

For Registration Register of Deeds

William Britton

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STATE OF NORTH CAROLINA

MOORE COUNTY

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WINDY RIDGE**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDY RIDGE is made this 20th day of April, 2023 by **Windy Ridge FF, LLC** ("Declarant") for itself and the Windy Ridge at Foxfire Homeowners Association, Inc.

Declarant is the owner and developer of certain real estate in Foxfire Village, North Carolina, containing 31.72 acres and described in the deed recorded in Deed Book 5649, Page 500, Moore County Registry (the "Property"), and

Declarant has developed the Property into a subdivision known as "Windy Ridge" as shown on a plat thereof recorded in the office of the Register of Deeds of Moore County North Carolina in Plat Cabinet 19, Page 806, (the "Subdivision"); and

Declarant desires to subject the Property and Subdivision to the Covenants, Conditions and Restrictions set forth herein: and

The Declarant hereby declares that all of the Lots located within the Subdivision are subject to the following easements, covenants, conditions and restrictions, all of which are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of said Lots. These easements, conditions, covenants and restrictions shall run with the land and shall be binding upon the Declarant and parties acquiring any right, title or interest, in and to the Lots, and shall inure to the benefit of the Declarant and the Lot Owners, and their heirs successors and or assigns.

Submitted electronically by Burns, Day and Presnell, PA in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Moore County Register of Deeds.

## ARTICLE 1 DEFINITIONS

1. **“Development Period”** means the period commencing on the date on which this Declaration is recorded in the Moore County Register of Deeds and terminating on the earlier to occur of (i) when Declarant no longer owns a Lot in the Subdivision; (ii) the date that Declarant records a notice in the public record terminating the Development Period; or (iii) December 31, 2035.
2. **“Lot”** shall mean and refer to any numbered parcel of land designated on the Plats upon which a residence has been or is intended to be constructed.
3. **“Owner”** shall mean and refer to the record owner, including Declarant, whether one or more persons or entities, of a fee simple title to any Lot located within the Subdivision.
4. **“Plat” or “Plats”** shall mean and refer to the record plats of portions of the Property recorded by Declarant, as the same may be amended or supplemented by Declarant from time to time.
5. **“Subdivision”** shall mean and refer to those portions of the Property delineated on the Plat referenced herein above, and delineated on any subsequent Plats of portions of the Property, and/or delineated on recorded plats of additional properties which have been subjected to this Declaration by annexation by Declarant pursuant to the terms of this Declaration. When applicable for the sense of this instrument, the singular should be read as including the plural and the male, female, and neuter pronouns and adjectives should be read as interchangeable.
6. **“Association”** shall mean the Windy Ridge at Foxfire Homeowners Association, Inc. a North Carolina non-profit corporation.
7. **“Common Area”** shall mean any real property owned by the Association for the common use, benefit and enjoyment of the Owners, and all other property required to be included as Common Area by state or municipal law. Common Area shall also mean the roads and the road easements until such time as they are accepted for maintenance by Foxfire Village, the open spaces and the utility easements as shown on the Plat of the Development all of which are owned or will be owned by the Association and also including the following (1) the signage and signage lighting installed by the Declarant at the entrance to the Development (the “Entrance Signage”), (2) open space shown on the Plat, (3) the Drainage Easements shown on the Plat of Development, (3) the vegetative buffer surrounding the Village water tower fencing as shown on the Plat, (4) retention pond area shown on the Plat and (5) mailbox kiosk, associated parking spaces and lighting, and guardrail installed by Declarant. The developer is responsible for maintenance of the streets until acceptance of streets by Foxfire Village.

## ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

The Lots, Subdivision and all residences thereon shall be held, transferred, sold, conveyed, leased, mortgage and occupied subject to the terms, provisions, covenants and conditions of this Declaration. Additionally, Declarant shall have the following rights with respect to the property subject to this Declaration:

**1. Withdrawal of Property.** Declarant reserves the right to amend this Declaration at any time during the Development Period to remove any portion of the Property from coverage by this Declaration so long as such removal does not unequivocally contradict the general scheme of development of the Lots no longer owned by the Declarant.

