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Lenoir County, NC
Pam Rich Register of Deeds

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NORTH CAROLINA

LENOIR COUNTY

MODIFICATION OF DECLARATION
OF COVENANTS AND EASEMENTS
FOR DOGWOOD CREEK
SUBDIVISION

THIS MODIFICATION OF DECLARATION OF COVENANTS AND EASEMENTS FOR DOGWOOD CREEK SUBDIVISION is made as of the 18th day of April, 2022, by **DANFIELD DEVELOPMENT, LLC**, a North Carolina Limited Liability Company and **WJH LLC**, a Delaware Limited Liability Company, hereinafter collectively referred to as "Owners".

WITNESSETH:

THAT WHEREAS, Owners are the owners of certain lots in that subdivision known as "Dogwood Creek Subdivision" (the "Lots"), located in Falling Creek Township, Lenoir County, North Carolina, as depicted on a plat entitled "FINAL PLAT OF DOGWOOD CREEK", prepared by The East Group, dated June 11, 2002, and recorded in Plat Cabinet 8, Page 288-289, Lenoir County Registry; and,

WHEREAS, the ownership of the Lots as of the date of this instrument is set forth on Exhibit A attached hereto; and,

WHEREAS, the Lots are subject to that certain "Amended Declaration of Covenants and Easements" dated July 18, 2003, and recorded in Book 1336, Page 408, Lenoir County Registry (the "Declaration"); and,

WHEREAS, Paragraph 23 of the Declaration provides that the Declaration may be amended in full or in part at any time by an instrument signed by not less than two-thirds (2/3) of the owner of the lots; and,

WHEREAS, the Owners who execute this instrument represent greater than two-thirds (2/3) of the current owners of the Lots; and,

WHEREAS, the undersigned Owners desire to modify the Declaration as set forth below.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the undersigned Owners do hereby modify the Declaration as follows:

1. Paragraph 20 is rescinded in its entirety.

2. Paragraph 24 is rescinded in its entirety and replaced with the following:

“24. **A. General Powers.** The Declarant shall have the right to create an owners association (herein referred to as the “Association”) which shall be incorporated as a non-profit corporation under the laws of the State of North Carolina. If created, each lot owner in Dogwood Creek Subdivision shall be a mandatory member of the Association and each lot shall be entitled to one vote on all matters for which the Association is established. The Association shall have the right to levy Annual, Special, Specific and Initial Assessments against each lot in Dogwood Creek Subdivision for the maintenance and upkeep of all common areas, ditches and streets within Dogwood Creek Subdivision (hereinafter “Association Property”), all as set out below. Prior to the time the roads and rights of way within the subdivision are offered to and accepted by the State of North Carolina for maintenance, it shall be the responsibility of the Association to maintain the roads and the related drainage facilities. Prior to the time an Association is formed or the roads are accepted for maintenance by the State of North Carolina, it shall be the responsibility of the Declarant to maintain the roads and related drainage facilities. No individual property owner shall be permitted to change the general structure of any drainage facility, ditch or culvert without the express written consent of the Association or the Declarant, if no Association has been formed. The Declarant shall also have the have the right to adopt such other rules, regulations, and bylaws

regarding the operation and administration of the Association as deemed necessary by the Declarant.

B. Assessments; Lien Therefore.

Each person other than the Declarant or Approved Builders who shall own any Lot, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, shall be deemed to covenant and agree to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration.

All sums lawfully assessed by the Association against any Lot and the owner thereof, shall, from the time the sums became due and payable, be the personal obligation of the owner of such Lot and constitute a lien in favor of the Association on such Lot prior and superior to all other liens whatsoever, except:

- a. liens for ad valorem taxes on the Lot;
- b. the lien of any First Mortgage or the lien of any prior Mortgage recorded in the Public Registry of Lenoir County, North Carolina prior to the recording of this Declaration; or
- c. the lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot.

