

For Registration Sharon A. Davis
Register of Deeds
Durham County, NC
Electronically Recorded
2021 Apr 13 09:16 AM
Book: 9294 Page: 889
NC Rev Stamp: \$ 0.00 Fee: \$ 26.00
Instrument Number: 2021018237
DECL

STATE OF NORTH CAROLINA : SUBDIVISION DECLARATION
COUNTY OF DURHAM : FOR THE BROWNSTONES AT 751 SOUTH

Prepared by and return to: Alison R. Cayton of Manning, Fulton & Skinner, P.A.,
Post Office Box 20389, Raleigh, NC 27619-0389

THIS SUBDIVISION DECLARATION, made this 18th day of April, 2021, by 751 South, Inc., a North Carolina corporation (hereinafter "Declarant");

WHEREAS, Declarant has previously recorded in Book 8442, page 666, Durham County Registry, that certain Declaration for 751 South, as amended from time to time (together the "Declaration"), and has subjected thereto certain real property as described in the Declaration; and

WHEREAS, the Declarant enters into this Subdivision Declaration pursuant to its authority under Article II, Section 5 of the Declaration; and

WHEREAS, Declarant desires to establish a Subdivision within the Properties which provides a standard of maintenance by the Association for the Brownstones Lots within the Subdivision that differs from the standard provided to other Lots within the Property; and

WHEREAS, pursuant to Article II Section 5 of the Declaration, Declarant desires to designate the property described on Exhibit A attached hereto as a Subdivision called The Brownstones at 751 South, and in so doing, provide for a specific level of service within the Subdivision,

NOW, THEREFORE, in consideration of the premises and other benefits to the property described herein, Declarant hereby declares that the property identified and described on Exhibit A attached hereto and incorporated herein by reference shall be and hereby is designated as the Brownstones at 751 South (the "Brownstones" or the "Brownstones Neighborhood") and is

subjected to the following additional covenants, conditions and restrictions, in addition to those contained in the Declaration.

1. Article I of the Declaration is hereby amended to add the following definitions:

(vv). Brownstones Definitions

1. "Brownstones Common Elements" shall mean all real property and any improvements constructed thereon located within The Brownstones at 751 South, owned by the Association in fee or by easement for the common use and enjoyment of the Owners of Lots within The Brownstones at 751 South, including but not limited to such Brownstones Common Elements as may be designated on any subdivision plat of the Property or by the Association. Expenses associated with repair, maintenance and replacement of Brownstones Common Elements are Brownstones Expenses that shall be allocated to the Brownstones Lot Owners within The Brownstones at 751 South.

2. "Brownstones Unit" shall mean and refer to an individual Dwelling which has been fully constructed on any Brownstones Lot within the Brownstones and made ready for occupancy as a residence, including without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances, for which a Certificate of Occupancy or Compliance has been issued, and owned by anyone other than the builder, except that any dwelling owned by a Builder and occupied as a residence shall be deemed a Brownstones Unit. A Brownstones Unit may or may not also be an Attached Dwelling Unit.

3. "Brownstones Committee" shall mean and refer to the three (3) representatives of the Brownstones which govern certain matters pertaining to the Brownstones and is comprised of those Brownstones Owners as designated in the Bylaws.

4. "Brownstones Expenses" shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration and the Bylaws, that are allocated solely to the Brownstones and payable by the Owners of a Brownstones Unit as an Assessment under the Declaration. Brownstones Expenses shall be determined by the Brownstones Committee in its sole discretion, pursuant to the additional terms and limitations contained in Article XVIII of the Declaration.

5. "Brownstones Lot(s)" shall mean and refer to those Lots designated on Exhibit A attached to this Amendment and any additional Lots designated by the Declarant

within the Property. Brownstones Lots may be designated by the Declarant on additional property that is annexed into the 751 South community.

