day of APRIL, 2017, by **HUMPHRIES FAMILY, LLC**, a North Carolina limited liability company, and **HENDERSON WOODS, INC.**, a North Carolina corporation, hereinafter collectively referred to interchangeably as "Declarant" or "Developer";

WITNESSETH:

WHEREAS, on April 21, 2017 Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions of Henderson Woods in Book RB6292, page 545 Orange County Registry (the "Original Declaration") encumbering the property shown on that plat recorded in Plat Book 117, pages 3 and 4 Orange County Registry (the "Property"); and

WHEREAS, Article XI, Section 4 of the Original Declaration provides that the Original Declaration may be amended by an instrument signed by two-thirds (2/3) of each class of Members; and

WHEREAS, as of the date hereof, Declarant holds all votes for all classes of Members and consents to this amendment and restatement of the Original Declaration as evidenced by their execution of this Amended and Restated Declaration.

NOW, THEREFORE, the Original Declaration is hereby amended by striking it in its entirety and substituting in its place the Amended and Restated Declaration as follows and Declarant hereby declares that all of the Property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Article I.

DEFINITIONS

Section 1. "Association" and "HOA" shall be used interchangeably to mean and refer to Henderson Woods Owners Association, Inc., its Successors and Assigns, a private non-profit corporation formed or to be formed by the Declarant for the mutual benefit and protection of the



Property and the owners of the lots in Henderson Woods, all of whom shall be Members of the Association.

Section 2. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, which shall include any real property, improvements thereon, and other amenities conveyed to the Association by the Developer. The Common Area is set forth in the plat of Henderson Woods, as recorded in Plat Book 117 at Pages 3 and 4 of the Orange County Registry and shall include but not be limited to the following: Primary Conservation Areas, Secondary Conservation Areas, Open Space, subdivision signage and associated landscape area.

Section 3. "Declarant" shall be used interchangeably with "Developer", and shall mean and refer to Humphries Family, LLC, and Henderson Woods, Inc., or either of their successors in interest if such successor should acquire undeveloped property from the Declarant for the purpose of development.

Section 4. "Declaration" shall mean this instrument as it may be from time to time amended or supplemented.

Section 5. "Architectural Committee" shall mean and refer to a committee of Owners appointed by the Board of Directors of the Association, which committee shall be responsible for the review and approval of all plans and specifications for the construction of dwellings and improvements on Lots.

Section 6. "Lot" shall mean and refer to any of the numbered Lots as shown on the plat of Henderson Woods, recorded in the Orange County Registry. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or create additional Common Areas; provided, however, in no event shall the Properties contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each Lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured Lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 7. "Membership" shall mean and refer to the rights, privileges, benefits, duties, and obligations, which shall inure to the benefit of and burden each Member of the Association.

Section 8. "Member" shall mean and refer to every person or entity who has a membership in the Association.

Section 9. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.



Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties.

Section 11. "Property" shall mean and refer to that certain property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II.

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in addition to the Common Area and all access easements thereto which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a. The right of the Association to limit the number of guests of Members.
- b. The right of the Association to suspend the voting rights and privileges by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.
- c. The rights of the Declarant as set forth herein.
- d. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon which regulations may further restrict the use of the Common Area.
- e. The right of the Association to mortgage or convey all or part of the Common Area subject to such conditions as may be agreed to by the Association. No such dedication or transfer shall be effective unless an instrument creating such a dedication or transfer is signed by two-thirds (2/3) of each class of Members (which votes may be cast in person or by proxy) and properly recorded.

Section 2. Delegation of Use. An Owner may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Area and facilities to any member of his family, his tenants, or contract purchasers who reside on the property.



ARTICLE III.

EASEMENTS

Section 1. Easements are reserved and may be granted by Declarant or the Association as necessary in the Common Area for installation and maintenance of wells, well supply lines, septic fields and septic repair areas, underground utilities and drainage facilities.

