

WAKE COUNTY, NC 137
LAURA M RIDDICK
REGISTER OF DEEDS
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Prepared by and HOLD FOR: Brian S. Edlin: B, P.O. Box 10669, Raleigh, NC 27605 *RD Box 39*

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR BROOKEFIELD STATION TWO

**THIS DOCUMENT REGULATES OR PROHIBITS THE
DISPLAY OF POLITICAL SIGNS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made on the date hereinafter set forth by BROOKEFIELD STATION DEVELOPMENT, LLC, a North Carolina limited liability company (hereinafter, "Declarant").

BACKGROUND STATEMENT

Declarant is the owner of the real property described in Exhibit A of this Declaration. Declarant desires to subject the real property described in Exhibit A hereof to the provisions of this Declaration to create a residential community that will include single family detached residential housing and to provide for the subjecting of other real property to the provisions of this Declaration. Declarant intends hereby to create a Planned Community as that term is defined and subject to the provisions of Chapter 47F of the North Carolina General Statutes.

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A of this Declaration and any additional property subjected to the Declaration as authorized in Article IX of this Declaration, including the improvements constructed or to be constructed thereon, are hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal representatives, successors,

successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I
PROPERTY SUBJECT TO THIS DECLARATION**

The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration and the jurisdiction of the Association is located in Wake County, North Carolina, and is more particularly described in Exhibit A attached hereto. Additional properties may be subjected to this Declaration in accordance with Article IX of the Declaration.

**ARTICLE II
DEFINITIONS**

Section 1. “Association” shall mean and refer to the Brookefield Station Two Homeowners Association, Inc., its successors and assigns.

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

Section 3. “Builder” is defined as a Person, other than Declarant, who regularly is in the business of constructing dwellings for resale to other Persons, and who purchases or becomes the Owner of one or more Lots within the Community for the purpose of constructing thereon one or more dwellings for resale to other Persons.

Section 4. “Bylaws” shall mean and refer to the Bylaws for the Brookefield Station Two Homeowners Association, Inc. as they may be amended from time to time.

Section 5. “Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the Members, including all areas designated on recorded plats as “Active Recreation Open Space,” “Passive Recreation Open Space” and any stormwater BMPs, if any.

Section 6. “Common Expenses” shall mean and include:

- a. All sums lawfully assessed by the Association against its Members;
- b. Expenses related to the administration, maintenance, repair or replacement of the Common Area and any other property for which the Association bears maintenance responsibility per the terms of this Declaration;
- c. Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- d. Expenses agreed by the Members to be common expenses of the Association;
- e. Ad valorem taxes and public assessments charges lawfully levied against Common Areas;
- f. Utilities used in connection with the Common Area;

- g. Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase.

Section 7. “Community” shall mean and refer to that certain real property and interests therein described in Exhibit A, attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of other real property; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property. The Community is commonly referred to as Brookefield Station Two.

Section 8. “Declarant” shall mean and refer to Brookefield Station Development, a North Carolina limited liability company, its successors and assigns to whom the rights of Declarant hereunder are expressly assigned in writing.

Section 9. “Declarant Control Period” shall mean and refer to that period of time during which Declarant retains sole authority to appoint, remove and replace members of the Board of Directors. The Declarant Control Period shall terminate upon the earliest of the following events: (i) upon Declarant’s voluntarily surrender in writing of such control; or (ii) December 31, 2024.

Section 10. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Brookefield Station Two.

Section 11. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 12. “Member” shall mean and refer to a person subject to membership in the Association per Article IV of this Declaration.

Section 13. “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, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. “Person” means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, limited liability company, or other legal entity.

Section 15. “Property” or “Properties” shall mean and refer to that certain real property described in Exhibit A together with such additional property as may be made subject to this Declaration.