2. There is hereby added a new Article XVIII entitled: "Brownstones at 751 South" which shall provide as follows.

ARTICLE XVIII

BROWNSTONES NEIGHBORHOOD

Section 1. Composition of the Brownstones Neighborhood. The Brownstones Neighborhood shall consist of all of the Brownstones Lots. For all purposes the Brownstones Committee, as a Committee of the Association, shall act as an agent of the Association on behalf of the Owners of the Brownstones Lots as a group, with the responsibility of arranging for the management of the Brownstones Neighborhood, and performing all of the other acts that may be required or permitted to be performed by or on behalf of the Brownstones Neighborhood by the Declaration, Articles and Bylaws.

Section 2. Brownstones Services and Restrictions. The following services and restrictions shall apply to the Brownstones Lots:

- (a) **Landscape Maintenance.** The Association shall maintain the lawns and landscaping located on the Brownstones Lots within the Brownstones Neighborhood pursuant to the terms of this Section 2 (a) of Article XVIII. The Association shall provide maintenance for the basic lawn and landscaping package provided by the Builder for each Brownstones Lot, in accordance with the landscaping standards applicable to all Owners in 751 South. No landscaping shall be installed on any Lot by an Owner without approval pursuant to Article X of the Declaration. The Brownstones Committee shall determine, in its sole discretion, the level of maintenance, if any, for plantings by the Builder in excess of the basic landscaping package provided for each Brownstones Lot, and the Brownstones Committee shall have the option but not the obligation to provide maintenance for plantings in excess of the basic landscaping package for a Brownstones Lot. The Owner of a Brownstones Lot shall be responsible at its sole cost and expense for additional lawn and landscaping maintenance in excess of that maintenance provided by the Brownstones Committee. The costs of maintenance provided by the Brownstones Committee shall be paid from the Assessment against lots within the Brownstones Neighborhood. Such maintenance shall include those matters reflected on a landscape maintenance responsibility schedule maintained by the Brownstones Committee, as those matters may be revised from time to time by the Brownstones Committee, and shall include but not be limited to lawn mowing, fertilizing, mulching, and edging, with such frequency as the Brownstones Committee shall determine is necessary to provide such Brownstones Lots with an appearance consistent with a first class residential subdivision and the standards of 751 South. The Brownstones Committee may discontinue the landscaping maintenance obligations described in this Section 2 with respect to the Brownstones Neighborhood only upon the written consent of Owners holding ninety percent (90%)

of the votes entitled to be cast by the Brownstones Owners within the Brownstones Neighborhood and, during the Declarant Development Period, the written consent of Declarant.

(b) Landscape Maintenance Easements. Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, employees, agents and subcontractors, a nonexclusive perpetual easement at all times over the Brownstones Lots for the purpose of maintaining the lawn and landscaping located on Brownstones Lots. The easement described in this Section expressly permits access within fenced areas of any Brownstones Lot. Further, any fences within the Brownstones Neighborhood must provide for an unlocked rear yard gate to permit the landscaping services provided in Section 2 of this Article XVIII. Failure of the Association or its contractors or agents to provide the services described in this Article XVIII, Section 2 due to denial of access within a fenced area of a Brownstones Lot, for example, if the gate is locked or if there is a dog in the fenced area, shall not be a breach of the responsibilities of the Brownstones Committee as required herein. An Owner may request approval from the Brownstones Committee for the Owner to maintain the rear yard on its Lot, however if in the opinion of the Association any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period, and any additional expense to the Association related to such maintenance shall be paid by the Owner. The Owner shall not plant any vegetation in the front or rear yard except with the prior written approval of the Association. In the event a Brownstones Lot Owner selects unusual or exotic vegetation for his Brownstones Lot, which vegetation necessitates extraordinary maintenance and care by the Association, the Association reserves the right to impose an individual assessment upon the individual Brownstones Lot Owner for any costs attributable to said extraordinary maintenance and care of his vegetation. No Brownstones Lot Owner may waive or otherwise escape liability for the Brownstones Expenses by (a) denying access to any portion of a Brownstones Lot to the Brownstones Committee or the contractors or agents of the Brownstones Committee for the purposes described in this Section; or (b) assuming maintenance of a Lot independent of the Association. The Association shall not be responsible for damage to vegetation planted by a Brownstones Lot Owner.

