BOOK 3868 PAGE 487 (10)

973576

This document presented and filed:
02/14/2022 02:50:17 PM

WILLIAM LEE KING, Henderson COUNTY, NC

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

DECLARATION OF RESTRICTIVE COVENANTS OF THE COTTAGES AT WINDY KNOLL

THESE RESTRICTIONS CONTAIN LIMITATIONS UPON THE DISPLAY OF FLAGS AND POLITICAL SIGNS

This Declaration of Restrictive Covenants is made this 14 day of February, 2022, by The Cottages At Windy Knoll, LLC, as the Declarant:

WITNESSETH:

Whereas, The Cottages At Windy Knoll, LLC, a North Carolina limited liability company, is the owner of that certain real property located in Henderson County, North Carolina, described in that deed recorded in Book 3853, Page 684, Henderson County Registry, which is being developed as The Cottages At Windy Knoll, a subdivision depicted on the plat recorded in Plat Slide 13690 in the office of the Register of Deeds, Henderson County, North Carolina; and

Whereas, it is the desire and intention of The Cottages At Windy Knoll, LLC, hereinafter referred to as the "Declarant", to sell the above-described real property and to improve upon it mutual, beneficial restrictions, conditions, easements, covenants, and agreements under a general plan of improvement for the benefit of all of the said lands and the future owners of Lots in The Cottages At Windy Knoll Subdivision (hereinafter referred to as the "Subdivision");

DEFINITIONS:

The following terms as used in this Declaration are defined as follows:

A. "Declarant" means The Cottages At Windy Knoll, LLC, or any party designated by The Cottages At Windy Knoll, LLC as a successor-declarant in an instrument duly executed and recorded in the office of the Register of Deeds, Henderson County, North Carolina.

B. "Lot Owner" means any person(s) or legal entity/entities, including the Declarant, who own(s) a Lot or Lots in the Subdivision. Each owner of any interest in a Lot shall be deemed the Lot Owner (or a portion thereof), but each Lot in the Subdivision shall be deemed to have a total of only one Lot Owner, whether one or more actual owners.

C. "Subdivision Plat" and "Subdivision Plats" mean the plat of The Cottages At Windy Knoll Subdivision recorded in Plat Slide 13690, Henderson County Registry, and also include any amendments and additions thereto

made hereafter by the Declarant, unless expressly provided otherwise. In the event that the Declarant exercises its right to hereafter include in or add to this Subdivision, Subdivision Plat and Subdivision Plats shall also include any and all plats the Declarant elects to record or designate and use depicting such additional lands or lot(s).

D. "Subdivision" as used herein shall also include all lands depicted on any Subdivision Plats, and shall include all Lots and land located in The Cottages At Windy Knoll Subdivision depicted on plat recorded in Plat Slide 13690, and other plats the Declarant may hereafter include in the Subdivision. The Subdivision shall be a planned community as defined in the North Carolina Planned Community Act in Chapter 47F of the North Carolina General Statutes.

E. "Lot" as used herein shall mean any Lots designated by number for residential use on Subdivision Plats.

F. "Act" shall mean, unless context clearly indicates otherwise, the North Carolina Planned Community Act in Chapter 47F of the North Carolina General Statutes, as may be amended.

G. "Common Property" and "Common Properties" shall consist of roads, rights of way, open space, green space, and other Common Properties as so identified as Common Property on the Subdivision Plats. Common Properties shall also include the entrance sign of the Subdivision and street signs of the Subdivision, if any.

H. "Association" as used herein shall mean, unless context clearly indicates otherwise, The Cottages At Windy Knoll Homeowners Association, Inc., a North Carolina non-profit corporation formed for the purpose of acting and being the property owners association of the Subdivision.

USES, RESTRICTIONS, COVENANTS AND EASEMENTS:

NOW, THEREFORE, the undersigned does hereby impress, place upon, and declare the title to the real property described in that deed to The Cottages at Windy Knoll, LLC, recorded in Book 3853, Page 684, Henderson County Registry, in said Subdivision, for the period set forth, to be subject to the following restrictive covenants, conditions, prohibitions, easements and reservations (herein collectively referred to as the "Restrictive Covenants"), to-wit:

1. These Restrictive Covenants shall run with the land to take effect immediately upon recordation of this instrument in the Henderson County Registry, and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these Restrictive Covenants are recorded. After that time these Restrictive Covenants shall be extended automatically for successive periods of ten (10) years, unless an instrument executed by at least sixty-seven percent (67%) of the Lot Owners agreeing to change the Restrictive Covenants in whole or in part has been recorded.

2. The Declarant reserves the right to amend the Declarative Covenants, without approval or joinder of any Lot Owners, until such time as all of the Lots are sold and conveyed by the Declarant. At such time as all of the Lots are sold and conveyed by the Declarant, any portion of these Restrictive Covenants may be released, changed, modified or amended by written instrument executed by at least sixty-seven (67%) majority of the Lot Owners and shall be sufficient to constitute an amendment of these Restrictive Covenants without notification to any person or persons.