ARTICLE III
PROPERTY RIGHTS

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

- a. for any period during which any assessment against his Lot remains unpaid for thirty (30) days or longer, the right of the Association to suspend the voting rights of an Owner and

to suspend other privileges or services provided by the Association, including use of recreational amenities, if any;

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

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

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

Section 4. Withdrawal of Property. The Declarant reserves the right in its sole discretion and without approval of the Association to amend this Declaration at any time until ten (10) years after the recording of this Declaration for the purpose of removing any portion of the real property then owned by the Declarant from the coverage of this Declaration. Any property withdrawn from the Declaration shall be released from the terms and provisions of the Declaration.

**ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS**

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

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

- a. **Class A Members.** Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

- b. Class B Member. The Declarant shall be the sole Class B Member and shall be entitled to six (6) votes for each Lot owned. The Class B Membership shall terminate at the end of the Declarant Control Period. If the Class B membership has been terminated or has expired and subsequently additional properties owned by Declarant are annexed and become subject to this Declaration, the Class B membership shall immediately be reinstated and shall not terminate until one hundred percent (100%) of the Lots within the Properties, including Lots in the annexed property, have been conveyed to a person other than a Builder or Declarant.

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

**ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges.
- b. Special assessments for those purposes outlined in Section 5 below, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs and reasonable attorney fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, with interest costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot when each assessment was made, and such assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Common Area shall be shared equally by the Owners of Lots within the Community. Notwithstanding anything herein to the contrary, the Declarant shall only pay annual or special assessments for any unoccupied lot owned by Declarant in accordance with the terms and conditions set forth in Section 7. Until a certificate of occupancy is issued and a home is occupied, Lots owned by a Builder shall not be subject to assessments as described in Section 7.

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 Properties and, in particular, for the payment of Common Expenses; for the payment of services which the Association is required to provide; for the acquisition of additional Common Area and improvement and maintenance of the Common Area, including the maintenance, repair and reconstruction of private streets, recreational facilities, driveways, walks, parking areas and storm water management facilities situated on the Common Area; for the cutting and removal of weeds and grass and the removal of trash and rubbish and any other maintenance necessary for the use and enjoyment of the Common Area, including the cost of repairs, replacement and additions and the cost of labor, equipment, materials, management and supervision; the payment of taxes and public assessments assessed against the Common Area; the procurement and maintenance of insurance in accordance with this Declaration; the employment of attorneys, accountants and other professionals to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements; for the purposes stated elsewhere in this Declaration; and for such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Area.

Section 4. Maximum Annual Assessment. Beginning January 1, 2015, the maximum annual assessment shall be \$ _____ per Lot, which amount shall be subject to annual review and adjustment by the Association.

- a. Beginning January 1, 2016, and for each year thereafter, the maximum annual assessment may be increased effective January 1 of such year without vote of membership by up to ten percent (10%) of the previous year's assessment.
- b. The maximum annual assessment may be increased above the increase permitted in Section 4(a) above only with the approval of two-thirds (2/3) of the votes of each class of Member who are present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- c. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any maintenance, 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 2/3 of the votes of each class Members who are present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 10 days nor more than 60 in advance of the meeting setting forth the purpose of the meeting. In addition to the foregoing, and without the consent of the Members, the Association may levy a special assessment in the event of emergencies not to exceed \$500.00 per Owner. Notwithstanding the foregoing, the Declarant shall be exempt from paying special assessments of any type for any unoccupied Lot owned by Declarant.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. At the first meeting called, the presence of Members or of proxies entitled to cast a majority of all 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 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on an annual basis and paid by Members in either monthly or quarterly installments as determined by the Board in the Board's sole discretion. Until the issuance of a certificate of occupancy and a home is occupied, Lots owned by a Builder shall be not be subject to annual or special assessments. After the

issuance of a certificate of occupancy and a home is occupied, Lots owned by a Builder shall be assessed at the same annual assessment rate as other Lots. As long as Declarant owns 5% or more of the Lots, Declarant's obligation for payment of annual assessments will be limited to the difference between the actual operating expenses of the Association and the assessments levied on Members other than Declarant. At such time as Declarant owns less than 5% of the Lots, Declarant shall pay annual assessments at the same annual assessment rate as other Lot Owners. Declarant shall be exempt from paying special assessments on any non-occupied Lot owned by Declarant.