(c) Exterior Maintenance.

1. Exterior Maintenance by Association. In addition to maintenance of the Brownstones Common Elements, the Association shall provide exterior maintenance upon each Brownstones Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, walks, fences installed by Declarant or approved by the Association, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, or screens for windows and doors, exterior lights, or any improvements contained within courtyards or areas secured by the owner or the

repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect. All outdoor lighting on a Lot (including but not limited to flood lights and motion detector lighting) shall be shielded as necessary to avoid a light pollution affecting neighboring Lots. As a matter of information to future Owners of this Association, the Declarant wishes to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some Brownstones Units may require more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of this subdivision as originally planned, are in accord in their belief that all Members of the Association will benefit from the variety of exteriors and, therefore, the Association should provide exterior maintenance and make a uniform rate of charge without regard to the actual cost of maintenance of each Brownstones Unit.

2. Damage by Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or tenants, guests, contractors, or invitees, or contract purchasers, the cost of such maintenance or repairs shall be added to, and become a part of, the assessment to which such Brownstones Lot is subject.

3. Inspection Rights Reserved. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Brownstones Lot and the exterior of each Brownstones Unit at all reasonable times for inspection and to perform maintenance as provided in this Article.

4. Casualty Loss Not Included. Maintenance and repairs under this Article arise from normal usage and weathering and do not include maintenance and repairs made necessary by fire or other casualty or damage.

5. Adjoining Areas. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Brownstones Lots and Brownstones Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, or additional settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachment, which include any encroachments created during the original construction of the Building and related structures on a Brownstones Lot, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Brownstones Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Brownstones Lot

and the Brownstones Common Elements agree that minor encroachments over adjoining Brownstones Lots and the Brownstones Common Elements shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

(d) Party Walls

1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Brownstone Dwelling upon the Property and placed on the dividing line between any Brownstones Lot and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Easement to Adjoining Brownstones Lot. The Owner of any Brownstones Lot may construct, reconstruct, repair, or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Brownstones Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Brownstones Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6. Right to Contribution Not Run with Land. The right of any Owner to contribution from any other Owner under this Article shall be contractual hereunder and shall not be appurtenant to the land and shall not pass to such Owner's successors in title.

7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this subsection, request of the adjoining Owner a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Brownstones Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

(e) Insurance.

1. Owner's Coverage. Every Owner shall maintain in full force and effect at all times fire and hazard insurance from an insurer reasonably approved by the Board, in an amount equal to the full replacement value of his Brownstones Unit, including the value of excavations and foundations. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Brownstones Lot until paid as a result of enforcement by the Association or otherwise.

2. Association Coverage. The Association may, at its election, procure and pay for such insurance on all buildings, improvements and Brownstones Units, which shall then become a Brownstones Expense included in the Association's budget and allocated to the Brownstones Lots within The Brownstones at 751 South.

Casualty coverage shall afford protection against:

(a) Loss or damage to property by fire or other hazards covered by a standard extended coverage endorsement; and

(b) Such other risks as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use as the buildings and improvements to be insured, including, but not limited to, vandalism and malicious mischief.

Such insurance shall be issued with an insurer licensed to do business in North Carolina and holding a rating of "A" or better by Best's Insurance Reports, and such policy must provide that the insurer will not cancel, reduce or substitute

coverage without first giving the Association and any mortgagee named in the policy thirty (30) days prior written notice thereof.

- (f) Repair, Restoration or Reconstruction of Casualty Damage. Except as otherwise herein provided, damage to or destruction of Brownstones Units or Brownstones Lots shall be repaired, restored or reconstructed by the affected Owners within one hundred and eighty (180) days from damage, such repair and restoration or reconstruction, insofar as possible, to be in accordance with the original plans and specifications of the original building. In the event that the Owners of damaged Brownstones Units and Brownstones Lots default in the obligation to repair and restore or reconstruct as herein provided, the Association, after thirty days prior notice, may (but shall be under no obligation to) repair and restore or reconstruct the damaged Brownstones Unit or Brownstones Lot. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association and its agents the right to unobstructed access over and upon each Brownstones Lot at all reasonable times to perform repair and restoration or reconstruction as provided in this Article. In the event of action by the Association as herein permitted, the Owners of damaged Brownstones Units and Brownstones Lots shall be liable for assessment for the entire cost of such repair and restoration or reconstruction and subject to exercise of the enforcement remedies herein provided in the event of failure of timely payment of the assessment.