Septic Easements in designated portions of the Common Area as illustrated on septic layout plans approved by the Orange County Health Department, as may be amended from time to time, are hereby declared for the benefit of Lots 1, 3, 4, 9 and 10. Well Easements and associated off-site electric and well supply line easements as illustrated on well location plans approved by the Orange County Health Department, as may be amended from time to time, are hereby declared in the Common Area for the benefit of Lots 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, and 17. Additionally, (i) a ten foot (10') off-site electric and well supply line easement is hereby established along the common boundary line of Lots 10 and 11 for the benefit of the wells serving Lots 9, 10, 11 and 12; (ii) an off-site electric and well supply line easement is hereby established in the southeast corner of Lot 11 (as shown on the recorded plat) for the benefit of the well serving Lot 10; (iii) a twenty foot (20') off-site electric and well supply line easement is hereby established along the rear lot line of Lot 8 for the benefit of the wells serving Lots 7 and 8; and (iv) a ten foot (10') off-site electric and well supply line easement is hereby established along the front line of Lot 17 for the benefit of the well serving Lot 16. The foregoing septic and well easements and associated electric and supply line easements are easements for the construction, access, use, maintenance, repair and replacement of the septic and well systems and associated electric and supply lines for the benefit of the specified Lots by the Owners of the benefitted Lots and by the contractors, invitees, and assigns so authorized by the Owners of the benefitted Lots. Nothing contained herein shall preclude location of a well on a Lot where an easement has been provided if an on-site location is approved by the Orange County Health Department, and in such case the well easement granted herein for that Lot shall be of no force or effect.

Section 2. In case of an emergency originating in or threatening any lot or the Common Area and facilities, regardless of whether any Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter upon any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Section 3. The Declarant reserves unto itself, its successors and assigns, a perpetual and alienable easement and right on, over, and under the ground to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, cable television or other public conveniences or utilities on, in, or over each lot and such other areas as are shown on the plat of the Properties recorded or to be recorded in the office of the Register of Deeds of Orange County; provided further, that the Declarant may establish drainage ways for surface water whenever such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These



easement rights expressly include the right to cut any trees, bushes, or shrubbery, grade the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Each Owner shall not allow the diversion or concentration of stormwater runoff, without the prior written approval of the Architectural Committee, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 4. The Declarant reserves unto itself, its successors and assigns, the right to subject the real property in this Subdivision to a contract with Duke Energy or other electricity generating company for the installation of street lighting, which contract requires a continuing monthly payment to Duke Energy by the Association for street lighting service.

Section 5. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

Section 6. Declarant does hereby create a buffer zone (the "Buffer Zone") more particularly shown as the "100' Natural Buffer" on the Plat recorded in Plat Book 117, Pages 3 and 4, Orange County Registry. It is the intent of the Declarant that the Buffer Zone remain in its natural state. Within the Buffer Zone, no private paths shall be permitted for access to Duke Forest. Additionally, removing, destroying or cutting trees and vegetation within the Buffer Zone are strictly prohibited except for the selective and minimal clearing necessary for the creation of wells, for reserved septic fields for the remediation of failed septic fields and for the reasons stated in Article X, Section 15 of this Declaration.

In addition to the foregoing restrictions, prior to the commencement of construction of any dwelling or other improvements upon any single Lot subdivided out of the Property, the Lot Owner shall install orange plastic tree protection fencing along the boundary line separating the Buffer Zone from the buildable area of the Lot. The protective fencing shall not be removed from the Lot until completion of construction and installation of all improvements to the Lot.

Notwithstanding the foregoing, wells and septic fields as approved by Orange County shall be permitted to be established and maintained within the Buffer Zone, and the Lots benefitted by the wells or septic fields are hereby granted appropriate easements for access, use, maintenance, repair and replacement of same.