**2. Special Declarant Rights.** Declarant reserves the following "Special Declarant Rights" for the entirety of Property, including any additions thereto, during the Development Period: (i) to complete, repair, maintain and revise any and all improvements indicated on the plats and plans; (ii) to exercise any development right reserved in this Declaration; (iii) to construct and maintain in the Subdivision sales, management or construction offices, model homes, and signs advertising the Property and any property which may be added thereto in accordance with the Foxfire Village Unified Development Ordinance; and (iv) to revise the Plats to alter the size of any unsold Lot, or to combine, recombine or re-subdivide any unsold Lots in accordance with all applicable restrictions set forth in the Foxfire Village Unified Development Ordinance.

### **ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS**

**1. Membership.** Declarant and Owners shall be Members of the Association.

**2. Voting Rights.** There shall be two (2) classes of membership with respect to voting rights:

a. **Class A Members.** Class A Members shall be the Owners of all Lots except the Class B Member. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots". When more than one Person owns an interest other than a security interest in any Class A Lot, all such Persons shall be Members and the voting rights appurtenant to their Lot shall be exercised jointly, fractional voting shall not be allowed, and no more than one vote shall be cast with respect to any Lot.

b. **Class B Member.** The Class B Member shall be the Declarant. Lots owned by the Class B Member shall be "Class B Lots". Subject to the provisions of this Section 2(b), Declarant shall be entitled to three (3) votes for each Lot that it owns. Upon expiration of the Development Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant owned Lots shall continue to be treated as Class B Lots for assessment purposes.

**3. Declarant's Right to Appoint Directors and Officers of the Association.** Until the expiration of the Development Period, Declarant may, in its discretion appoint and remove all of the Directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members.

### **ARTICLE 4 PROPERTY RIGHTS**

**1. Owners' Easements.** Every Owner shall have a right and easement of enjoyment in, use of, and access to, from, and over the Common Area, subject to:

a. the right of the Association to limit the use of Common Area to Owners who occupy a residence on the Subdivision and to their families, tenants and guests, and to make reasonable rules and regulations with respect to use of the Common Area.

b. the right of the Association, with approval of the Members, to dedicate or transfer all or any part of the Common Area to a governmental body or agency, or utility. Dedication or conveyance pursuant to this paragraph shall require the approval of at least Eighty percent (80%) of the votes of the Members in writing or at a duly called meeting of Members. Notwithstanding the above, the Board of Directors of the Association may grant and convey easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the approval of the Members when necessary or convenient for the use and enjoyment of the Subdivision. The Common Area shall be maintained for the benefit of the Owners or for the public in general and shall not be conveyed except to the County or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

**2. Conveyance of Title to the Association.** Declarant covenants that it will convey the Common Area to the Association. Declarant hereby reserves and grants for itself an easement over, under, across and through the Common Area so long as it owns any Lot within the Subdivision, for the purpose of maintaining or constructing any improvements on the Common Area or the Lots. Conveyances by the Declarant to the Association shall be free and clear of all encumbrances and liens except restrictive covenants applicable to the Subdivision, access, utility, drainage, greenway and other easements herein, of record, or shown on the recorded plats of the Subdivision, and property taxes not yet due and payable. Any improvements placed on the Common Area by Declarant shall become the property of the Association, except utilities owned and maintained by the Foxfire Village or other governmental entity, or a public or private utility company.

## ARTICLE 5 ASSESSMENTS

**1. Lien for Assessments.** Each Owner of a Lot, by acceptance of a deed, covenants and agrees to pay to the Association the annual assessments and special assessments established by the Association as provided herein. All past due assessments, together with interest and late charges set forth in Section 7 of this Article 5 and all costs of collection, including Attorneys' Fees, shall be the personal obligation of the Owner and shall be a continuing lien against the Lot as provided in Section 3-116 of North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes, herein after the "Act"), which lien shall attach to the Lot if said lien remains unpaid for a period of 30 days and a claim of lien is filed by the Association. Assessments, interest and costs of collection, including Attorneys' Fees, shall also be a personal or corporate obligation of the Owner when said assessment becomes due, but the personal or corporate obligation of the Owner shall not be imposed upon Owner's successors unless expressly assumed by them, however, assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