3. Easements and rights-of-way of the Subdivision on the Lots, including easements for roads, sidewalks, ditching and culverts, water, sewer, fire hydrants, open space, and drainage, are shown on the Subdivision Plats and/or otherwise provided for herein.

Each Lot is subject to the 50-foot wide right-of-way of Windy Knoll Acres Drive, which includes ditching, culverts and sidewalks.

Each Lot is subject to an easement for the installation, maintenance and repair of utilities ten feet wide located adjacent to the 10-foot wide road easements on the front of the Lot. The Declarant and utility companies shall have the right to do any necessary clearing for installation and/or maintenance of utilities. Neither the Declarant nor any such utility company shall be liable for any damage to any structure or landscaping within such boundary easement area.

4. All Lots within the Subdivision shall be used exclusively for single-family residential purposes. All Lots within the Subdivision are entitled to have one home office to be used strictly as a remote office. No customers, venders, buyers or clients shall be permitted to visit the home office or the Lot to conduct business of any type, at any time. Except as expressly stated otherwise, no commercial activity or use may be made of any Lot in the Subdivision, other than as may be reasonably necessary for the construction of any permitted building and improvements. No trade or business and no obnoxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No obnoxious or offensive activity shall be carried on upon any Lot in the development. No Lot or premises shall be used or occupied so as to affect injuriously the use, occupation, or value of any adjoining premises for residential purposes.

5. As long as the Declarant owns one or more Lots in the Subdivision, [1] all residences and improvements (if any) to be constructed hereafter on Lot(s), and [2] all residences, additions and improvements to be modified hereafter on Lot(s) in any manner visible from the exterior of the residence or improvement (including but not limited to changes of exterior paint colors and door colors), are subject to the prior approval of the Declarant as stated herein. All residential dwelling and improvement plans, including elevations and specifications, shall be submitted in written plans and details to the Declarant, for approval prior to the commencement of construction. The Declarant's refusal of any plans may be based on any grounds not precluded by law, including purely aesthetic considerations, which at the sole discretion of the Declarant shall be deemed sufficient. Approval or denial shall be issued by the Declarant within thirty (30) days after Declarant's actual receipt from the Lot Owner of the Lot Owner's written request including complete copies of the written plans and details. All residences, additions and improvements approved to be constructed or modified, shall be constructed or modified in strict conformity with the stated written approval received from the Declarant, if any.

6. All residences shall be stick-built or constructed on site, or the components otherwise expressly approved by Declarant prior to the beginning of construction of residence. No residence constructed on any Lot shall have any unfinished masonry, block or concrete foundation.

7. All outside construction work, grading and cleanup of unused material, not performed or undertaken by Moore & Son Site Contractors, Inc., shall be completed within a period of one (1) year from the date of the commencement of construction. All living areas of any house built on a Lot must be completed and a certificate of occupancy issued prior to occupancy.

8. Prior to commencing construction on any Lot in the Subdivision the Lot Owner shall have the utility companies identify the location on the Lot of all underground utilities running along and/or across the Lot.

9. No trailer, mobile home, tent, shack, garage or other outbuilding moved or maintained on any Lot shall at any time be used as a residence temporarily or permanently. Except as otherwise stated herein, no recreational vehicles or pull campers shall be kept on any Lot permanently unless the same is stored in a completely enclosed garage. No inoperative motor vehicle shall be allowed to remain on any Lot for more than thirty (30) days unless same is stored in a completely enclosed garage. All vehicles remaining on a Lot shall be tagged with current year plates and used on a regular basis. No commercial type vehicle or truck larger than a pickup truck shall be stored or

parked on any Lot unless parked in a closed garage. No Lot Owner shall operate, nor permit the operation, in the Subdivision of any motorized vehicle without a fully functional and operating muffler. The Declarant shall have the right to require the permanent removal from the Subdivision of any vehicle or other item not fully in compliance with the provisions of this Paragraph.

10. No privies, outdoor toilets, or outdoor lavatories are permitted on any Lot in the Subdivision. No unsanitary condition prejudicial to the public health shall be permitted. All sewage systems shall be connected to a public sewage system or otherwise to a septic tank designed, located and constructed in, accordance with the requirements of the North Carolina State Board of Health, and approved as installed by the Henderson County Board of Health or its successors. No liquid in any way may be placed into open ditches or watercourses. No Lot or any portion thereof, shall be used or maintained as dumping grounds for rubbish. All such waste shall be kept in sanitary containers and shall be disposed of at least twice monthly. All garbage, recycling and trash containers shall be maintained in a sanitary and clean condition and must not be visible from any other Lot or street in the Subdivision. All such containers shall not be placed for pickup and collection earlier than twelve (12) hours prior to collection, and must be removed from curbs or other collection areas within twelve (12) hours of completed collection. Such containers shall be maintained in a manner to prevent and suppress emission of any foul or noxious odors.

11. No building, landscaping feature or other structure shall be erected, constructed, installed, placed or altered on any Lot without the prior review and written approval of the Declarant. Disapproval by the Declarant may be based on any ground, including purely aesthetic considerations, in its sole discretion.