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 classes of voting membership:

- a. CLASS "A". Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot. 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 among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- b. CLASS "B". The Class B Member shall be the Declarant or Developer and Declarant or Developer shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
 - (1) When the total votes outstanding in Class A membership equals the total votes outstanding in the Class B membership, but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (2) below, there are added additional Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to six (6) votes for each Lot that is owned by Declarant or for which Declarant holds a contract right to purchase) greater than those of the Class A membership, or
 - (2) Ten (10) years from the date of recordation of this Declaration.

ARTICLE V.

MANAGEMENT AND CONTROL

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with this Declaration and the By-Laws. PROVIDED HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the Declarant until such time as all of the Lots in Henderson Woods have been sold and conveyed by the Declarant to purchasers or until the date that is ten (10) years from the date of recordation of this Declaration, whichever occurs first. Management and control may be transferred to the Owners at any time by Declarant in its sole discretion.



ARTICLE VI.

COVENANTS FOR ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges;
- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- c. Insurance assessments;
- d. For the appropriate governing taxing authority, a pro rata share of ad valorem taxes, if any, levied against the Common Area;
- e. A working capital assessment; and
- f. Penalty assessments, such assessments to be established and collected as hereinafter provided.

The annual, special, insurance and property assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

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 for the improvement and maintenance of all easements, utilities, and the Common Area, as conveyed to the Association and as shown on the recorded plat of Henderson Woods, and repair of any other amenities located upon the Common Area, the costs of enforcing this Declaration, maintenance of Henderson Woods Lane, Martin Madden Way, and Shakori Trail until such roads are accepted for maintenance by NC Department of Transportation, and the payment of all other expenses associated with the Common Area, including the prompt and full payment of all ad valorem property taxes and insurance for said Common Area and, in addition, for the Association to keep the Property in neat and good order, and to provide for the health, welfare, and safety of the Owners and residents of Henderson Woods.

Section 3. ANNUAL ASSESSMENTS. A Lot shall become subject to annual assessments from the day following the day of conveyance by the Declarant or Developer to the Owner. The annual assessments shall be determined as follows:



- a. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the annual assessments shall be in the amount of \$1,000.00 (and shall be in addition to a one-time capital contribution of \$500.00 payable to the Association at the closing of the purchase and sale of each Lot pursuant to Section 7 of this Article) in order to carry out the responsibilities of the Association.
- b. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without a vote of the membership.
- c. From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased above ten (10%) percent by vote of the owners of 2/3 of the Lots within the subdivision who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. 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 the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the owners of 2/3 of the Lots who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. INSURANCE. The Board of Directors, on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards or other such risks, including, but not limited to, director's liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the Property and Common Area, which insurance shall be payable in case of loss to the Association for all Members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each Member to insure his property for his own benefit at this own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by Members or their mortgagees.

Section 6. INSURANCE ASSESSMENTS. All insurance policy premiums on the Common Area for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be common expenses, and the Association shall levy against the Owners equally an additional annual assessment (herein called "Insurance Assessment") which shall be in addition to the amounts provided for, of all such insurance premiums.

Section 7. WORKING CAPITAL ASSESSMENT. At the time a Lot is conveyed to an Owner, the Owner shall pay to the Association as a working reserve an amount at least equal to



two (2) months assessment on that Lot. Such funds shall be used solely for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the Common Area and facilities furnishings and equipment. Amounts paid into the working capital fund area shall not be considered as advance payment of regular assessments. Any working capital funds remaining at the end of the first full operating year shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

Section 8. PENALTY ASSESSMENT. The Association may assess a penalty assessment against any Owner for violation of any provision of this Declaration or any rule or regulation promulgated by the Board of Directors of the Association in regard to the use of the Common Area. A schedule of penalty assessments to be assessed for a restriction violation or rule violations shall be established annually by the Board of Directors at their annual meeting and the collection of such assessments shall be enforced in the same manner as the collection of annual, special and insurance assessments.

Section 9. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or proxies entitled to cast two-thirds of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 10. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS AND DUE DATES. The annual assessments provided for herein shall commence as to each Lot on the first day following the date of conveyance of the Lot by the Declarant or Developer to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. 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.