**2. Purpose of Assessments.** Assessments shall be used to promote the recreation, health, safety and welfare of the Owners, including for:

a. management, maintenance, repair and reconstruction of the Common Area and improvements thereon including storm water drainage and stormwater treatment/control structures and the cost of repair, replacement and expansion thereof;

- b. payment of assessments, penalties and fines levied against the Association or the Common Area;
- c. payment of taxes and public assessments levied against Common Area owned in fee by the Association;
- d. procurement of insurance;
- e. employment of attorneys, accountants, management agents and other Persons for Association business;
- f. payment of principal and interest on funds borrowed by the Association; and,
- h. other cost and expenses incurred by the Association in connection with carrying out its duties and obligations pursuant to this Declaration.

**3. Maximum Annual Assessment.** The Maximum Annual Assessment through December 31, 2023 for each Class A Lot shall be \$300.00 per year. The Maximum Annual Assessment for Class A Lots may automatically be increased by ten percent (10%) of the Maximum Annual Assessment for the previous calendar year unless the Board adopts a lesser increase of the Maximum Annual Assessment.

**4. Budget and Annual Assessments.** Annual assessments shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

**a. Budget.** The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board shall send a copy of the proposed budget to the Members and shall give the Members written notice of a meeting of the Members to consider ratification of the budget, which meeting shall be held at least ten (10) days but not more than sixty (60) days after the mailing of the notice. Said meeting may be combined with the annual meeting of the Members. A quorum shall not be required for a vote on ratification of the budget. The budget shall be deemed ratified unless, at that meeting, Members having a majority of the votes of the entire membership vote to reject the budget. If the proposed budget provides for annual assessments not more than five percent (5%) greater than the annual assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. No ratification vote is required for the initial budget.

**b. Assessments.** The Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment then in effect. Unless a lower amount is set by the Board, the initial annual assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article 5 and shall be prorated according to the number of months remaining in the calendar year; provided, however, that, notwithstanding any other provision of this Declaration, the annual assessment for Class B Lots shall always be zero. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannual, quarterly or monthly basis, as determined by the Board.

**c. Notice.** At least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

**5. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy special assessments to raise funds for the construction, reconstruction, repair or replacement of the Common Area and or improvements thereon, for repayment of indebtedness and interest thereon, or for any other nonrecurring common expense. Special Assessments made hereunder shall be subject to approval of not less than two-thirds of the Members present and voting at a meeting of the Members called for the purpose of voting on a special assessment. Special Assessments for Class B Lots shall always be zero. Special Assessments shall be fixed at a uniform rate for all Lots within each Class and maybe collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors.

**6. Notice of Quorum for any Action Authorized Under Section 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 5 of this Article V shall be sent to all Members at least ten (10) days but not more than sixty (60) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast a majority of the votes of each Class of Lots shall constitute a quorum.

**7. Remedies for Nonpayment of Assessments.** An assessment not paid within ten (10) days after the due date shall incur late charges as established by the Board of Directors. Unpaid assessments shall bear interest from the due date at the rate of eighteen percent (18%) per year. The Association may file a claim of lien against the Lot once an assessment levied against it has remained unpaid for a period of thirty (30) days. The Association may foreclose the claim of lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes

**8. Subordination of the Lien to Mortgages.** The liens provided herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust shall extinguish the lien of any assessments which become due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments which come due after the sale or liens of such assessments, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

**9. Working Capital Assessment.** At the time of closing of the initial sale of each Improved Lot from a Builder to a homeowner, a working capital assessment equal to \$150.00 for Class A Lots, shall be collected from the purchaser of such Lot and paid to the Association to allow the Association to maintain adequate cash balances and meet its operating expenses. Amounts paid to the Association pursuant to this Section 11 shall not be considered as an advance payment of any regular assessment.

**10. Declarant's Agreement to Fund Operating Deficits.** During the Development Period, Declarant agrees to fund deficits between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the Person providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. Any monies paid at any time for or by the Declarant pursuant to this paragraph shall be credited against past or future assessments due from the Declarant, if any.