Section 3. Determination of Brownstones Expenses and Brownstones Assessments against Brownstones Lots.

- (a) Fiscal Year. The fiscal year of the Brownstones Neighborhood shall be January 1 through December 31 unless otherwise determined by the Brownstones Committee.
- (b) Preparation and Approval of Budget.
1. At least thirty (30) days before the beginning of each fiscal year, the Brownstones Committee shall adopt a budget for the Brownstones Neighborhood containing an estimate of the total amount considered necessary to pay for the landscaping for those parts of the Brownstones Lots as to which it is the responsibility of the Brownstones Neighborhood to maintain and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Brownstones Expenses by the Declaration or by a resolution of the Brownstones Committee and which will be required during the ensuing fiscal year for the administration, operation and maintenance of the services provided to the Brownstones Neighborhood. The budget shall reflect the separate assessment of any individual Brownstones Expenses against a specific Brownstones Lot and the Owner thereof.
 2. Such budget may also include such reasonable amounts as the Brownstones Committee considers necessary to provide working capital, a general operating

reserve and reserves for contingencies and replacements. At least thirty (30) days before the beginning of each fiscal year, the Brownstones Committee shall send to each Brownstones Owner a copy of the budget in a reasonably itemized form which sets forth the amount of the Brownstones Expenses and any special assessment payable by each Brownstones Lot. Such budget shall constitute the basis for determining each Brownstones Lot's assessment for the Brownstones Expenses. Any budget increasing assessments by less than twelve percent (12%), is ratified unless ninety percent (90%) of the total vote of each class of Brownstones Lot Owners vote to reject the budget at a duly called meeting of the Brownstones Neighborhood. Any budget increasing assessments in excess of twelve percent (12%) must be approved by an affirmative vote of two-thirds (2/3) of the Owners of the Brownstones Lots who are voting in person or by proxy, at a meeting duly called for such purpose

- (c) Assessment and Payment of Brownstones Expenses. The total amount of the estimated funds required from assessments for the operation of the Brownstones Neighborhood set forth in the budget adopted by the Brownstones Committee shall be assessed against each Brownstones Lot, except for Brownstones Lots owned by the Declarant, pursuant to the authority of the Brownstones Committee as a committee of the Association as contained in this Article XVIII and pursuant to the Association's authority in the Declaration. The assessment for Brownstones Expenses shall be a lien against each Brownstones Lot. The assessments for Brownstones Expenses shall be collected in advance on a monthly, quarterly, annually or other periodic basis established by the Brownstones Committee. Any amount accumulated in excess of the amount required for actual expenses and reserves may, at the discretion of the Brownstones Committee, be placed in reserve accounts, or be placed in a special account to be expended solely for the general welfare of the Brownstones Owners. Any net shortage may be assessed promptly against the Brownstones Lots and shall be payable either: (1) in full with payment of the next assessment due; or (2) in not more than three (3) equal monthly installments, as the Brownstones Committee may determine.
- (d) Special Assessment for Brownstones Expenses. The Brownstones Committee shall levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement related to the services provided solely to the Brownstones Lots, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of at least sixty seven percent (67%) of the votes entitled to be cast by the owners of the Brownstones Lots.
- (e) Reserves. The Brownstones Committee may build up and maintain reasonable reserves for working capital, operations (including losses due to insurance deductibles), contingencies and replacements associated with the services provided within the Brownstones Neighborhood.
- (f) Initial Budget and Initial Capital Payment.

1. Upon taking office, the first Brownstones Committee elected or designated pursuant to the Bylaws shall determine the budget for the period commencing thirty (30) days after such election and ending on the last day of the fiscal year in which such election occurs. Assessments shall be levied and become a lien against the Brownstones Lots during such period.