Section 8. Date of commencement of Annual assessments; Due Dates. The assessments provided for herein shall commence as to a Lot when such Lot is conveyed by Declarant to another Person other than a Builder, except that Declarant and Builder shall pay assessments as set forth in Section 7 above. Assessments shall be due and payable in a manner and on a schedule as the Board may provide. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessments stated therein.

Section 9. Capital Contribution. Upon the initial conveyance of a Lot from a Builder to a Person other than a Builder, an initial working capital contribution will be paid to the Association in the amount of Two Hundred Fifty Dollars (\$250.00) which shall be transferred upon closing of the Lot to the Association and held as a working capital fund. The purpose of said fund is to ensure that the Association will have adequate cash available to meet unforeseen expenses. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 10. Effect on Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest legal rate per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien against the Lot in the same manner in which a Deed of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the North Carolina General Statutes, or in accordance with Chapter 47F of the North Carolina General Statutes, or pursuant to any other applicable statute. Interests, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may give or otherwise escape liability for the assessments provided herein by non-use of the Common Area or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

Section 11. Subordination Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. All property dedicated to, and accepted by, a local public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from these assessments, except as specifically provided for herein.

Section 13. Fines. The Board may impose fines of up to \$100.00 per day (or any higher amount

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

ARTICLE VI
ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Architectural Review Committee. The Declarant desires to provide for the preservation of the values in the Properties with respect to any improvements to be constructed on or alterations made to any Lot, and to that end establishes an Architectural Review Committee to provide, enforce and maintain certain standards as to harmony of exterior design and location of improvements or alterations in relation to surrounding structures, natural features, and topography. Declarant shall retain control of the Architectural Review Committee until such time as a certificate of occupancy has been issued on the last Lot in the subdivision unless, prior to that time, Declarant shall voluntarily assign in writing the rights, powers, duties and obligations of the Architectural Review Committee to the Association. When the final certificate of occupancy has been issued on the last Lot in the subdivision, the rights, powers, duties and obligations of the Architectural Review Committee shall automatically transfer to the Association.

During Declarant's control of the Architectural Review Committee, the Architectural Review Committee shall consist of one (1) or more person designated by the Declarant. At such time as the rights, powers, duties and obligations of the Architectural Review Committee shall be transferred or assigned to the Association, the Board shall designate the number of and appoint the members of the Architectural Review Committee on an annual basis. The Board may remove members of the Architectural Review Committee appointed by the Board at any time with or without cause, and in the event of the death, resignation or removal by the Board of any member of the Architectural Review Committee, the Board shall have full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member. Members of the Architectural Review Committee shall not be entitled to any compensation for services performed pursuant to this Article.

No building, sign, fence, hedge, wall, walk, mailbox, dog house, landscaping, ornaments, patio, statues, swimming pool, irrigation systems, grading, landscaping, site improvement or other improvements or structures shall be constructed, erected, placed upon or planted on a Lot, nor shall any exterior addition or alteration thereof be made, until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished product have been approved by the Architectural Review Committee, in writing, as to conformity and harmony of external design with the existing structures in the subdivision, including, without limitation, with respect to topography and finished ground elevation. The Architectural Review Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for safety, appearance, aesthetic or any other reasons, provided such approval is not unreasonable withheld. In approving or disapproving such plans and applications, the Architectural

Review Committee shall consider the suitability of the proposed building, improvement, structure or landscaping and materials in relation to the surrounding area and the effect thereof on adjacent or neighboring property.

The Architectural Review Committee may from time to time promulgate design standards and architectural guidelines applicable to the Lots. The Committee may also adopt a schedule of reasonable fees for processing requests for approval, and may, in its sole discretion, retain the services of a consultant of its choosing to assist the Committee in the review of any plans, the cost of which shall be the responsibility of the applicant. The fees and costs referenced herein shall be deemed to be an individual assessment against the Owner of the Lot enforceable in the same manner as unpaid annual assessments as provided for in Article V.