Section 11. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed twelve (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.



The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, late charges, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 12. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a mortgage or deed of trust or any proceeding in lieu thereof, shall extinguish the lien of such assessments 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 of such assessments.

ARTICLE VII

INSURANCE

Section 1. INSURANCE TO BE MAINTAINED BY THE ASSOCIATION. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, but public liability shall be an amount of at least One Million and no/100 Dollars (\$1,000,000.00) for each occurrence.

(b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.

(c) Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all improvements located in the Common Area.

(d) Such other fidelity bonds as it may determine to be desirable and necessary for those officers or employees having control over Association funds.

(e) Other insurance required by law.

Section 2. PREMIUMS. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged as a Common Expense ratably to Owners as an annual assessment according to the applicable provisions of this Declaration.



Section 3. INSURANCE BENEFICIARIES. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. INSURANCE TO BE MAINTAINED BY THE OWNERS. 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 Improvements except that the amount shall not be required to exceed the replacement cost of the Improvements. An Owner shall exhibit to the Board, upon request, 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 as a result of enforcement by the Association or otherwise.

ARTICLE VIII.

ARCHITECTURAL CONTROL

Section 1. BUILDING AND SITE IMPROVEMENTS. No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot in the Property, nor shall any exterior addition to or change in or alteration therein (including color of paint or finish) be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all Lots by the Declarant, by the Board of Directors of the Association, or by the Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee or, if applicable, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided such addition, change or alteration is in general conformity with the overall plan, design and appearance of the subdivision in general. Refusal or approval of any such plans, location or specification shall be based upon reasonable grounds. One copy of all plans and related data shall be furnished to the Declarant or the Architectural Committee as the case may be, for its records. Neither the Declarant nor the Architectural Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Section 2. LANDSCAPING PLANS. All landscaping plans (other than purely seasonal bedding plantings) must first be approved by the Declarant, or the Architectural Committee. The removal of any tree in excess of eight inches (8") in diameter on any lot in the subdivision shall require the prior approval of the Declarant or the Architectural Committee. No change in landscaping (other than purely seasonal bedding plantings) shall be commenced or maintained upon any lot in the subdivision until the plans and specifications showing the nature, kind, and location of the same shall have been submitted to and approved in writing as to harmony of design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all lots by the Declarant, by the Board of Directors of the Association, or by a the Architectural Committee. In the event the Declarant, or its designee, or,



if applicable, the Board, or the Architectural Committee, fails to approve or disapprove such landscape plan within thirty (30) days after said plan has been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, provided such addition, change or alteration is in general conformity with the overall plan, design and appearance of the subdivision in general. Refusal or approval of any such plan may be based upon any reasonable grounds. One copy of all plans and related data shall be furnished to the Declarant or Architectural Committee, as the case may be, for its records.

Section 3. DEVELOPER'S RIGHTS. All duties and responsibilities conferred upon the Board or the Architectural Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot in the Property.

Section 4. APPROVAL OF PLANS:

A. All dwelling units shall have a minimum of 2,500 square feet of finished and heated enclosed dwelling area. The term "enclosed dwelling area" as used in the minimum requirements shall be the total enclosed area within a dwelling; provided, however, that such term does not include garages, terraces, decks, open porches, and like areas.

B. No dwelling erected on a detached single-family residential Lot (including garage) shall be constructed nearer than thirty (30') feet to the front Lot line, fifteen (15') feet to any side Lot line, and fifteen (15') feet to the rear Lot line. This restriction shall prevail over any lesser governmental setback standard. Variances of these setback requirements may be granted by Declarant or the Board of Directors of the Association, but in no case will the setback be less than that required by the governmental agency having jurisdiction over the Property. Roof overhangs, decks, stoops, steps and patios shall not intrude into any setback area.