**11. Reserve Account.** The Association shall establish separate reserve accounts to fund major repairs to and replacements of Common Area including storm water management facilities. Each annual budget shall show the amount to be placed in reserve for each category for which reserves are to be held.

## ARTICLE 6 MAINTENANCE OF LOTS AND COMMON AREA

**1. Owner's Maintenance Responsibility.** Each Owner shall keep his Lot and residence in neat and orderly condition and shall maintain the improvements in a functional and attractive state of repair. Owners shall maintain landscaping on their lot to prevent erosion and not make any modifications or construct any improvements which increases the total impervious area on each lot in excess of the maximum impervious surface allotment per Lot as allowed by the governing municipality, currently 4000 square feet, accelerate or concentrate the flow of storm water runoff.

**2. Maintenance by the Association.** The Association shall have the right and obligation to ensure that the Common Area is maintained for the benefit of the Owners and shall:

- a. maintain the Common Property in its natural or improved state, as appropriate for use by the Owners, subject to easements of record and any limitations on such use provided in this Declaration;
- b. procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered resulting from use of the Common Property; and,
- c. pay all property taxes and other assessments levied against all Common Property owned in fee by the Association.

**3. Storm Water Management.** Except for maintenance responsibilities placed on Owners by this Declaration or applicable law or assumed or undertaken by a governmental body or agency, the Association shall maintain storm water management facilities, and comply with all obligations of storm water management laws, regulations and agreements, as part of the common expenses. The Owner of any Lot on, over or through which any storm water management facilities are located shall not obstruct or interfere with their normal and intended operation and shall be responsible for maintaining landscaping thereon including regular mowing of grass and removal of debris and other materials to which may interfere with flow of storm water on, over or through the storm water management facilities. The Owner's responsibility shall also include notification of the Association of any defects in the storm water management facilities including any fencing surrounding said facilities, and of the existence of any debris or other matter Owner cannot remove, and any excessive erosion within any such storm water management facilities. Declarant may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under all agreements entered into by the Declarant with respect to storm water management for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of, all obligations specifically required of the Declarant under the agreements being assigned to the Association

## ARTICLE 7 EASEMENTS

**1. Owners' Easements.** Every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, subject to the right of the Association to limit the use of the Common Area to Owners who occupy a residence in the Subdivision, and their families, tenants and guests. Declarant grants to each Lot Owner mutual, perpetual, non-exclusive and appurtenant easements on, over and under the roads and easements shown on the Plats for

- a. access, ingress and egress
- b. placement, maintenance, replacement and repair of any and all utilities.

**2. Declarant's Easements.** Declarant reserves for itself, its successors and or assigns mutual, perpetual, non-exclusive and appurtenant easements on, over and under the roads, Common Area, easements and setback areas of Lots (provided that said easements shall not materially and unreasonably interfere with the use of any residence located upon any Lot) shown on the Plats for:

- a. access, ingress and egress to Lots and adjoining land.
- b. placement, maintenance, replacement and repair of any and all utilities, including street lighting. The Association shall be responsible for all fees and costs associated with operation and maintenance of street lights.
- c. grading, construction, installation and maintenance of roads, drainage facilities and erosion control facilities.
- d. placing signs, advertising, marketing and promoting sales of Lots in the Subdivision.

**3. Declarant's Additional Easement Rights.** Declarant's easement rights reserved herein may be utilized and or assigned for the benefit of property within the Subdivision. Each Owner and/or mortgagee by acceptance of a deed or deed of trust conveying an ownership interest in a Lot, hereby irrevocably appoint Declarant, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for and in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to complete development and construction of the Subdivision according to the Plats and all applicable permits. The easements may be assigned and/or granted by the Declarant to any utility or service company and Declarant may subject to the Subdivision to a contract with any utility company approved by the North Carolina Utilities Commission.

**4. Limitation on Easement Rights.** All of the easement rights granted herein shall be subject the following limitations: Declarant shall have the right to contract with Utility providers for exclusive rights to provide utilities within the Subdivision and easement rights shall not be exercised by any Lot owner to install similar utilities for or on behalf of other providers. All use of easements rights shall be subject to all applicable laws, and shall be done with all applicable permits. Any party exercising easement rights shall be responsible to re-pave and re- landscape any disturbed areas and repair any other damage caused by the use. No use of the easements may be made which impairs, restricts or otherwise interferes with existing uses of easements by Declarant or other Lot Owners.