In the event the Architectural Review Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within sixty (60) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved. The response of the Association may be an approval, a denial, an approval with conditions, or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the sixty (60) day time period for further Committee response shall only commence upon receipt of the requested additional information.

There is specifically reserved unto the Architectural Review Committee, the right of entry and inspection upon any Lot for the purpose of determination by the Architectural Review Committee whether there exists any construction of any improvement which violates the terms of any applicable covenants, conditions, or restrictions. The Architectural Review Committee and the Board of Directors are specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expense, and reasonable attorney's fees in connection therewith.

The Association, Declarant, Architectural Review Committee or any other officer, employee, director, or member thereof shall not be liable for damage to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or Architectural Review Committee to recover any such damages.

Once any construction, improvement, alteration or addition has begun, work thereon shall be prosecuted diligently and continuously until the full completion of such work. The Architectural Review Committee may impose reasonable deadlines for the completion of work, which shall be binding upon the Owner.

Section 2. Maintenance by the Association. The Association shall maintain all Common Area and improvements thereon and landscape islands within street right of ways adjoining the Properties and landscape easements, sign easements, access easements and center islands as shown on the recorded plats of the Properties, if any. The Association shall have no maintenance and repair responsibility related to any Lot, including any improvements thereon, unless such responsibility is specifically assumed by the Association.

The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the subdivision, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Owner's family, guests, lessees, invitees or contractors, and is not covered and paid for by insurance maintained by the Association, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

Section 3. Maintenance by the Owner. Each Owner at such Owner's sole cost and expense shall maintain such Owner's Lot, including all improvements thereon, in a safe, clean and attractive condition, including without limitation all of the following:

- (i) Prompt removal of all litter, trash, refuse and waste;
- (ii) Seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns on a regular basis, including, any portions of a publicly dedicated street right of way or private street right of way adjacent to any boundary of such portion of the Lot and not maintained by any governmental entity;
- (iii) Pruning and trimming of all trees, hedges and shrubbery not maintained by the Association so that the same are not obstructive of a view by motorists or pedestrians of street traffic, do not cause unsightly or unkempt conditions and do not trespass onto the property of others;
- (iv) Removal of dead or diseased trees, shrubs and other plant material;
- (v) Maintenance of flower and plant gardens;
- (vi) Maintenance of exterior lighting and mechanical facilities;
- (vii) Maintenance of parking areas and driveways;
- (viii) Ensuring proper drainage of the Lot so as to prevent soil erosion;
- (ix) Repairing and painting (or other appropriate external care) and otherwise caring for the dwelling and all other structures located on the Lot;
- (x) Maintenance, repair and painting of all fences, retaining walls, and other improvements or structures on the Lot;
- (xi) Maintenance of all drainage easements, utility easements and other easements located on a Lot that are not specifically allocated by this Declaration to be the responsibility of the Association;

- (xii) Preventing and correcting unclean, unsightly or unkempt conditions of Lots and all improvements thereon, including keeping all Lots clean and free of garbage, junk, trash, debris, non-operable vehicles and apparatus, and any substance or conditions that might contribute to an unsightly condition, health hazard or the breeding and habitation of snakes, rats, insects or other wildlife or pests; and
- (xiii) Building and restoring any residence located on a Lot in the event of damage thereof, and applying the full amount to the extent necessary of any insurance proceeds to the restoration or repair of said residence.

If the Board of Directors determines that any Owner has failed or refused to discharge properly any of Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, if such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. The remedies provided in this Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

**ARTICLE VII
EASEMENTS**

Section 1. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved on each Lot. No structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of any utilities and drainage channels in the easements. Such easement areas of each Lot and all improvements on it shall be maintained continuously by the owner of the Lot except for storm drainage pipes located in drainage easements serving more than one Lot, for which the Association shall be responsible. Declarant shall also reserve the right for installation, maintenance and repair of bike and pedestrian paths, sidewalks, street lights and/or street-side landscaping.