12. Any and all fences, including underground fencing for pet containment, shall be approved in writing by the Declarant, and in the event of approval, any and all fences shall be constructed behind the rear of the structure of the dwelling.

13. No portion of any building shall be placed upon or permitted to encroach upon any easements or rights of way established within the Subdivision without the express prior written consent of the Declarant.

14. No swimming pool may be installed, erected, located or otherwise permitted on any Lot.

15. No clothing lines, whether permanent or temporary, may be installed or used upon any Lot within the Subdivision. In no event shall any Lot Owner permit the drying of clothes, linens, or other similar materials outside any dwelling within the Subdivision in any manner visible to any other Lot or streets in the Subdivision.

16. All playground equipment, goals, children's toys, sports equipment, vegetable gardens, patio furniture and outdoor grilling apparatus shall be located only in the side or rear yard of a dwelling, as viewed from Windy Knoll Acres Drive, and any placement thereof shall be subject to the sole discretion of the Declarant. Upon written approval by the Declarant, the Lot Owner may place a portable basketball goal in the driveway.

17. No mail or newspaper boxes or other similar depository shall be placed, nor allowed, upon any Lot. All activities regarding mail in the Subdivision shall take place, and are permitted, only at the Subdivision's mail kiosk.

18. The Lot Owner shall, by acceptance of a deed for a Lot, be obligated to provide adequate erosion control measures as a part of the construction process in order to minimize siltation or erosion of areas outside the Lot of such Lot Owner. It shall be the duty of the Lot Owner to design and execute such control measures so as to avoid damage to other Lots or properties. If such Lot Owner has not provided adequate control measures which comply with applicable erosion control regulations, or if the Lot Owner is in violation of this section, the Declarant may, after five (5) days written notice to such Lot Owner, perform such measures, in which case the Lot Owner shall pay the Declarant, within thirty (30) days, that sum equal to 115% of all costs of the Declarant associated with such control measures.

19. Except as otherwise provided herein, all Lot Owners, residents, occupants and guests are responsible for maintaining their Lots and other areas of the Subdivision in a clean, sanitary and proper condition. All residences and improvements that are built on any Lot shall be maintained in a good and attractive manner at all times.

20. No subdivision or boundary relocation of any Lot may be made without the written approval of the Declarant; however, as long as the Declarant owns one or more Lots, the Declarant has and reserves the right to re-plat or re-subdivide any Lot prior to the conveyance thereof in order to create a modified Lot or Lots. These Restrictive Covenants shall apply to each Lot or Lots which may be created.

21. Except as otherwise provided herein, no residence or structure hereafter shall be constructed, erected, or placed nearer than thirty (30) feet from the center line of the fronting street or closer than ten (10) feet to any side lot line or rear lot line. Notwithstanding anything herein to the contrary, the Declarant shall have an absolute right to modify and/or waive a building set-back when, in the sole discretion of the Declarant, the size, terrain and/or location of the Lot renders such modification or waiver necessary.

22. No building or structure shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family dwelling, not to exceed two stories in height, exclusive of basement, either finished or unfinished, with attached private garage for the automobiles of those occupying said dwelling. No detached garage, carport, storage building or other outbuilding shall be placed or otherwise built hereafter upon any Lot.

23. Except as otherwise provided herein, no single-level residence shall be permitted on any Lot unless the same shall have a minimum of 1,500 square feet of heated, finished floor space on a permanent foundation, exclusive of garage and open porches. No two-level residence shall be permitted on any Lot unless it shall have a minimum of 700 square feet of heated, finished floor space on the main level, on a permanent foundation, exclusive of garage and open porches, with a total minimum of 1,500 square feet of heated, finished floor space exclusive of garage, open porches and basement.

24. No second, additional, or expanded driveway may be placed upon any Lot without the express prior approval of the Association, which approval may be withheld by the Association in its sole discretion.

25. Except for the Subdivision's entrance sign and street signs, no signs or flags may be posted or displayed on any Lot in any manner visible from any other Lot or the street, except as provided in this Paragraph 25:

A. The official flag of the United States of America and the official flag of North Carolina, may be displayed upon any Lot, subject to any such display being in accordance with law and customary, respectful display protocol.

B. One seasonal sports flag may be displayed, and must be removed upon the conclusion of the season.

C. Except as otherwise stated herein, any permitted sign shall not be bigger than five square feet.

D. One sign advertising the Lot for sale or the dwelling for rent, may be displayed and must be removed no later than when the property is sold or rented.

E. Political campaign signs may be displayed for no more than 30 days immediately preceding Election Day and must be removed at the end of that Election Day.

F. One security company sign no bigger than two square feet.

The Association shall have the right, upon five days' notice to the Lot Owner, to enter upon the Lot Owner's Lot and remove from the Lot any sign or flag displayed not in compliance with this Paragraph 25.

26. No fuel tanks, bottled gas tanks or other similar storage receptacles may be exposed to view upon any Lot. All such tanks and receptacles shall be installed within the dwelling, inside an enclosement or buried underground.