C. No structure shall be erected, altered, placed or permitted to remain on any Lot, except one single family dwelling not to exceed two and one-half stories of heated living space in height, unless the Declarant or the Architectural Committee, as the case may be, approves in writing a structure of more than two and one-half stories, and one or more small accessory buildings (which may include guest facilities) provided that the use of such dwelling or accessory building does not in the opinion of the Declarant or Architectural Committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business.

D. No mobile homes, manufactured homes, modular homes, or other similar pre-manufactured home shall be constructed, placed, located, or allowed to remain on any Lot within the subdivision. It is the intent of the Declarant to only allow "stick-built" houses to be constructed on the Lots within the subdivision.

E. All service utilities, trash containers, clothes lines and fuel tanks are to be enclosed within a wall or plant screen of a type and size approved by the Declarant or the Architectural Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision. No individual mail and newspaper boxes shall be allowed. No



fences shall at any time be placed or permitted to remain on any Lot without approval of the Declarant or the Architectural Committee.

F. Off street parking within an enclosed garage for not fewer than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said lot which parking areas and the driveways connected thereto shall be constructed of a material approved by the Declarant, or its designee. No owner or invitee of any owner shall be allowed to park on the Common Area, on any roadway or street right of way, or on any yard areas.

G. There shall be a twenty foot (20') landscape buffer located along the front of all Lots which may be used for the installation of sidewalks and is established in order to maintain and enhance a consistent natural look along the neighborhood streets. Trees, bushes, shrubs, grass or other vegetation contained therein shall not be installed or removed except upon written approval by the Architectural Committee.

H. Minimal and selective clearing of trees and vegetation for the installation of septic fields and septic repair areas shall be permitted pursuant to the approval and guidelines of the Orange County Health Department. It is the intent of the Declarant that septic fields and septic repair areas be maintained in a generally natural condition. However, this requirement shall not be interpreted to prevent installation of a septic tank on any Lot.

I. Open Loop Geothermal HVAC systems are prohibited, as closed loop geothermal systems are encouraged.

J. A maximum of 10,000 square feet of impervious surface per lot may be developed on Lots 1, 2, 3, 4, 5, 6, and 7 ("Permitted Impervious Surface"). A maximum of 12,500 square feet of impervious surface per lot may be developed on Lots 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17. Surfaces considered to be impervious shall be determined based on Orange County regulations in effect at the time of construction of any improvement on a Lot. "Additional Impervious Surface" which has been allocated to one Lot may be reallocated to another Lot or Lots upon request of all affected Lot Owners, and upon approval of the reallocation by the Declarant or the Architectural Control Committee, as the case may be and by the Orange County Planning Department. In the event of reallocation of Additional Impervious Surface, the Association shall prepare a statement (i) stating the amount of Impervious Surface originally granted to each Lot participating in the reallocation, (ii) stating the re-allocation of Additional Impervious Surface among the participating Lots, and (iii) stating the total Impervious Surface allocated to each Lot participating in the re-allocation. This statement of re-allocation shall be executed by the president of the Association and by the Lot Owners participating in the re-allocation and by the Orange County Planning Department and shall be recorded in the Orange County Registry. All determinations regarding Permitted Impervious Surface and Additional Impervious Surface are subject to the confirmation and approval of the Orange County Planning Department.

Section 5. MAINTENANCE BY ASSOCIATION The Association shall maintain the Common Area, including all roadways, road lighting fixtures, entryway plantings, sidewalks, and



shall pay all costs of operation thereof including premiums associated with general liability insuring the Association from liability arising from the ownership and operation thereof.

ARTICLE IX.

USE RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE. Except for the Common Area, which may be used for recreational purposes, all Lots shall be used for residential purposes only except that so long as the Declarant or the Developer shall retain ownership of any Lots, it may utilize and such Lot for models for the purpose of selling or renting Lots within the subdivision and may place "For Sale" or "For Rent" signs on such Lot. The Declarant may assign this limited commercial usage right to any other person or entities at it may choose; provided, however, that when all Lots have been sold, this right of commercial usage by the Declarant, its successors and assigns shall immediately cease. Co-ownership of Lots shall not be prohibited. Except as herein provided, any building erected, altered, placed, or permitted to remain on any Lot shall be subject to the provisions of Article VIII of this Declaration relating to Architectural Control.