## ARTICLE 8 ARCHITECTURAL CONTROL COMMITTEE

1. **General.** Anything contained in Article 9 of this Declaration to the contrary notwithstanding, no Lot



preparation on any Lot, or change in grade or slope of any Lot, or erection of buildings or exterior additions or alterations to any building situated upon the Property, or erection of or changes or additions in landscaping (excluding minor changes such as, but not limited to, annual and perennial flowers), fences, hedges, walls and other structures, or construction of any swimming pools or other improvements (as defined in Section 9 below), shall be commenced, erected or maintained on any Lot until the Architectural Control Committee (herein called the "Architectural Control Committee" or the "Committee"), appointed as hereinafter provided, has approved the plans and specifications therefore and the location of such improvements. However, the above described architectural review procedure is not applicable to improvements constructed or installed by or on behalf of the Declarant.

2. **Composition.** Until December 31, 2035, or until Declarant no longer owns any Lots, whichever first occurs, Declarant shall appoint the members of the Architectural Control Committee which will be composed of three (3) individuals, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Property. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. Subsequent to December 31, 2035, the Board shall appoint the members of the Architectural Control Committee. At any time, Declarant may elect not to appoint the members of the Architectural Control Committee and may assign this right to the Board of Directors. For all construction commenced on or before December 31, 2035, and to continue until Declarant has sold all of the Lots, Declarant retains the right to approve all original construction plans even though other members may be appointed to the Architectural Control Committee. Members of the Architectural Control Committee are not required to be Members or Owners.

3. **Procedure.** No improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefore and a site plan therefore have been submitted to and approved in writing by the Architectural Control Committee, as to:

- a. quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- b. conformity and harmony of the external design, color, type and appearance of exterior surfaces with the remainder of the Property and improvements thereon;
- c. location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement;
- d. the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Control Committee, or matters in which the Architectural Control Committee has been vested with the authority to render a final interpretation and decision as the same may relate to creating a harmonious residential development in the Property.

Final completed plans and specifications for all improvements proposed to be constructed on a Lot shall be submitted in duplicate to the Architectural Control Committee for its approval or disapproval. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Control Committee, one complete set of plans and specifications will be retained by the Architectural Control Committee and the other complete set of plans and specifications will be marked

“Approved” and returned to the Lot Owner or his designated representative. If the plans and specifications are found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the Architectural Control Committee pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked “Disapproved” accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being unacceptable. Any modification or change to the Architectural Control Committee approved set of plans and specifications must again be submitted to the Architectural Control Committee for its inspection and approval. The Architectural Control Committee’s approval or disapproval, as required herein, shall be in writing. All homeowners requesting Architectural Control Committee approval must comply with all municipal requirements, whether or not they are part of the architectural approval process under this Declaration.

The Architectural Control Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Although the Architectural Control Committee shall not have unrestrained or complete discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement this Declaration and are incorporated herein by reference, provided, however, that such bulletin may be amended with only the affirmative vote of the Board of Directors. Copies of all Architectural bulletins shall be on file for inspection in the principal office of the Association.

4. **Jurisdiction.** The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any improvements on a Lot which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property of the Project.

5. **Enforcement.** The Architectural Control Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article of this Declaration and/or to prevent any violation of the provisions contained in this Article of this Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of this Declaration. No failure to enforce or delay in enforcement of this Article shall be deemed a waiver of the right to enforce strict compliance with the terms of this Article.

6. **Definition of Improvement.** The term “improvement” shall mean and include all buildings, storage sheds or areas, carports, garages, decks, patios, roofed structures, satellite dish antennas, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, pales, driveways, ponds, lakes, changes in grade or slope, site preparation, swimming pools, tennis courts, signs, exterior illumination, changes in any roof shingle, changes in any exterior color or shape and any new exterior construction or exterior improvement which may not be included in any of the foregoing. The definition of improvements does not include flower, shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of improvements does include both original improvements and all later changes to improvements.