27. No satellite dishes greater than eighteen (18) inches shall be permitted on any Lot. The location and placement on any Lot of any satellite dish is subject to approval by the Association, in its sole discretion.

28. Use of fireworks shall not be permitted within the Subdivision.

29. No horses, livestock or poultry of any kind shall be raised, bred, maintained, kept or permitted on any Lot. No "dog lots," kennels" or "runs" shall be installed upon any Lot. Dogs, cats, or other ordinary household pets shall be limited to no more than a total of three (3) per Lot, subject to the Lot Owner's strict compliance with this instrument. All pets shall be kept within the boundary of the Lot Owner's Lot, and Lot Owners shall not permit their pet to wander outside the boundary of the Lot. No animal breeding shall be permitted for commercial purposes within the Subdivision.

30. No hunting, use or discharge of any weapon shall be permitted within the Subdivision, including but not limited to firearms, air guns, archery or other projectile devices.

31. No access rights, whether by easements, right of way, or otherwise, shall be deeded, granted or conveyed in any way by any Lot Owner within the Subdivision to or for any property located outside the Subdivision, without the prior written and recorded consent of the Declarant. After the Declarant no longer owns any Lot, written and recorded consent of 100 per cent of the Lot Owners shall be necessary.

32. Except as provided in this instrument, no Lot Owner shall permit any portion of its Lot to be used to provide access or utility connection to any property that is not part of the Subdivision and subject to these Restrictive Covenants.

33. The Declarant and any utility company may enter upon any Lot, as reasonably necessary for the purpose of installing, maintaining or repairing any facilities relating to provision of any utilities or upkeep and clearing of any drainage routes. Each Lot Owner, his successors or assigns, herewith waives any and all causes of action and claims against the Developer, the Association or any utility company or municipality, or agents thereof, for any damages or claims arising out of construction, maintenance or repair of utilities or on account of temporary or other inconvenience incurred by virtue of such.

34. The Declarant reserves the right to amend boundaries of any Common Properties and to grant easements for encroachments upon any Common Properties for any improvements within the Subdivision or for improvements constructed by Declarant on adjacent property.

35. The Declarant reserves the right to access and connect to rights of way, easements, utilities, and common facilities for the benefit of adjacent parcels or phases developed by Developer, its successors and assigns.

36. The Declarant expressly reserves the right hereafter to add to the Subdivision other land and Lots besides those depicted on the original Subdivision Plat recorded in Plat Slide 13690 of the Henderson County Registry. The Declarant reserves the right to modify in its discretion this Declaration so long as the Declarant owns at least one Lot in the Subdivision. The Declarant expressly reserves all development rights itemized in North Carolina G.S. 47F-1-103(11) and all special declaration rights itemized in North Carolina G.S. 47F-1-103(28). The special declaration rights reserved include but are not limited to:

A. All the rights set forth in the Act including but not limited to those rights set forth in and described in North Carolina General Statutes Sections 47F-1-103(28) and 47F-3-104, and as thereafter amended.

B. All rights and authority of a declarant under the Act; and

C. The right to use all types of easements though the Common Properties for the purpose of making improvements, resolving encroachments, connecting to utilities and/or granting access within the Common Properties or upon adjacent parcels or phases of the Subdivision and to change or alter road access and rights-of-way at any time; and

D. The right to exercise development rights and not to be subject to specific Restrictive Covenants set forth herein for the purposes of development; and

E. The right to maintain sales offices, management offices, and models on any Lot, upon Common Properties, or elsewhere upon the Subdivision property; and

F. The rights to withdraw from or add to the Subdivision other real property including but not limited to certain separate portions of the real estate as shown on the Plats of the Subdivision; and

G. The right to add Lots, to relocate the boundaries of any Lot, and the right to designate portions of the Common Properties as part of an existing Lot; and

H. The right to submit the property to a Master Declaration for the Community including adjacent parcels; and

I. The right not to be assessed or to be responsible for any fees or assessments from the Association or otherwise for Lots or portions of the Subdivision Property titled in the name of the Declarant unless such applicable Lot shall be actually occupied as a residence.

37. Except as provided otherwise herein, all costs of the maintenance, the repair and any replacement of Common Properties shall be a Common Expense to be divided between all Lot Owners of Lots within the Subdivision as further described herein and shall be subject to Annual Assessment.

38. The Cottages At Windy Knoll Association, Inc. (the "Association") will be formed by the Declarant as a North Carolina non-profit corporation entity. The Association shall provide for the orderly enforcement of these Restrictive Covenants, including but not limited to, the maintenance, upkeep and repair of the rights of way, easements and Common Properties within the Subdivision and to handle any other matters determined by the Association to be of common interest to the Lot Owners within the Subdivision. The Board of Directors of the Association as governed by the Bylaws, shall constitute the Executive Board as defined in Section 47F-3-103 of the Act. The Association and Board shall be subject to the provisions set forth in the Act, except in such instances where these Restrictive Covenants permissibly deviate therefrom. Until such corporate entity is formed, the Declarant or its successors or assigns will perform al l duties and responsibilities and retain all authority of the Association as set forth and contemplated by this document. Until such time as the Declarant turns over control of the Association, the Declarant retains the right to unilaterally appoint all members of the Board of Directors of the Association. No Lot Owner may establish or maintain a homeowner's association or like organization whose purpose relates to the enforcement of the Restrictive Covenants without the written consent and approval of the Declarant, except as expressly provided in the Act. The Declarant shall not owe or be charged assessments or fees of any kind for Lot(s) owned by the Declarant, but the Declarant shall be deemed a Lot Owner for each such Lot owned by Declarant, for all other purposes of membership in the Association.