Section 2. NUISANCES. No noxious or offensive activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on such Lot which would tend to substantially decrease the beauty of the neighborhood as a whole or the specified area.

Section 3. LOT MAINTENANCE. In the event that any Owner shall fail or refuse to keep the Owner's Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects, then, after thirty days' notice from the Architectural Committee, the Association or its designee shall enter upon such Lot and remove the same at the expense of the Owner, and such entrance shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs, and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens.

Section 4. JUNK VEHICLES AND TRACTOR TRAILERS. No inoperable vehicle or vehicle without current registration, current state inspection sticker, current license plate, and current insurance will be permitted on the premises, and no tractor-trailers will be permitted on the premises. The Association shall have the right to have all such vehicles towed away at the owner's expense.

Section 5. SIGNS. No signs shall be permitted on any Lot or in the Common Area without permission of the Board of Directors, except that "For Sale" signs conforming to Orange



County Sign Ordinances may be displayed by an Owner on the Owner's Lot. The display of political signs is permitted; provided, however, there shall be no display of political signs earlier than 45 days before the day of the election nor later than seven days after an election. Further, no political sign may be larger than 24 inches by 24 inches. For purposes of this section a political sign means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on an election ballot. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about any Lot or in the Common Area unless approved in advance by the Association. To the extent permitted by law, no signs or flags shall be placed on any building or improvement unless otherwise approved by the Association. In the event that the Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material. The display of the flag of the United States or North Carolina is permitted as long as its size is no greater than 4 feet by 6 feet and it is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. § 5-10, as amended. No flag (North Carolina or United States included) of a size greater than 4 feet by 6 feet shall be displayed or erected on or about any Lot or Common Area.

Section 6. TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. Provided however, that this provision shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any Lot until the construction of dwellings on all lots in the subdivision is completed.

Section 7. RECREATIONAL VEHICLES. No boat, motor boat, camper trailer, or mobile home shall be permitted to remain on any lot or on any street in the Property at any time, without the written consent of the Developer or the Association or its designee. If allowed by the Developer or the Association or its designee, such boats or other vehicles must be screened or otherwise hidden from view from the street.

Section 8. ANIMALS. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are at all times properly leashed or under the control of their owner and do not become a nuisance to the neighborhood.

Section 9. TV SATELLITE DISHES AND OUTSIDE ANTENNAS. No TV satellite signal receiving dishes will be permitted on any lot and no outside radio or television antennas shall be erected on any lot within the Property unless and until permission for such dishes or antennae has been granted by the Board of Directors of the Association or its Architectural Committee in regard to size and location.

Section 10. EXTERIOR LIGHTS. All light bulbs or other lights installed in any fixtures located on the exterior of any building or any lot shall be clear, white, or non-frost lights or bulbs. No "area lights" or similar flood lights shall be allowed within the subdivision.



Section 11. **VEHICLE REPAIRS.** No repairs to any vehicle may be made in driveways, but may be made only in garages and shall not be visible from the street. No inoperable or immobile vehicle, whether or not containing current registrations, shall be permitted to remain in any driveway or on any street.

Section 12. **ALTERATIONS.** No person shall undertake, cause, or allow any alteration of construction in or upon any portion of the Common Area except at the direction or with the express written consent of the Association.

Section 13. **SUBDIVIDING.** No lot shall be subdivided, or its boundary lines changed, except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, in addition to the rights reserved in Article I, Section 6 of this Declaration, the Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat Lots, to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access to any area of the Properties or are needed for use as private roads or access areas, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said re-platted Lots. In no event may a Lot be subdivided or reconfigured without the approval of the appropriate local governmental authority.