Section 2. Sign and Landscaping Easements. There is hereby reserved to the Declarant, the Association and the designees of each, a perpetual non-exclusive easement upon, across, over and under any sign and landscaping easement appearing upon any recorded plat applicable to the Properties, for the installation, maintenance, repair and replacement of monument/entrance signs and associated landscaping, and other landscaping.

Section 3. Sidewalk Easement. There is hereby reserved to the Declarant, the Association and the designees of each, a perpetual non-exclusive easement upon, across, over and under all of the Lots and Common Area to the extent reasonably necessary to install, construct, repair, replace, maintain and operate sidewalks for pedestrian traffic over, across and through the Properties. This sidewalk easement may be located along either or both sides of the roads or streets and over any Lot shown on any recorded

plat of the Properties within seven (7) feet of each lot line fronting a street or road, and over such other areas as may be identified on any recorded plat of the Properties.

Section 4. Construction Easements. There is hereby reserved to the Declarant during the Declarant Control Period a non-exclusive easement upon, across, over and under all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate and for the purposes of developing lots within the Community.

Section 5. Other Easements. All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors in title; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved unto the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Common Area now or hereafter owned by the Association for the purpose of construction of improvements within the Properties.

**ARTICLE VIII
USE RESTRICTIONS**

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

Section 2. Use of Properties. No portion of the Properties (except for temporary offices of the Declarant and/or any model used by Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto. Notwithstanding the foregoing, the Board may enact rules and regulations regarding the use of a home office.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. 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. At no time shall any household pet be allowed to run free. All pets shall be leashed when off the Owner's Lot. For purposes of this section, the term "household pet" shall not include any animal for which a permit must be obtained from a local, state or federal government to legally keep such animal, nor shall the term include chickens, pigs, horses, goats, sheep, cows, or other type of traditional livestock of any size, including pygmy and miniature varieties.

Section 5. Dwelling Specifications. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) detached single-family dwelling not to exceed three and one-half (3½) stories in height, a private garage, and (with the approval of the Declarant, Board of Directors of the Association or its Architectural Committee) an accessory building or structure for storage or other appropriate use not in excess of two hundred fifty (250) square feet in area. No Lot shall be subdivided or recombined without the express consent of the Association and the applicable local government authority.

Section 6. Leasing. An Owner may let or rent his entire residence, but no portion of any residence shall be leased separately from the rest of the residence. The Board of Directors may enact additional restrictions related to leasing, including, but not limited to, minimum lease terms and requirements that all leases be in writing, be subject to the terms of the Declaration, Bylaws and rules and regulations of the Association, and be registered with the Board. No Lot or residence located thereon may be used for transient housing.

Section 7. Temporary Structures. No structure of a temporary character shall be placed upon any Lot, including, but not limited to, trailers, tents, shacks, barns or other outbuildings, unless specifically allowed by this Declaration or approved by the Architectural Review Committee.

Section 8. Fences and Signs. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the Properties, including any Lot, without the prior written consent of the Architectural Review Committee. No fence, wall, hedge or mass planting shall be permitted to be closer to the front street than the front of the residence, except upon approval by the Architectural Review Committee. The Committee may issue guidelines detailing acceptable fence styles or specification, but in no event shall "hog wire" or "chicken wire" or "chain link" fencing be approved. No signs shall be erected or allowed to remain on any Lot except for a single "For Sale" or "For Rent" sign no larger than 18 inches by 24 inches. Notwithstanding the foregoing, Declarant and/or Declarant's assigns shall be authorized to erect and maintain temporary signs for the sale and construction offices and for marketing of Lots and to erect and maintain decorative fencing at any sales or construction office.

Section 9. Accessory Buildings and Other Outdoor Structures. No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, doghouses and greenhouses) shall be placed on any Lot without the prior written approval of the Architectural Review Committee. Under no circumstances shall metal storage buildings be permitted. All accessory buildings must conform to the same architectural style as the residence located on the same Lot. No outside clotheslines, supplies or equipment are allowed on a Lot. Garbage and refuse containers, transformers, air conditioning, and other alternative energy devices shall either be concealed behind screening or integrated into the building design so as to be inconspicuous. All outdoor equipment and accessories on a Lot, such as play structures, benches, sculptures etc. shall be concealed by approved screening or approved in writing by the Architectural Review Committee as compatible and harmonious with the surroundings.