39. Every Lot Owner of a Lot which is subject to assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated or severed from ownership of any Lot. Lots owned by the Declarant shall not be subject to or charged assessments or fees of any kind, but the Declarant shall be deemed a Lot Owner for each such Lot owned by the Declarant for all other purposes regarding the Association including voting membership in the Association.

40. The Declarant may retain the legal title to any or all of the Common Properties so long as it owns at least one Lot in the Subdivision. The Declarant may transfer and convey title to any Common Property within the Subdivision to the Association at any time after the Association's formation, and the Association shall accept the same. On or before the sale and conveyance by Declarant of the last Lot which it owns in the Subdivision, Declarant shall deed and convey to the Association all Common Properties still in its ownership, subject only to any restrictions, conditions, limitations, reservations and easements then of record, and the Association shall accept the same.

41. Designation of Open Space. Property identified on the recorded plat as "Open Space" shall be maintained in perpetuity in this condition. The Open Space may be used for: conservation of natural, archeological, or historical resources; agriculture, horticulture, or silviculture; passive recreation; nonstructural stormwater practices; easements for drainage, access, and underground utility lines; and water, septic and sewer systems. The area may be used for active recreation provided impervious surfaces are limited to no more than 12 percent (12%) of the total Open Space. The area designated Open Space may not be used by motor vehicles, except for maintenance purposes; road; parking Lots; and impervious surfaces excluding the maximum 12 percent (12%) for active recreation as stated herein. This covenant is to run with the land and shall be binding on all parties and persons claiming under them.

42. Open Space is Common Property as defined herein and shall be maintained pursuant to the provisions for maintenance of Common Property as outlined herein. Additionally, this maintenance shall include any maintenance of trails, mowing, removal of trash, waster, and litter and efforts to control vandalism and other crimes on the property. The expense for this maintenance shall be borne by the Lot Owners and paid for through the collection of assessments as provided for herein.

43. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Lot, subject to suspension for the following:

A. Violation of rules and regulations governing use and enjoyment of the Common Properties adopted by the Association, not to exceed thirty (30) days; and/or

B. For any period during which any Assessment remains due but unpaid.

44. Each Lot is subject to a non-refundable assessment lien for a transfer fee in the amount of $250 that is due and payable to the Association at any time title to the Lot is conveyed of record. At the time of the conveyance of any Lot in this Subdivision the grantee of the Lot shall pay to the Association the assessment for the $250 non-refundable transfer fee, which shall not be applied toward or credited against any other assessments or fees charged pertaining to that Lot by the Association, and shall be subject to a transfer fee in the amount of $250.00 any time the Lot or any interest therein is conveyed. This assessment for transfer fee shall not apply to any conveyance by a Lot Owner of the Lot to a revocable trust agreement of which the transferring Lot Owner is the sole trustee and the sole beneficiary during the life of the Lot Owner.

45. The Declarant hereby covenants and each Lot Owner (excluding the Defendant), by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association any Annual Assessments or Special Assessments to be established and collected as herein provided.

Every person or entity who is a record fee simple Lot Owner, including the Declarant at all times as long as the Declarant owns a Lot, shall be a member of the Association, provided that any such person or entity who holds such as security for the performance of an obligation (e.g. lien, mortgage or deed of trust holder) shall not be a member of said Association. Each Lot shall be subject to assessment, except as otherwise provided herein.

46. The Association is authorized and empowered to collect any assessments and fees levied in accordance with these Restrictive Covenants, as set forth in the Act. The Association is authorized and empowered to levy Annual Assessments and Special Assessments for the maintenance, upkeep and repair of the rights of way, easements, and Common Properties within the Subdivision and to handle any other matters determined by the Association to be of common interest to Lot Owners within the Subdivision, in accordance with procedures set forth in the Act. All such assessments shall be determined by the Association and notice of such assessments shall be sent to the Lot Owners no less than ninety (90) days prior to the due date of such assessments. All assessments shall be billed on an annual basis, beginning on July 1 of each calendar year. Except as otherwise provided, each Lot should be subject to Annual Assessments in the amount of $475.00 per calendar year.