C. Personal Obligation of Members.

Each member of the Association other than the Declarant or an Approved Builder (as defined below), by acceptance of a deed or other conveyance to the Lot(s) owned by such member, irrespective of whether it shall be so expressed in any such deed or other conveyance, and by acceptance of ownership of such Lot (s), and by taking record title to such Lot(s), shall be deemed to covenant and agree to pay to the Association:

- a. His share of the Annual Assessments which shall be levied by the Association in accordance with this Paragraph; and

b. When properly authorized in accordance with this Paragraph, special assessments, such annual and special assessments to be fixed, established and collected from time to time as hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be the personal obligation of the person who is the owner of the Lot against which such assessments are levied at the time such assessments become due and payable. The covenant to pay assessments herein stated is and shall be a covenant running with the land. For the purposes of this Declaration, an "Approved Builder" shall mean any person or entity who is engaged in residential home construction as his/her/its regular, usual business and purchases a Lot for the purpose of constructing a Home and reselling the completed Home to a third party for profit. The Board of Directors shall have reasonable discretion in determining whether a party claiming as an Approved Builder meets this definition. A company that builds and sells more than ten (10) homes per year is presumed to be an Approved Builder.

D. Purposes of Assessments.

The assessments levied by the Association pursuant to Paragraph 24 hereof shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: repair and maintenance of all Association Property; payment of all governmental charges, taxes and assessments which shall be levied against all Association Property; payment of all costs and expenses incurred by the Association in connection with its operations, including, without limitation, the payment of electricity charges for all lighting located on the Property which does not serve a particular Lot; payment of the premiums for all policies of property and liability insurance maintained by the Association with respect to Association Property; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the maintenance of reserves for the repair and replacement of improvements located on the Association Property and for such other purposes as the Board of Directors shall determine, in all cases in such amounts as the Board of Directors shall determine; the payment of the fees of such management

firms as the Board of Directors shall employ; and payment of the fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including legal, accounting and architectural services.

E. Determination of Annual Assessment.

Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserve fundings based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied against all of the members of the Association for any fiscal year is herein referred to as the "**Annual Assessment**"). The amounts so determined by the Board of Directors shall be levied against all of the members of the Association and against all Lot owners other than the Declarant and Approved Builders. The amount of the Annual Assessment levied against each Lot shall be the same as the amount levied against every other Lot. Each Lot not owned by the Declarant or an Approved Builder shall be liable for that share of every Annual Assessment which is so determined by the Board of Directors. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments the Board of Directors shall determine, and after notice of the same shall have been given to all of the members of the Association by the Board of Directors, and shall be paid to the Association when due without further notice.

F. Special Assessments.

If for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Board of Directors for any fiscal year

shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a Special Assessment (a "Special Assessment") to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a Special Assessment against the Lots and the owners thereof (other than the Declarant) to raise such needed funds. Any Special Assessment levied by the Board of Directors pursuant to the provisions of this Paragraph 24 shall be payable at such times and such installments as the Board of Directors shall determine. Each Lot not owned by the Declarant or an Approved Builder shall be liable for the payment of an equal share of every Special Assessment which shall be levied by the Association pursuant to the provisions of this Paragraph 24.

H. Specific Assessments.

The Board of Directors shall have the power to levy specific assessments ("Specific Assessment(s)") as, in its discretion, it shall deem appropriate. Failure of the Board Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association and shall not constitute a waiver of the Board Directors' right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Paragraph 24. Specific Assessments shall include, but are not limited to, fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the owner is responsible. The Board of Directors may also specifically assess owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received; and (c) expenses incurred by the Association which are a result of the acts or omissions of an owner, occupant or an owner's invitees or guests.

In the event the Association is served by a common water meter, the Board of Directors shall have the authority to install submeters and assess individual Lot utilities usage charges as Specific Assessments as provided above. This shall include the right to add a charge for

the cost of overhead for such submetering, against individual Lots and/or to install separate utility meters for the Lots.

I. Initiation Assessments. A one-time initiation assessment (an “Initiation Assessment”) is due from the buyer and payable to the Association at the time each Lot is conveyed from Declarant or Approved Builders to a buyer who shall use the Lot for residential purposes. The Initiation Assessment is paid to the Association at the time of the closing of the Lot. The Initiation Assessment is secured by a lien of the Association on the Lot. The Association shall use the Initiation Assessments for any purpose the Board of Directors deems appropriate, including, without limitation, the payment of operating expenses. An Initiation Assessment is due at closing and payable to the Association for each conveyance of the Lot subsequent to the first conveyance from Declarant or an Approved Builder to a buyer.