Section 10. Appearance. Each Owner shall keep his Lot free of tall grass (grass greater than 8 inches in height is prohibited), undergrowth, dead trees, trash and rubbish. Each Lot shall be maintained so as to present a neat and attractive appearance, and each Owner shall comply with those requirements set forth in Article VI, Section 3 of this Declaration. No more than fifty (50) percent of the mature trees on any Lot may be removed without the written approval of the Architectural Review Committee.

Section 11. Parking. Except on streets or roadways that are sixty (60) feet or greater in width, there shall be no on-street parking within the Properties, except on a temporary basis as specifically allowed by the Association. Automobiles shall be parked only on paved areas designed for parking. No boats or boat trailers, other trailers, commercial vehicles, campers, motor homes, tractors, golf carts, motor cycles, recreational vehicles, utility vehicles, tractor trailers, trucks (one ton or larger) or other similar items may be parked on the streets in the Properties or on any Lot unless such items shall be parked in an enclosed garage or in an area approved by the Architectural Review Committee which is screened from view from the street and adjoining Lots. In no case shall recreational vehicle parking be allowed in front of or beside a residence. No inoperative, abandoned, or unlicensed vehicle or any vehicle displaying an invalid inspection sticker shall be parked or stored on any Lot or on the streets in the

Properties. No tractor trailer or tractor cab may be parked anywhere within the Properties at any time, whether permanently or temporarily.

The operation of motor bikes, dirt bikes, all-terrain vehicles, go-carts, and motorized recreational vehicles shall be prohibited both on the streets of the subdivision and on the individual Lots comprising said subdivision, except that golf carts shall be allowed if operated by a licensed driver. The use of golf carts must comply with all applicable ordinances and statutes.

The Board of Directors may promulgate additional rules and regulations governing parking and operation of vehicles, conveyances and equipment within the Properties, including on the Lots. Such rules may, among other things, provide for temporary parking of vehicles on the streets within the Properties for purposes of social gatherings.

Section 12. Nuisances. No noxious or offensive trade or activity shall be carried out upon any Lot, nor shall anything be done to become an annoyance or nuisance to the property owners in the subdivision. All motorized vehicles operating within the Properties must be properly muffled so as to eliminate excessive noise.

Section 13. Antennas. Satellite Dishes. Satellite dishes greater than one meter in diameter are prohibited. Satellite dishes one meter in diameter or less should be placed on the rear exterior wall or rear roof of the residence in a location not visible from the street. If adequate reception is not available, satellite dishes may be located in the rear Lot behind the residence, but must be screened from view of the street. Installation is not permitted on any Common Area. Dishes and accompanying equipment should be painted to the extent possible to match the exterior of the residence or to blend in with the surrounding area where located. Owners are solely responsible for maintaining satellite dishes and all related equipment. No other exterior radio antennae, television antennae, or other electronic signal-receiving or transmitting equipment shall be placed, allowed, or maintained upon any portion of the Properties, including any Lot, without approval of the Architectural Review Committee, except for an antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via broadband radio service (wireless cable) or to receive or transmit fixed wireless signals other than via satellite, or an antenna that is designed to receive local television broadcast signals.

Section 14. Garbage Receptacles. All garbage shall be stored in receptacles, which are picked up and disposed of weekly. Receptacles shall be placed out of sight of the subdivision streets at all times with the exception of the purpose of garbage pickup.

Section 15. Tanks. Gasoline, propane or any other storage tanks located on any Lot must be either buried or screened in such a manner that the tank is not visible from any adjoining Lot.

Section 16. Pools. In-ground pools may be permitted in the sole discretion of the Architectural Review Committee. No above-ground pools are allowed, except for temporary wading pools no deeper than two (2) feet tall and no wider than ten (10) feet in diameter.