47. The Association is hereby authorized and empowered to levy reasonable fees for non- compliance with any terms of these Restrictive Covenants. Such fees shall not be regarded as punitive, but shall be collected for the purpose of covering expenses relating to enforcement of these Restrictive Covenants. In no event shall any fees levied by the Association for non-compliance be assessed less than fifteen (15) days after notice to any Lot Owner of the Lot Owners' non-compliance with these Restrictive Covenants. In no event shall any fees be levied in an amount in excess of One Hundred Dollars ($100) per day of such non-compliance commencing no less than fifteen (15) days after notice of such non-compliance is given to an Lot Owner. All such fees levied shall be in accordance with the procedures set forth in the Act.

48. Annual Assessments must be fixed at a uniform rate for all Lots in the Subdivision (but excluding the Lots owned by the Defendant). Special Assessments may be applied to any specific Lot(s), as provided herein, or as reasonably necessary to make improvements or perform maintenance for the exclusive benefits of any such assessed Lot(s). The Declarant shall be exempt from paying any Annual Assessments, Special Assessments, or other fees of any sort for each Lot owned by Declarant.

49. Any assessments not paid within thirty (30) days of the due date shall bear interest from the due date at the rate of eight percent (8%) per annum. The Association may bring an action at law or equity against the Lot Owner personally obligated to pay the same or foreclose its lien against the Lot against which the delinquent assessment has been levied. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Common Properties and/or Subdivision Roads, abstention from Association actions, abstention from constructing a dwelling on the Lot Owner's Lot, or abandonment of the Lot Owner's Lot.

50. The lien for the assessments provided for herein shall be subordinate to the lien of any mortgage or deed of trust, unless the Association shall file a claim of lien prior to the recording of said mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to a foreclosure or any proceeding in lieu of a mortgage or deed of trust superior to the assessment lien (not to include a deed given as settlement in lieu of foreclosure) shall extinguish the line of such assessments as to payments which became due prior to such exempted sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent any mortgagee from, at its option, paying any delinquent obligations of a Lot Owner. The Association shall notify by registered mail, return receipt requested, any mortgagee of any delinquency or default of any obligations of a Lot Owner prior to taking any action against such Lot Owner which would affect the mortgagee's interest in the Lot.

51. The Declarant may assign its architectural and other review and approval rights to the Association at any time after the Association's formation. Such rights, not sooner transferred, shall automatically transfer to the Association upon the sale by Declarant of all Lots in the Subdivision.

52. After turnover of control of the Association to the Lot Owners, each Lot Owner of a Lot shall be entitled to one vote for each Lot owned in The Cottages At Windy Knoll. The Declarant shall exercise total control of the Association until the earlier occurrence of one of the following events: 1) the Declarant no longer owns a Lot in The Cottages At Windy Knoll or 2) the Declarant provides a written document to the Association relinquishing control of said Association to the Board of Directors of the Association.

53. It shall be lawful for the undersigned Declarant and its successors and assigns, and for any Lot Owner to institute and prosecute any proceedings at law or in equity against any person or persons violating or threatening to violate the Restrictive Covenants. If any such court action is instituted and successful, the violator or threatening violator shall pay all costs, including attorney's fees and court costs incurred by the enforcing party.

54. Invalidations of any one of these Restrictive Covenants by judgment or court order shall not in any way effect any of the other provisions above set out, which shall remain in full force and effect.

The undersigned Declarant does hereby declare that the advantages accruing to his property from the Restrictive Covenants set out constitute good and valuable consideration for the execution of this instrument.

IN WITNESS WHEREOF, The Cottages At Windy Knoll, LLC, has hereunto caused this Declaration to be executed and sealed in its name by its undersigned Member/Manager, the day and year first above written.

The COTTAGES AT WINDY KNOLL, LLC (SEAL)

by: _____
Rick Moore, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Rick Moore, Member/Manager of The Cottages At Windy Knoll, LLC, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of The Cottages at Windy Knoll, LLC. Witness my hand and official stamp or seal, this 11 day of February, 2022.

My Commission Expires:
11/1/2025

_____
Notary Public

KELLY KIRK
NOTARY
PUBLIC
HENDERSON COUNTY, NC

BOOK 4026 PAGE 406 (2)

1000995418

This document presented and filed:
03/28/2023 03:16:18 PM

WILLIAM LEE KING, Henderson COUNTY, NC

→ PMA

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

AMENDED DECLARATION OF RESTRICTIVE COVENANTS OF THE COTTAGES AT WINDY KNOLL

THESE RESTRICTIONS CONTAIN LIMITATIONS UPON THE DISPLAY OF FLAGS AND OF POLITICAL SIGNS

This Amended Declaration of Restrictive Covenants is made this 27 day of March, 2023, by The Cottages At Windy Knoll, LLC, as the Declarant:

WITNESSETH:

Whereas, the Declaration Of Restrictive Covenants Of The Cottages At Windy Knoll, LLC were recorded February 14, 2022, in Book 3868, Page 487, Henderson County Registry;

Whereas, pursuant to Paragraph 2 of the Declaration Of Restrictive Covenants Of The Cottages At Windy Knoll were recorded Book 3868, Page 487, the Declarant reserves the right to amend the Declarative Covenants until such time as all of the Lots are sold and conveyed by the Declarant, and the Declarant presently owns Lots therein; and the Declarant desires to amend the said recorded Declaration in order to correct an inadvertent error therein;

Now, therefore, the Declaration Of Restrictive Covenants Of The Cottages At Windy Knoll recorded February 14, 2022, in Book 3868, Page 487, shall be amended as follows:

1. Paragraph 44 is herewith amended, in its entirety, to provide as follows:

Each Lot is subject to a non-refundable assessment lien for a fee in the amount of $250 that is due and payable to the Association when the Lot is initially conveyed by the Declarant. At the time of the initial conveyance by the Declarant the grantee of the Lot shall pay to the Association this assessment of $250.00 non-refundable transfer fee, which shall not be applied toward or credited against any other assessments or fees charged pertaining to that Lot by the Association.