7. **Failure of the Architectural Control Committee to Act.** If the Architectural Control Committee fails to

approve or disapprove any plans and specifications and other submittals which conform (and which relate to improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within forty five (45) days after submittal thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Control Committee, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, except that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in the Declaration or by any rules, regulations, ordinances, or requirements of any governmental authority. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee shall either reject them as being inadequate or approve or disapprove part, conditionally or unconditionally, and reject the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

8. **Limitation of Liability.** Except for gross negligence, neither the Architectural Control Committee nor the members thereof nor Declarant shall be liable for claims, causes of action, damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

9. **Miscellaneous.** The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses.

10. **Inspection.** The Architectural Control Committee shall have the right to enter the Lot of the applicant to determine that the improvements were made in conformity with the approved plans.

## ARTICLE 9 USE RESTRICTIONS

1. **Land Use.** Except for those specific uses set forth in this Section the Lots shall be used for residential purposes only and shall not be used for any agricultural, business or commercial purposes. The following uses shall not be a violation of this restriction:

- a. Maintenance of construction, sales and management offices, model homes, and other construction and sales activities of the Declarant or its assigns.
- b. Use of a Lot for a home occupation which complies with all applicable Village Zoning requirements of Foxfire UDO Sec. 21-8-6. - Home occupations, and other ordinances and regulations, and which does involve the physical presence of customers, employees, inventory of goods or the shipping, receiving or delivery of goods to or from the Lot.
- c. Declarant, and Declarant's successors in title, may devote any Lot or portion thereof not already sold for any construction to provide the Subdivision with utilities, drainage or erosion control facilities; and Declarant, and Declarant's successors in title, may devote any Lot or portion thereof not already sold, or once sold but later reacquired by Declarant, for street purposes for access to any adjoining property hereafter acquired, by Declarant.

2. **Building Type.** No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family residence not to exceed two stories in height and a private garage for not more than three cars and other outbuildings incidental to the residential use of the Lot. Outbuildings

shall be of the same quality, workmanship and material as the principal residence and will be erected and placed to the rear of the residence structure on the Lot. No mobile homes, manufactured homes or other non-site-built homes shall be placed or permitted to remain on any Lot. Outbuildings may be fabricated offsite with materials matching color and construction of the residence. All Accessory Buildings shall be placed and constructed in accordance with requirements of Foxfire Village UDO Sec. 21-8-1 Accessory Building.

**3. Set Back Requirements.** Residences, garages and other outbuildings shall be located within setbacks provided by applicable Foxfire Village ordinances and as shown on the Plats. If building setback lines are shown on the Plats, those set back lines shall control in the case of any contradiction with the setbacks in this Declaration. For the purpose of this covenant, eaves, steps and overhangs shall not be considered as a part of the residence or outbuildings.

**4. Minimum Size of Each Residence.** No residence shall be constructed on a Lot which shall have less than 1,700 square feet of heated living space, of which not less than 900 square feet of heated living space is on the ground floor level. Heated living space shall be calculated pursuant to the standards of measurement for dimensional requirements in the municipal zoning ordinance governing the Subdivision.

**5. Driveways.** All driveways shall be constructed of concrete. Driveways shall be no wider than 20 feet wide where it enters the right of way of the street and are subject to the restrictions on total impervious area on each lot (4000 SF Maximum). Each lot shall have a maximum of one (1) street connection and is subject to all NCDOT driveway requirements.

**6. Landscaping.** All Lots will be properly graded and sodded in the front yard up to the front line of the residence and with shrubbery and bedding materials. The side and rear yards may be seeded. Lot Owners shall be responsible for maintaining ground cover, swales, berms, ditches and other landscape and hardscape features to prevent soil erosion. All landscaping shall meet the requirements of and be maintained in accordance with Foxfire Village UDO Sec. 21-8-4. – Landscaping.

**7. Temporary Structures.** No trailer, tent, shack, carport, shed or other temporary or non-site built structure shall be placed, erected or allowed to remain on a Lot without the written consent of the Declarant. No RV, camper, trailer or structure of a temporary character may be used as a residence temporarily, permanently, or otherwise.

