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AMD

*Prepared by and return to:  
Ragsdale Liggett PLLC (Ramseur)  
2840 Plaza Place, Suite 401  
Raleigh, North Carolina 27612*

NORTH CAROLINA

WAKE COUNTY

**FIRST AMENDMENT TO DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE  
DOGWOOD TOWNHOMES SUBDIVISION**

This First Amendment to the Declaration of Protective Covenants, Conditions and Restrictions for the Dogwood Townhome Subdivision (the "First Amendment") is made effective the 29<sup>th</sup> of January, 2020, by MTS RAL, LLC, a North Carolina limited liability company (the "Declarant"), GCAM DOGWOOD, LLC, a Delaware limited liability company ("GCAM Dogwood"), and EASTWOOD HOMES OF RALEIGH, LLC, a North Carolina limited liability company ("Eastwood").

WHEREAS, Declarant is the developer of the Dogwood Townhome Subdivision project described in plats entitled "Final Plat of Subdivision of Dogwood Pointe – 5220 Wake Forest Highway – City of Durham, Oak Grove Township, Durham County, North Carolina", dated October 4, 2019, prepared by Triangle Surveyors, and recorded in Plat Book 202, Pages 125-128, Durham County Registry (the "Property"); and

WHEREAS, Declarant and GCAM Dogwood attempted to subject the Property to certain covenants, conditions and restrictions through the execution and recording of a Declaration of Protective Covenants, Conditions and Restrictions recorded in Book 8801, Page 103, Durham County Registry (the "Declaration"); and

WHEREAS, GCAM Dogwood conveyed to Eastwood certain lots in the Property and made the conveyance of those lots subject to the Declaration; and

WHEREAS, the Declarant, GCAM Dogwood and Eastwood now desire to amend the Declaration to correct certain deficiencies in the Declaration; and

WHEREAS, the Declarant, GCAM Dogwood and Eastwood are filing this First Amendment as authorized and reserved under the Declaration.

NOW, THEREFORE, Declarant, GCAM Dogwood and Eastwood hereby state as follows:

1. Section 2.1 is deleted in its entirety and is replaced with the following provision:

“Section 2.1. Property Subjected To This Declaration. The real property that is subject to the covenants and restrictions contained in this Declaration is the real property described as all of the property described in plat entitled “Final Plat of Subdivision of Dogwood Pointe – 5220 Wake Forest Highway – City of Durham, Oak Grove Township, Durham County, North Carolina”, dated October 4, 2019, prepared by Triangle Surveyors, and recorded in Plat Book 202, Pages 125-128, Durham County Registry.”

2. Section 6.4(dd) is deleted in its entirety.
3. Section 6.4(ii) is deleted in its entirety and is replaced with the following provision:

“(ii) Minimum Square Footage. Unless otherwise approved by the ARC, which the ARC shall be under no obligation to approve, dwellings shall consist of a minimum of 1,400 heated square feet. There shall additionally be a minimum of a one-car garage.”

4. Section 4.2 is deleted in its entirety and replaced with the following provision:

“Section 4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner agrees to timely pay to the Association: (a) annual assessments or charges; (b) special assessments; (c) specific assessments; (d) assessments for the Shared Amenity Areas; (e) the costs of maintaining, repairing, and reconstructing the stormwater facilities located within the Community; and (f) benefited assessments against any particular Lot, which are established pursuant to the terms of this Declaration. Each Owner also agrees to pay reasonable penalties as may be imposed in accordance with the terms of the Declaration.

5. The following provision is to be added to Article IV:

“Section 4.19 Stormwater. The Lot Owners shall be responsible for the cost of the maintenance, repair and reconstruction of the stormwater facilities located within the Community. Such costs shall be allocated to the Lot Owners. The obligations of the Association and Lot Owners with regard to stormwater shall be governed by the provisions of Exhibit “A”, which are attached hereto and incorporated herein by reference.”

Except as amended by this First Amendment, the Declaration shall remain in full force and effect.

This the 27<sup>th</sup> day of January, 2020.

SIGNATURE AND NOTARY PAGES FOLLOW

**DECLARANT:**

**MTS RAL, LLC**, a North Carolina limited liability company

By: [Signature]  
Name: JOE F. POLITE, JR.  
Its: Member/Manager

STATE OF NC

COUNTY OF Mecklenburg

I, Kaitlyn Sands, a Notary Public for the State and County aforesaid, certify that JOE F. POLITE JR. personally appeared before me this day and acknowledged that he/she is the Member/Manager of **MTS RAL, LLC**, a North Carolina limited liability company, which is authorized to do business in North Carolina (the "Company" ) and that by authority duly given and as the act of the Company, the foregoing instrument was voluntarily executed in its name by him/her.