2. Except as expressly amended herein, the Declaration of Restrictive Covenants of The Cottages at Windy Knoll recorded in Book 3868, Page 487, as amended at Book 3868, Page 497, and Book 3887, Page 576, Henderson County Registry, shall remain in full force and effect

In witness whereof, The Cottages at Windy Knolll, LLC, has caused this instrument to be executed and sealed in its name by its undersigned member/manager.

THE COTTAGES AT WINDY KNOLL, LLC (SEAL)

by: _____
Rick Moore, Member/Manager

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Rick Moore, Member/Manager of The Cottages At Windy Knoll, LLC, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of The Cottages At Windy Knoll, LLC. Witness my hand and official stamp or seal, this 27 day of March, 2023.

My Commission Expires:
11-24-2027

Heidi Beam
Notary Public

HEIDI BEAM
NOTARY
PUBLIC
HENDERSON COUNTY, NC

BOOK 3887 PAGE 576 (4)
976206

This document presented and filed:
03/22/2022 03:47:36 PM
SRS
WILLIAM LEE KING, Henderson COUNTY, NC

→PMA

STATE OF NORTH CAROLINA

AMENDED STORM WATER RULES, RESTRICTIONS AND COVENANTS OF THE COTTAGES AT WINDY KNOLL

COUNTY OF HENDERSON

These Amended Storm Water Rules, Restrictions and Covenants are made this 21 day of March, 2022, by The Cottages at Windy Knoll, LLC, a North Carolina limited liability company, as the Declarant:

WITNESSETH:

Whereas, The Cottages at Windy Knoll, LLC, a North Carolina limited liability company, is the owner of that certain real property located in Henderson County, North Carolina, described in that deed recorded in Book 3853, Page 684, Henderson County Registry, which is being developed as The Cottages At Windy Knoll, a subdivision depicted on the plat recorded in Plat Slide 13690, in the office of the Register of Deeds, Henderson County, North Carolina; and

Whereas, it is the desire and intention of The Cottages at Windy Knoll, LLC, hereinafter referred to as the "Declarant", to sell the above-described real property and to improve upon it mutual, beneficial restrictions, conditions, easements, covenants, and agreements under a general plan of improvement for the benefit of all of the said lands and the future owners of Lots in The Cottages At Windy Knoll Subdivision (hereinafter referred to as the "Subdivision"); and

Whereas, part of those improvements entail subjecting the Lots in The Cottages At Windy Knoll Subdivision to the following stormwater rules, restrictions and covenants in accord with and pursuant to the terms and provisions of the Declarant's North Carolina State Stormwater Management Systems Permit No. SWPH2 2018-06-01 Rev.; and,

Whereas, the Declaration Of Restrictive Covenants Of The Cottages At Windy Knoll were made and recorded in Book 3868, Page 487, Henderson County Registry, and Storm Water Rules, Restrictions And Covenants Of The Cottages At Windy Knoll were made, in addition to and, in amendment of, the said Declaration Of Restrictive Covenants Of The Cottages At Windy Knoll recorded in Book 3868, Page 487, Henderson County Registry, which were recorded in Book 3868, Page 497, for the purposes stated therein; and whereas, it is the intention of this instrument to amend the said Storm Water Rules, Restrictions And Covenants Of The Cottages At Windy Knoll recorded in Book 3868, Page 497, for the purposes stated herein:

Now, therefore:

DEFINITIONS:

The following terms as used in this Declaration are defined as follows:

A. "Declarant" means The Cottages at Windy Knoll, LLC, or any party designated by The Cottages at Windy Knoll, LLC as a successor-declarant in an instrument duly executed and recorded in the office of the Register of Deeds, Henderson County, North Carolina.

B. "Subdivision Plat" mean the plat of The Cottages At Windy Knoll Subdivision recorded in Plat Slide 13690, Henderson County Registry, and also include any amendments thereto made hereafter by the Declarant, unless expressly provided otherwise.

C. "Subdivision" as used herein shall also include all Lots and land located in The Cottages At Windy Knoll Subdivision depicted on plat recorded in Plat Slide 13690, Henderson County Registry.

D. "Lot" as used herein shall mean any Lots designated by number for residential use on Subdivision Plat.

E. "Lot Owner" means any person(s) or legal entity/entities, including the Declarant, who own(s) a Lot or Lots in the Subdivision. Each owner of any interest in a Lot shall be deemed the Lot Owner (or a portion thereof), but each Lot in the Subdivision shall be deemed to have a total of only one Lot Owner, whether one or more actual owners.