Section 14. **SWIMMING POOLS.** No above ground swimming pools shall be permitted within the subdivision. Swimming pools, spas, and hot tubs shall be located on a Lot in a place specified by the Architectural Committee. All fencing surrounding swimming pools, spas, and hot tubs shall be approved by the Architectural Committee.

Section 15. **OPEN SPACE MAINTENANCE.** The Open Space owned by the Association is intended to remain in its natural state. Hence, removing, destroying or cutting trees and vegetation within the Open Space is strictly prohibited except for: (a) selective removal of trees or vegetation for the prevention or treatment of disease, (b) removal of dead or fallen trees posing a hazard, (c) removal of invasive, non-native or noxious plants that threaten indigenous plant species, (d) relocation of exposed root balls to their original position, and (e) minimal and selective clearing necessary to maintain best forestry practices in the management of wooded areas. Trees and limbs from trees may be removed from the Open Space only with the prior approval of the Architectural Committee to determine if a tree has fallen or constitutes a hazard. The method of removal shall be approved by the Architectural Committee, and may include on-site chipping or grinding, provided the methods and machinery used shall not result in erosion or compaction of soil.

ARTICLE X.

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 an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing, the Association shall have the right, at its option, whenever there shall have been built on any Lot any structure which is in violation of these restrictions, to enter upon such Property where such violations exist, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days' written notice of such violation, it shall not have been corrected by the Owner. Any such entry, abatement, or removal shall not be deemed a trespass. The failure to enforce any covenants, restrictions, reservations or conditions contained in these Restrictions shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 2. COST OF ENFORCEMENT. Should the Association employ counsel to enforce any of the foregoing covenants, conditions, reservations, or restrictions, or re-entry, by reason of such breach, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots, and the Association shall have a lien upon such Lot to secure payment of all such claims.

Section 3. SEVERABILITY. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions, all of which shall remain in full force or effect.

Section 4. LOTS SUBJECT TO DECLARATION. All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot as though such provisions were made apart of each and every deed of conveyance or lease. The covenants and restrictions of this Declaration are to run with the land and be binding on all persons and parties with an interest in the Property.

Section 5. AMENDMENT OF DECLARATION. Except as herein provided, the covenants and restrictions of this Declaration may be amended by an instrument signed by two-thirds (2/3) of each class of Members and recorded in the Orange County Register of Deeds. The Declarant's power to amend this Declaration as provided in Section 6 of this Article shall not require the consent of the Class A Members and shall be valid when signed by the Declarant and recorded in the Orange County Register of Deeds. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee.

Section 6. AMENDMENT BY THE DECLARANT. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the Members;



A. Prior to the sale of the first lot, this Declaration may be amended by the Declarant.

B. The Declarant or the Board may amend this Declaration to correct any obvious error or inconsistency in drafting, type or reproduction.

C. The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property, or to qualify the property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency, or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare.

D. The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

E. The Declarant, for so long as it has control of the Board, may amend this Declaration to include any platting change of the Property as permitted herein.

Section 7. MORTGAGEE PROTECTION

A. This Section 7 to Article X establishes certain standards and covenants for the benefit of Mortgagees. This Section 7 to Article X is supplemental to, and not in substitution for, any other provisions of the Declaration, but in the event of any conflict between the provisions of the Declaration and the provisions of this Section 7 to Article X, the provisions of this Section 7 to Article X shall control.

B. Any Mortgagee, and any insurer or guarantor of a loan secured by a mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

C. Any Mortgagee (including, for purposes of this section, any insurer or guarantor of a loan secured by a mortgage that has notified the Association in writing of its name and address, and that it insured or guarantees a mortgage) shall have the right to receive from the Association prompt written notice of the following:



- i. Default under any of the terms and provisions of the Declaration by the Association or any Owner owning a Lot encumbered by a mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of sixty (60) days.
- ii. Any loss or damage to or condemnation or taking of the Common Area, or any loss or damage to or condemnation or taking of a Lot encumbered by a mortgage held, insured or guaranteed by such Mortgagee.
- iii. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- iv. Any proposed action by the Association or the Owners, which under the terms of the Declaration requires the consent of all or any portion of the Mortgagees.