Notwithstanding the foregoing, no Initiation Assessment is due in connection with inheritance of any Lot on account of the death of the owner or in connection with the subjecting of any Lot to any Mortgage. Foreclosure Administration Fee.

It is recognized that foreclosures of mortgages on Homes and/or Lots create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Lenoir County, North Carolina land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Home and/or Lot. Pursuant to this Declaration, the Association is authorized to assess individual owners certain fees and expenses occasioned by and benefiting just those owners or those owners’ Homes and/or Lots. In accordance with these provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration, except as otherwise specifically set forth in this Declaration provided below, any Person who acquires a Home and/or Lot at a foreclose sale of the mortgage on such Home and/or Lot, or by deed in lieu of a foreclosure, will be required to pay the Association a “Foreclosure Administration Fee” of \$900.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the Lenoir County, North

Carolina records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

J. Lots Owned by Declarant or Approved Builders.

Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant or Approved Builders shall be subject to any assessment provided for in this Paragraph 24. Rather, all Lots owned by the Declarant or Approved Builders shall be exempt from the payment of all assessments for so long as such Lots are owned by the Declarant or Approved Builders. At such time as any Lot which is owned by the Declarant or Approved Builders shall be conveyed or transferred away by the Declarant or Approved Builders, all liens and assessments provided for in this Paragraph 24 shall become immediately levied against such Lot, and the owner of such Lot shall immediately become liable for the payment of all such assessments.

K. Effect of Non-Payment of Assessments; Remedies of the Association.

In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, or any installment of any annual or special assessment which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. All such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent member, which lien shall bind such Lot or Lots in the hands of then owner, and his heirs, devisees, successors and assigns.

All amounts which the Board of Directors shall declare to be due and payable pursuant to this Paragraph shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such member, in either of which events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

L. Budget Deficits Prior to Termination of Class B Membership.

Prior to the Termination of the Class B Membership, Declarant shall have the right, but not the obligation, to pay a subsidy to the Association in order to reduce the Annual Assessment for any fiscal year. Declarant shall have the right to pay such subsidy on the terms, conditions and under such circumstances as Declarant, in its sole and absolute discretion, deems appropriate. Any such Declarant subsidy shall be disclosed as a line item in the income portion of the Association annual budget. If the Declarant elects to pay a subsidy, the amount of the subsidy shown on the annual budget shall be an estimate only, and the Declarant's obligation to fund such subsidy shall be limited to the difference, if any, between the actual operating expenses of the Association and the sum of Annual Assessments, Special Assessments, and Initiation Assessments collected by the Association in such fiscal year. Declarant's election to pay a subsidy in one (1) year shall not, under any circumstances, obligate the Declarant to pay a subsidy in future year(s).

Declarant may pay a subsidy in cash, or by "in kind" contributions of services or materials, or a combination thereof. The fair market value of such services and/or materials, as agreed upon by Declarant and the Association, shall constitute the amount of the subsidy resulting therefrom. If the Association and Declarant cannot agree upon the fair market value of any services and/or materials provided as a subsidy, then Declarant shall supply the Association with a detailed explanation of the services performed and materials furnished, and the Association shall acquire a bid for performing like services and furnishing like materials from an independent contractor, which independent contractor is in the business of providing such services and materials and has been approved by Declarant. Absent manifest error, such bid shall constitute the fair market value of such services and/or materials and the amount of Declarant's subsidy resulting therefrom.

Declarant, in its sole and absolute discretion, may elect to characterize all such subsidized amounts that are used to offset any actual operating deficit of the Association as loans to the Association. At Declarant's request, such loans shall be evidenced by a promissory note(s) from the Association to Declarant, due and payable upon demand, with interest at the rate of ten percent (10%) per annum after demand, unless otherwise negotiated and agreed to by the Association and the Declarant. Failure of a subsidy to be evidenced by a promissory

note, however, shall not diminish or otherwise negatively impact Declarant's characterization thereof as a loan."