F. "Real Property" as used herein shall mean the real property described in that deed to the Declarant recorded in Book 3853, Page 684, Henderson County Registry.

RULES, RESTRICTIONS, AND COVENANTS:

NOW, THEREFORE, the undersigned does hereby impress, place upon, and declare the title to the Real Property described in that deed to The Cottages At Windy Knoll, LLC, recorded in Book 3853, Page 684, Henderson County Registry, in said Subdivision, to be subject to the following stormwater rules, restrictions and covenants (these said rules, restrictions and covenants collectively referred to herein as the "covenants"):

1. The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number SWPH2 2018-06-01 Rev., as issued by the Division of Energy, Mineral and Land Resources (the "Division") under 15A NCAC 02H.1000, effective January 1, 2017.

2. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

3. These covenants are to run with the land and be binding on all persons and parties claiming under them.

4. The covenants pertaining to stormwater shall not be allowed to expire and may not be altered or rescinded without the express written consent of the Division.

5. Alteration of the drainage as constructed under the said ATC permit approval and as shown on the final stormwater plans submitted as part of the as-built package may not take place without the concurrence of the permittee and approval by the Division. Filling in, piping, altering, or modifying any component of the approved vegetated conveyance system and/or curb outlet system shown on the approved plan, except for a minimum driveway crossing, is strictly prohibited.

6. The maximum allowable built-upon area for each of the lots in The Cottages at Windy Knoll shall be as specified for each such on the attached Exhibit A. The allotted amount specified for each said lot includes any built-upon area constructed within that lot's property boundaries, and that portion of the right-of-way between the front lot line and the edge of the street pavement and/or sidewalk. The specified maximum allowable built-upon area shall not be exceeded on or for any lot until the permit is modified to ensure compliance with the stormwater rules. Built upon area has the same meaning as G.S. 143-214.7, as amended in Session Law 2017-10.

7. All lots shall maximize dispersed flow of runoff through vegetated areas and minimize channelization of runoff. Where runoff cannot be released as dispersed flow, vegetated conveyances may be used.

8. This project includes a curb outlet system. Each designated curb outlet system must be maintained in accordance with the requirements of designs shown on the approved plans and per 15A NCAC 02H. 1003(2)(d).

9. A 30-foot wide vegetated setback must be provided and maintained adjacent to all surface waters in accordance with 15A NCAC 02H.1003(4) and the final plans submitted as part of the as-built package.

10. Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in NCGS 143, Article 21.

11. The Declarant shall have the right to amend the covenants without consent of the members to conform the Declaration to the requirements of any law or governmental agency having legal jurisdiction over the property, including those agencies sponsored by or under the control of the State of North Carolina. A letter from an official of any such agency requesting, requiring or suggesting an amendment necessary to comply with the requirements of such agency, shall be sufficient evidence to affect such amendment. The amendment shall be effective upon recording.

IN WITNESS WHEREOF, The Cottages At Windy Knoll, LLC, has hereunto caused this Declaration to be executed and sealed in its name by its undersigned Member/Manager, the day and year first above written.

THE COTTAGES AT WINDY KNOLL, LLC (SEAL)

by: _____
Rick Moore, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that Rick Moore, Member/Manager of The Cottages At Windy Knoll, LLC, personally appeared before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of The Cottages At Windy Knoll, LLC. Witness my hand and official stamp or seal, this 21 day of March, 2022.

My Commission Expires:
11/1/2025

_____
Notary Public

KELLY KIRK
NOTARY PUBLIC
HENDERSON COUNTY, NC

— Exhibit A —

IMPERVIOUS AREA PER LOT

LOT #	HOUSE	DRIVEWAY	TOTAL
LOT 1	1600	1134	2734
LOT 2	1600	1530	3130
LOT 3	1600	1136	2736
LOT 4	1600	1709	3309
LOT 5	1600	2001	3601
LOT 6	1600	1378	2978
LOT 7	1600	1534	3134
LOT 8	1600	1134	2734
LOT 9	1600	1134	2734
LOT 10	1600	1530	3130
LOT 11	1600	2260	3860
LOT 12	1600	1869	3469
LOT 13	1600	3041	4641
LOT 14	1600	1135	2735
LOT 15	1600	1135	2735
LOT 16	1600	1135	2735
LOT 17	1600	1871	3471
LOT 18	1600	1650	3250
LOT 19	1600	1869	3469
LOT 20	1600	1746	3346
LOT 21	1600	1651	3251
LOT 22	1600	2971	4571
LOT 23	1600	1747	3347
LOT 24	1600	1774	3374
LOT 25	1600	1706	3306
LOT 26	1600	2373	3973
LOT 27	1600	1907	3507
LOT 28	1600	1048	2648
LOT 29	1600	2092	3692
LOT 30	1600	2377	3977
LOT 31	1600	1827	3427
LOT 32	1600	2514	4114
LOT 33	1600	2441	4041