**8. Restricted Activities.** No commercial, noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

**9. Animals.** No undomesticated animals, livestock or exotic pets shall be permitted on any Lot. Only common, domesticated dogs, cats, and pet birds in reasonable numbers owned as pets for pleasure of the occupants, and not for breeding or commercial use, shall be permitted. All pet enclosures and shelters shall comply with the fence and accessory building requirements of this Declaration and Foxfire Village UDO Sec. 21-8-3.7. – Dog runs.

**10. Vehicles.** Lawn tractors, boats, ATVs and other small recreation vehicles, golf carts, and non-operable motor vehicles shall not be permitted on any Lot unless completely enclosed inside a garage with closed door. Other than one pick-up truck or passenger van, there shall be no commercial trucks,

delivery vans or tractor trailers permitted to be parked in the Subdivision, except in the course of delivery, pickup or performing a specific service on a Lot, and in no event shall any such commercial vehicle be parked in the Subdivision overnight. No camper, motor home, travel trailer, boat or other recreations vehicle shall be stored outside of the closed garage on any Lot.

**11. Fences.** In no case shall any fence be erected which shall extend closer to the street than the rear corner of a residence. All fence materials shall consist of exterior grade lumber, vinyl, aluminum or steel wrought iron style fencing, not to exceed four (4) feet in height with required opacity of 60%. No chain link fences are permitted. All fencing shall be in compliance with Foxfire Village UDO Sec. 21-8-3.1. - Zoning districts RS-20, RS-30, RS-40WS, RM, VBD, and RD. No fence shall be installed without prior permitting from the Foxfire Village Zoning Administrator and the Architectural Control Committee.

On interior Lots or on the interior side of a corner Lot, fences must extend to the side or rear boundary line. No double fencing between Lots is permitted, and each Lot owner shall have the right and easement to extend his fence and join the fence erected on the adjacent Lot. Notwithstanding the foregoing, deviations from these requirements may be permitted with the prior written consent of the Architectural Control Committee.

**12. Exterior Alterations.** No exterior alterations, additions, or changes of any kind may be made to the structure or design of an existing residence and improvements on the Property during the Development period without the written consent of the Architectural Control Committee.

**13. Mailboxes.** Individual lot mailboxes are not allowed. All mail will be delivered to the mail kiosk or directly to the street address for parcels too large to fit in the kiosk.

**14. Satellite Dishes, TV and Radio Antennas or Towers.** No TV, radio antenna, tower or satellite dish larger than 24 inches in width or diameter or 36 inches in height shall be placed or allowed to remain on the Property. No permitted antenna or satellite dishes shall be installed in such a manner or location so as to be visible from the front of any Lot. All subject devices must comply with Foxfire Village UDO Sec. 21-8-8. - Antennas.

**15. Clothes Lines.** No outside clotheslines shall be permitted on the Property.

**16. Signs.** No signs or billboards of any kind or nature whatsoever shall be placed on the Property except as specifically authorized by this Declaration or the Architectural Control Committee. Notwithstanding the foregoing, Declarant's signs identifying and promoting the subdivision shall be permitted on the Property; and 1 "For Sale" or "For Rent" sign. All signage must comply with the requirements of Foxfire Village UDO Sec. 21-8-5.

**17. Roads.** The roads shown on the Plats shall not be used for any purpose other than ingress and egress.. Any shrubbery, edging, fencing, rocks, basketball goals or other objects placed in a right-of-way (including but not limited to the area between the front corners of a Lot and the actual pavement in the street) may be removed by the Declarant at Owner's expense without notice. Any trucks or other commercial vehicles left in a right-of-way overnight may be removed without notice and any towing charges shall be the responsibility of the owner or operator of such vehicle.

**18. Partition or Re-Subdivision.** With the exception of Lots re-platted pursuant to Declarant's Special Development rights, no Lot in the subdivision shall be subdivided or re-platted to create additional Lots

or reduce the size of any Lot. Subject to written and recorded approval of Declarant during the Development Period, two or more lots may be recombined to create an equal or lesser number of Lots, but in no event shall any Lot created by said recombination be smaller in area, width along the road frontage, and average depth from road to rear lot line than the Lot on the original Plats having the smallest measurements for said dimensions.