2. The Declarant, as the agent of the Brownstones Committee, may collect from each initial purchaser at the time of settlement an "initial capital payment" equivalent to two times the estimated monthly assessment for Brownstones Expenses for such purchaser's Brownstones Lot. The Declarant will deliver the funds so collected to the Brownstones Committee to provide the necessary working capital for the Brownstones Neighborhood. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Brownstones Committee may determine.

(g) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Brownstones Committee to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Brownstones Owner's obligation to pay the allocable share of the Brownstones Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Brownstones Owner shall continue to pay each monthly installment at the monthly rate established for the previous fiscal year until notified of the monthly payment which is due at least ten (10) days after such new annual or adjusted budget is adopted.

(h) Accounts. All sums collected by the Brownstones Committee with respect to assessments against the Brownstones Owners or from any other source may be commingled into a single fund.

Section 4. Voting Rights. For every matter that the Owners of the Brownstones Lots vote on pursuant to this Section XVIII, the Owners of the Brownstones Lot shall have the same number of votes as such Owner is allocated as a Lot owner in 751 South pursuant to Article III of this Declaration. Thus the Declarant shall have the number of votes allocated to the Class B Member pursuant to Article III of this Declaration and the Owners of the Brownstones Lots have the number of votes allocated to the Class A Members pursuant to Article III of this Declaration.

Section 5. Annexation and Withdrawal. The Declarant, in its sole discretion, may designate additional land presently within 751 South as a part of the Brownstones Neighborhood. Upon annexation of additional land to 751 South, the Declarant, in its sole discretion, may designate such additional land as part of the Brownstones Neighborhood. The Declarant in its sole discretion may withdraw land from the Brownstones Neighborhood prior to construction of improvements on a Lot.

Section 6. Amendments. Amendments to this Article XVIII of the Declaration and any other amendment to this Declaration specific only to the Brownstones Neighborhood shall not

be effective until approved by 80% of votes allocated to the Brownstones Lots, and during the Declarant Control Period, the Declarant.

Notwithstanding the terms of the immediately preceding paragraph of this Section 6, Declarant, without obtaining the approval of any Owner or Owners of Brownstones Lots or other Person, other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendment or modifications to any procedural, administrative or substantive provision of this Declaration such as amendments or modifications to controls, covenants, conditions, restrictions, easements, guidelines, charges and liens, provided such amendment is not expressly prohibited by the Act, does not adversely affect the title to any Brownstones Lot, does not materially alter or change any Owner's right to use and enjoyment of his Brownstones Lot and Brownstones Common Property .

IN WITNESS WHEREOF, 751 South, Inc. has caused this Declaration to be executed by its duly authorized Manager, all as of the day and year first above written.

[SIGNATURE ON FOLLOWING PAGE]

751 SOUTH, INC., a North Carolina corporation

By: [Signature]
John A. Mitchell, President

State of NORTH CAROLINA

County of DURHAM

I, the undersigned Notary Public of the County and State aforesaid, certify that John A. Mitchell personally came before me this day and acknowledged that he is the President of 751 South, Inc., a North Carolina corporation and acknowledged the due execution of the foregoing instrument as the act of said company.

Witness my hand and Notarial stamp or seal, this 1st day of APRIL, 2021.

[AFFIX SEAL]

[Signature]
Notary Public
Notary's Typed or Printed Name: Rhonda Hammer
My Commission Expires: 11-23-25

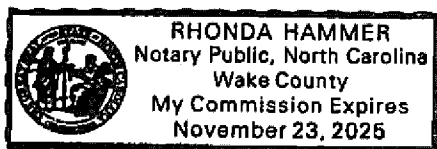


EXHIBIT A

BEING all of Lots 360 – 367A, inclusive, 751 South – Phase 1A, Southeast Park Section 5, as shown on that certain map recorded in Plat Book 199, pages 105-123, Durham County Registry.

Together with all rights, privileges, and easements appurtenant to the above-described property as set forth in that certain Declaration for 751 South recorded in Book 8442, Pages 666-737, Durham County Registry, as amended.