Section 17. Governmental Regulations. All government buildings codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provisions of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 18. Mobile Homes. No mobile home, manufacture home, or trailer home shall be permitted on any Lot. The term "mobile home" shall include modular homes, even when such modular homes do not rest on wheels.

Section 19. Heating and Air Equipment. Any exterior air conditioning or hearing equipment must be screened from public view by a screening material or shrubbery approved by the Architectural Review Committee.

Section 20. Trees. Trees measuring three (3) inches or more in diameter at a point two (2) feet above ground level, and any flowering trees or shrubs above five (5) feet in height may not be removed from the Property, including any Lot, without prior written approval of the Architectural Review Committee, unless located within (10) feet of a dwelling.

Section 21. Firearms. The use of firearms in the Community is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, bows and arrows, sling shots, small firearms of all types, shotguns, rifles and all similar weapons. There shall be no hunting or trapping of any type within the Community. Notwithstanding the foregoing, the Board shall have the authority, upon a determination by the Board that any wildlife species poses a threat to persons or property within the Community, to engage licensed professionals to cull such nuisance wildlife as may be deemed appropriate under the circumstances then existing.

Section 22. Driveways. All driveways, guest parking and turnabouts on Lot will be of non-porous materials, and special materials, surface treatments and/or accents may be required by the Architectural Review Committee.

Section 23. Water and Sewer Facilities. Water and sewer treatment services shall be provided through Knightdale in accordance with that certain Brookefield Station II Subdivision Utility Allocation recorded at book _____, page _____ of the Wake County Register of Deeds. Water and sewer services shall be extended to all Lots prior to transfer of title of such Lot by Declarant to any Owner other than a Builder.

**ARTICLE IX
ANNEXATION OF ADDITIONAL PROPERTIES**

Section 1. Unilateral Annexation by Declarant. Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to annex and subject such additional real property which is contiguous to the boundary of the Community as shown on Exhibit "B" attached hereto and by reference made a part hereof, to the provisions of this Declaration or any Supplementary Declaration thereto, by filing for record in the public registry of the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, Declarant may include additional restrictions and limitations affecting any such annexed real property.

Section 2. Other Annexation. Subject to the consent of the owner(s) thereof and the consent of Declarant (so long as Declarant has the right unilaterally to annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots (other than Lots owned by Declarant so long as the consent of Declarant is

required), and the approval of the Attorney for the Town of Knightdale, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public registry of the county in which the property to be annexed is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President of the Association, whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

Section 3. Prior to the conveyance of the first Lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Common Area within the lands annexed.

**ARTICLE X
INSURANCE**

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

- a. **Ownership of Policies.** All insurance policies on the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners.
- b. **Coverage.** Any buildings and improvements located on the Common Area and all personal property owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value, as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
 - i. Loss or damage by fire and other hazards covered by the standard coverage endorsement, and
 - ii. Such other risks as from time to time shall be customarily covered with respect to improvements on the land, if any.

Such policies shall contain clauses providing for waiver of subrogation.

- c. **Liability.** Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- d. **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V above.
- e. **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees

shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

- i. Proceeds on account of damage to Common Area.
- ii. In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- a. **Expense of the Trust.** All expenses of the insurance trustee shall be first paid or provisions made therefore.
- b. **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.
- c. **Fidelity Insurance or Bond.** All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

**ARTICLE XI
GENERAL PROVISIONS**

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. These covenants and restrictions shall run with, burden and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by the affirmative vote or written agreement of Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated, provided, however, that during the Declarant Control Period any amendment must have the written consent of the Declarant. No amendment shall be valid unless approved by the Town of Knightdale. Provided, however, that in the event the Association forwards an amendment to the Town of Knightdale and no response to said amendment is given within thirty (30) days, then in that event, the Town of Knightdale will be deemed to have consented to the amendment. In

addition, during the Declarant Control Period the Declarant may amend this Declaration without membership approval for any reason as long as such amendment does not have a material adverse effect on any current Lot Owner, including without limitation, (i) to comply with laws or regulations relating to FHA, VA, or Office of Interstate Land Sales; (ii) to establish the non-profit qualifications of the Association; (iii) to correct typographical errors, clarify any ambiguity, or add or delete any incidental provisions deemed to be in the best interest of the Properties and of the Owners; and (iv) to qualify the Association or any part of the Properties for tax-exempt status.