Witness my hand and official seal this 19 day of December, 2019.



[Signature]  
Notary Public  
Kaitlyn Sands  
Printed Name of Notary Public

My Commission Expires: 4/27/20

**GCAM DOGWOOD:**

**GCAM DOGWOOD LLC,**  
a Delaware limited liability company

By: *A. Janelle Iturbe*  
Name: A. Janelle Iturbe  
Its: Authorized Representative

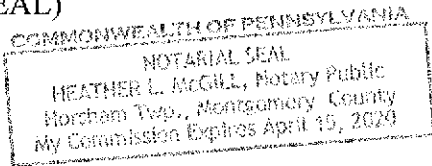
STATE OF PENNSYLVANIA

COUNTY OF MONTGOMERY

I, Heather L. McGill, a Notary Public for the State and County aforesaid, certify that A. Janelle Iturbe, personally appeared before me this day and acknowledged that she is an Authorized Representative of **GCAM DOGWOOD LLC**, a Delaware limited liability company, which is authorized to do business in North Carolina (the "Company" ) and that by authority duly given and as the act of the Company, the foregoing instrument was voluntarily executed in its name by him/her.

Witness my hand and official seal this 27<sup>th</sup> day of January, 2020.

(SEAL)



*Heather L. McGill*  
Notary Public  
Heather L. McGill  
Printed Name of Notary Public

My Commission Expires: 4.15.20

**EASTWOOD:**

**EASTWOOD HOMES OF RALEIGH, LLC**, a  
North Carolina limited liability company

By: [Signature]  
Name: JOE F. POLITE, JR  
Its: Member/Manager

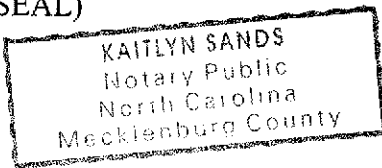
STATE OF NC

COUNTY OF Mecklenburg

I, Kaitlyn Sands, a Notary Public for the State and County aforesaid, certify that JOE F. POLITE, JR. personally appeared before me this day and acknowledged that he/she is the Member/Manager of **EASTWOOD HOMES OF RALEIGH, LLC**, a North Carolina limited liability company, which is authorized to do business in North Carolina (the "Company" ) and that by authority duly given and as the act of the Company, the foregoing instrument was voluntarily executed in its name by him/her.

Witness my hand and official seal this 19<sup>th</sup> day of December, 2019.

(SEAL)



[Signature]  
Notary Public

Kaitlyn Sands  
Printed Name of Notary Public

My Commission Expires: 4/27/20

## Exhibit "A"

**Obligations Regarding Stormwater Facilities**

The Property includes one or more stormwater management facilities (hereafter "Facilities") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of a Stormwater Facility Agreement and Covenants ("Stormwater Agreement") between Declarant, the Association, and the City of Durham ("the City") that is binding on the Association. The Stormwater Agreement is recorded in Deed Book 8806, Page 464, Durham County Register of Deeds. The Property subject to that Stormwater Agreement is the "Property" referred to in this Article. The Stormwater Facilities must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols and in accordance with the recorded Stormwater Agreement. In particular the City's current "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" (available at the time of recording this document at <http://durhamnc.gov/DocumentCenter/View/2239> and the operation and maintenance manual prepared specifically for the Facilities contain requirements that apply to the Association's Facilities.

Nothing in the remaining Article of these Restrictive Covenants filed by Declarant as part of this Declaration or any subsequent modifications of this Declaration may reduce the Association's or Lot Owners' obligations with regard to the Facilities. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facilities and their location are as follows:

- i. one constructed wetland (CW) designed to have a drainage area of 10.05 acres, a design storm surface area of 28,350 square feet and a design storm storage volume of 79,480 cubic feet; and
- ii. one 10-ft. level spreader (LS) located downstream of the constructed wetland.