**19. Use of Block Materials.** No residence or other structure using exposed cement block wall shall be placed upon a Lot. Block foundations shall be faced in brick or covered with mortar parging or stucco to cover block. Synthetic stucco is not allowed.

**20. Trash/Construction Debris Disposal.** During construction of any single family residence on a Lot, each such Lot Owner shall maintain a trash bin for the accumulation of all construction debris, trash, garbage, or other rubbish. All such construction debris, trash, garbage, and other rubbish shall be promptly and regularly deposited in said trash bin and removed from the Lot. Declarant shall have the right to dispose of any trash, garbage, or other rubbish of a Lot Owner in violation of this Section and such Lot Owner shall reimburse the Declarant for its actual costs within ten (10) days of written demand therefore. If such Lot Owner fails to pay such amount within the allotted time, then the amount owed shall be a charge on the Lot and shall be a continuing lien upon the Lot. Such amount, together with interest at the legal rate, costs and reasonable attorney's fees, shall also be the personal obligation of the Lot Owner at the time when the obligation fell due. The Declarant may bring an action at law against the Owner obligated to pay the same, or foreclose the lien against the Lot. No Owner of any Lot may waive or otherwise escape liability for such obligation by abandonment of its Lot. Any such lien shall be subordinate to the lien of any first mortgage.

**21. Pools.** Above ground pools are not permitted. No in-ground pool shall be installed without prior permitting from the Foxfire Village Zoning Administrator and approval by the Architectural Control Committee. All pool fencing shall be in compliance with Foxfire Village UDO Sec. 21-8-3.1. - Zoning districts RS-20, RS-30, RS-40WS, RM, VBD, and RD.

## **ARTICLE 10 GENERAL PROVISIONS**

**1. Term and Amendment.** The covenants and restrictions imposed by this Declaration shall run with the land for a term of 20 years from the date of recording and shall automatically renew for successive terms of 10 years each unless terminated by a recorded instrument executed by not less than 66% of the Lot Owners. Notwithstanding anything contained herein, this Declaration may be amended by the Declarant during the Development Period, or thereafter, by a recorded instrument executed by not less than 66% of the Lot Owners.

**2. Enforcement.** In addition to specific remedies set forth herein, the Declarant or any Lot Owner may enforce this Declaration by proceedings at law or equity against any person violating any covenant, condition or restriction to restrain or enjoin violation or to recover damages, and if a violation is established by said proceeding the enforcing party shall be entitled to also recover all reasonable court cost and attorney fees incurred in the enforcement.

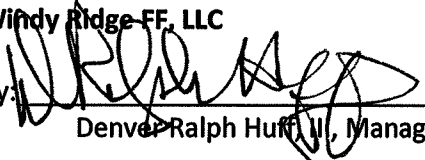
**3. Severability.** Invalidation of any one of these covenants, conditions or restriction by judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

4. **Conflict with Laws.** To the extent the provisions of this Declaration conflict with any applicable governmental statute, ordinance or regulation the governmental provision shall control over the terms of this Declaration.

5. **Successors.** References to Declarant, Owners, Association, and other persons, or parties, natural or corporate shall include their heirs, executors, administrators, successors and or assigns.

Declarant has caused this instrument to be executed by its duly authorized Manager this the day and year first above written.

Windy Ridge FF, LLC

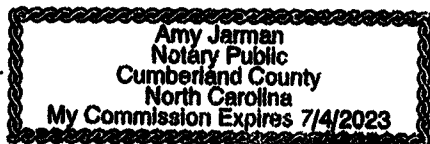
By:   
Denver Ralph Huff, III, Manager

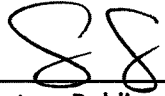
STATE OF NORTH CAROLINA ,  
COUNTY OF CUMBERLAND , to wit:

I certify that the following person(s) appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purposes stated therein and in the capacity indicated: Denver Ralph Huff, III, Manager of **Windy Ridge FF, LLC**

This 20 day of April, 2023

NOTARY SEAL



  
Notary Public

My commission expires: 7/4/23