If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

- a. Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined.)
- b. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed.

Section 4. Management and Contract Rights of Association. Declarant may enter into a contract with a management company for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer or management by Declarant to the Association.

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

**ARTICLE XII
ELECTRICAL SERVICE**

Declarant reserves the right to subject the above-described Properties to a contract with a utility company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or continuing monthly payment to the utility company by the Owner of each Lot within said Property. The subdivision may contain landscape lights which will be on a separate meter and will be billed directly to the Association and paid as a Common Expense.

ARTICLE XIII
TREE CONSERVATION AREA

There are various tree save areas that may be identified on the recorded maps of the subdivision. Within these tree save areas, no person or entity is permitted to remove any healthy trees or natural vegetation, fill, grade, excavate or perform any other land disturbing activities; cut, mow, burn, remove or harm any vegetation; construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers, or any other permanent or temporary structures; drain or otherwise disrupt or alter the hydrology of drainage ways of the conservation area; dump or store soil, trash, or other waste; or graze or water animals, or use for any agricultural or horticultural purpose.

INI WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunder set its hand and seal this 23rd day of January, 2015.

BROOKEFIELD STATION DEVELOPMENT, LLC, a
North Carolina Limited Liability Company

By: *[Signature]*
Name: Daniel Stewart Marlowe
Title: Member-Manager

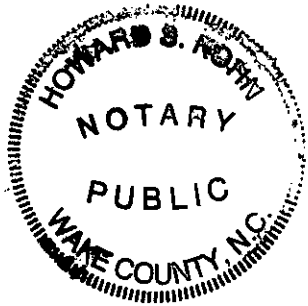
By: *[Signature]*
Name: Howard D. Moye III
Title: Member-Manager

STATE OF NORTH CAROLINA
COUNTY OF WAKE

ACKNOWLEDGEMENT

I, Howard S Kohn, a Notary Public of the County and State aforesaid, certify that Daniel Stewart Marlowe and Howard D. Moye, III of whose identities I have personal knowledge, personally appeared before me and acknowledged that the signatures on the record presented is his signature and that they voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

Witness my hand and official stamp or seal, this 23rd day of January, 2015.



[Signature]
Notary Public
Howard S Kohn
Printed Name

My Commission Expires: 7/13/2019
19

EXHIBIT A

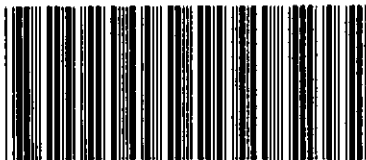
PROPERTY INITIALLY SUBJECTED TO THE DECLARATION

BEING all of those numbered Lots, the roads and Open Space shown on the map entitled “Brookefield Station II – Phase 1, Final Plat for Brookefield Station Development, LLC,” recorded at book 159, page 160 of the Wake County Register of Deeds and all land shown on the entitled “Brookefield Station II – Phase 1, Final Plat for Brookefield Station Development, LLC,” recorded at book 159, pages 160-161 of the Wake County Register of Deeds.

EXHIBIT B

PROPERTY WHICH MAY BE SUBJECTED TO THE DECLARATION

BEING all of that land identified as “Future Development” on the map entitled “Brookefield Station II – Phase 1, Final Plat for Brookefield Station Development, LLC,” recorded at book 2015, page 159 of the Wake County Register of Deeds.



BOOK:015900 PAGE:01678 - 01699



**WAKE
COUNTY**
NORTH CAROLINA

Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording.

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

☐ New Time Stamp

☐ \$25 Non-Standard Fee

☐ Additional Document Fee

☐ Additional Reference Fee

This Customer Group

____ # of Time Stamps Needed

This Document

22 # of Pages
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