3. Except as specifically changed, modified, added or rescinded herein, all other paragraphs and provisions contained in the Declaration are hereby ratified and shall remain in full force and effect.

Continued to Signature Page

IN TESTIMONY WHEREOF, the parties do hereunto set their hands and seals as of the 18th day of April, 2022.

OWNERS BY:

DANFIELD DEVELOPMENT, LLC

By: *Ronald W. Benfield* (SEAL)
Ronald W. Benfield, Manager

NORTH CAROLINA

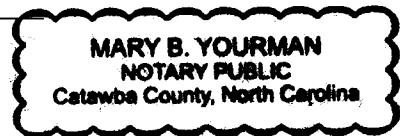
Catawba COUNTY

I, *Mary B. Yourman*, a Notary Public of said County and State certify that RONALD W. BENFIELD being personally known to me or identified by satisfactory evidence, came before me this day and acknowledged that he is Manager of Danfield Development, LLC, a North Carolina limited liability company, and that by authority duly given, he voluntarily executed the foregoing instrument, as the act of such limited liability company.

Witness my hand and notarial seal, this *4th* day of *May*, 2022.

Mary B. Yourman
Notary Public

My commission expires: *5/31/2023*



WJH LLC

By: [Signature]

Dave Hodgman, Executive Vice President
Field Operations

GEORGIA

WINNETT COUNTY

I, Leslie Dekle, a Notary Public of
said County and State certify that Dave Hodgman being personally known to
me or identified by satisfactory evidence, came before me this day and
acknowledged that he is Exec. VP Field Operations of WJH LLC, a Delaware limited liability
company, and that by authority duly given, he voluntarily executed the foregoing
instrument, as the act of such limited liability company.

Witness my hand and notarial seal, this 4th day of
May, 2022.

[Signature]
_____, Notary Public

My commission expires: 7.9.2023

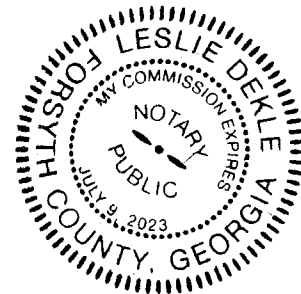


EXHIBIT A
DOGWOOD CREEK SUBDIVISION OWNERS

- | | |
|--|---------|
| 1. Tyler Moore
2103 Deerwood Lane
Kinston, NC 28504 | Lot# 10 |
| 2. Travis Luczaj
2117 Deerwood Lane
Kinston, NC 28504 | Lot# 12 |
| 3. Bruce and Barbara Keller
2125 Deerwood Lane
Kinston, NC 28504 | Lot# 13 |
| 4. James and Kendra Thomas
2133 Deerwood Lane
Kinston, NC 28504 | Lot# 14 |
| 5. Gerald and Michael Snell
2141 Deerwood Lane
Kinston, NC 28504 | Lot# 15 |
| 6. Patsy Sanders
3467 Danfield Dr
Kinston, NC 28504 | Lot# 17 |
| 7. Ryan O'Neal
3452 Danfield Dr
Kinston, NC 28504 | Lot# 59 |
| 8. Darby Deaver
2174 Carriage Dr
Kinston, NC 28504 | Lot# 20 |
| 9. Kevin and Kim Benton

2158 Carriage Dr
Kinston, NC 28504 | Lot# 21 |
| 10. Brandon Earley
2137 Carriage Dr
Kinston, NC 28504 | Lot# 32 |

11. Victoria Moore
3468 Danfield Dr
Kinston, NC 2850

Lot# 61

12. Javina Jennings
2102 Deerwood Lane
Kinston, NC 28504

Lot # 8

mailing address:
PO Box 3633
Kinston, NC 28501

13. Danfield Development, LLC
208 Banberry Drive
Statesville, NC 28677

Lots # 19,26,27,28,29,30,31,33
34,35,36,37,38,39,40,41,42,43,44
45,46,47,48,49,50,51,52,53,54,55
58,60,62,63, & 64

14. WJH LLC
3091 Governors lake Dr. Ste. 300
Norcross GA 30071

Lots #1, 2, 3, 4, 5, 6,
7,9,11,16,18,22,23,24,25,
56, & 57