D. The provisions of this Section 7 to Article X are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

(SIGNATURE AND NOTARY ACKNOWLEDGMENT ON NEXT PAGE)



IN WITNESS WHEREOF, the Declarant has hereunto executed this Declaration on the day and year first above written

HUMPHRIES FAMILY, LLC

By: C. Thomas Humphries
C. Thomas Humphries, Manager

STATE OF NORTH CAROLINA

COUNTY OF Union

I, the undersigned Notary Public, certify that **C. Thomas Humphries** personally came before me this day and acknowledged that she is Manager of **Humphries Family, LLC**, a North Carolina limited liability company, and that she as Manager, being so authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal on this the 24 day of April, 2017

[NOTARY SEAL]

Beatrice Hill
Beatrice Hill, Notary Public
My Commission Expires: 10/20/2021

 OFFICIAL SEAL
Notary Public - North Carolina
UNION COUNTY
Beatrice Hill
My Commission Expires: 10/20/2021



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HENDERSON WOODS, INC.

By: C. Thomas Humphries
C. Thomas Humphries, President

STATE OF NORTH CAROLINA

COUNTY OF _____

I, the undersigned Notary Public, certify that **C. Thomas Humphries** personally came before me this day and acknowledged that he is President of **Henderson Woods, Inc.**, a North Carolina corporation, and that he as President, being so authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal on this the 24 day of April, 20 17

[NOTARY SEAL]

Beatrice Hill
Beatrice Hill, Notary Public
My Commission Expires: 10/20/2021



OFFICIAL SEAL
Notary Public - North Carolina
UNION COUNTY
Beatrice Hill
My Commission Expires: 10/20/2021



EXHIBIT A

BEING all of that tract or parcel of land shown on that map entitled "Final Plat Henderson Woods" dated January 11, 2017 by R.S. Jones & Associates, Inc. and recorded in Plat Book 117, pages 3 and 4 Orange County Registry.



LENDER'S CONSENT AND SUBORDINATION

FIRST NATIONAL BANK OF PENNSYLVANIA (the "Lender"), as successor in interest by merger to NEWBRIDGE BANK via those certain articles of merger recorded on March 10, 2017 with the Corporations Divisions of the North Carolina Secretary of State #C2017 069 00415, does hereby consent to the recordation of the foregoing Declaration of Covenants, Conditions and Restrictions of Henderson Woods ("Declaration"), and Lender hereby subordinates (A) its deed of trust as recorded in Book RB6106, Page 154, Orange County Registry, and (B) its deed of trust as recorded in Book RB6106, Page 173, Orange County Registry, to the terms of the Declaration. The execution of this Consent and Subordination by the Lender shall not be deemed or construed to have the effect of creating between Lender and Declarant the relationship of partnership or of joint venture, nor shall said Lender be deemed to have accepted in any way, nor shall anything contained herein, be deemed to impose upon said Lender, any of the liabilities, duties or obligations of Declarant. Beneficiary executes this Consent and Subordination solely for the purposes set forth herein

LENDER:

FIRST NATIONAL BANK OF PENNSYLVANIA, as
successor in interest by merger to NEWBRIDGE BANK

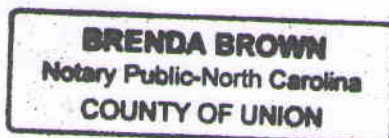
By: [Signature]
Name: DAVID G. COLSON
Title: SVP

STATE OF NORTH CAROLINA

COUNTY OF mecklenburg

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: David G. Colson, as SVP of Lender.

Date: April 25, 2017



(Official Seal)

Brenda Brown
Official Signature of Notary

Brenda Brown
Notary's printed or typed name, Notary Public

My commission expires: May 3, 2017