In addition to the above obligations, the Association's obligations with regard to the Facilities are:

1. **Inspections/Routine Maintenance.** In accordance with City Requirements, the Association shall cause the Facilities to be inspected i) annually; and, ii) after major storm events that cause visual damage to the Facility; and iii) upon notification from the City to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City who shall document those things mandated under City Requirements. The inspection shall occur annually during the month in which the Facilities as-built certification was accepted by the City, which month may be determined through contact with the City of Durham Department of Public Works, Stormwater Division. The inspection shall be reported to the City as further described below.

2. **Repair and Reconstruction.** The Association shall repair and/or reconstruct the Facilities as it determines is necessary, and, at a minimum, as set forth in City Requirements or as directed by the City to allow the Facilities to function for its intended purpose, and to its

design capacity. The Association shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

3. **Stormwater Budget Line Items & Funding.** The dues of the Association shall include amounts for upkeep and reconstruction of the Facilities which shall be included in dues charged to Lots or members from the point that Lots or members are charged dues for other common purposes. The Association shall maintain two (2) separate funds in its budget for the Facilities. The first, the "Inspection and Maintenance Fund," shall be for routine inspection and maintenance expenditures and shall be used for annual inspections, maintenance, and minor repairs. The funds for this purpose may be maintained as part of the Association's general account. The second fund, the "Major Reconstruction Fund," shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facilities. The Major Reconstruction Fund shall be maintained in an account that is separate account from the Association's general account as described below. At a minimum, the Association shall, annually, earmark **\$3,687.00 [CW: \$2,389.00; LS: \$1,298.00]** from its collected dues for the Inspection and Maintenance Fund and **\$738.00 [CW: \$572.00; LS: \$166.00]** for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year's amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facilities. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association's other obligations. The Association may compel payment of dues through all remedies provided in these Covenants or otherwise available under law.

4. **Assessments/Liens.** In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association's obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in these Covenants. As allowed under NCGS §47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessment remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association's rights may, in the discretion of the City, be exercised by the City, as a third party beneficiary of the recorded Stormwater Agreement and/or as Attorney in Fact for the Association, as provided in Section 7 of the recorded Stormwater Agreement.

5. **Stormwater Expenditures Receive Highest Priority.** Notwithstanding any contrary provisions of the covenants of which this Article is a part, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facilities shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

6. **Separate Account for Major Reconstruction Fund. Engineer's Report.** The Association shall maintain the Major Reconstruction Fund for the Facilities in an account separate from the Association's general account. The Association shall use the Fund only for major repairs and reconstruction of the Facilities. No withdrawal shall be made from this fund unless the withdrawal is approved by two Association officials who shall execute any documents

allowing such withdrawal. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director of the City's Department of Public Works, and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the Stormwater Services Division of the Department.

7. **Annual Reports to City.** The Association shall provide to the City annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the Association's affairs, the report shall so indicate. The Officer's signature and attestation shall be notarized. At a minimum each report shall include:

- i. the annual Facilities inspections report described in section (1) above;
- ii. a bank or account statement showing the existence of the separate Major Reconstruction Fund described in Section (6) above and the balance in such fund as of the time of submission of the report;
- iii. a description of repairs exceeding normal maintenance that have been performed on the Facilities in the past year, and the cost of such repairs;
- iv. the amount of Association dues being set aside for the current year for each of the two stormwater funds – the Inspection and Maintenance Fund and the Major Reconstruction Fund.

8. **Facility/ies to Remain with Association; Lot Owners' Liability.** To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations under this Agreement. Such Lot Owners shall have the right of contribution from other owners with each Lot's pro rata share being calculated as Lot Owner's proportional obligations are otherwise defined in these Covenants. The City may also exercise the rights described in Section 7 of the recorded Stormwater Agreement and other remedies provided by law.

9. **City Rights; Liens Against Owners.** In addition to rights granted to the City by ordinance or otherwise, the City shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

- a. Direct the Association in matters regarding the inspection, maintenance, repair, and /or reconstruction of the Facilities;
- b. If the Association does not perform the work required by ordinance, by these covenants, and by the Stormwater Agreement referenced above, do such work itself, upon 30 days' written notice to the Association.

- c. Access the Facilities for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facilities are located and all other private and public easements that exist within the Property subject to these covenants.
- d. Require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Facilities, as provided in the Stormwater Agreement referenced above.
- e. Enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of these Covenants, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above.

10. **No Dissolution.** To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person who has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facilities in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations.

11. **No Amendment.** Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of these Restrictive Covenants, the Association may not amend or delete this Article with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other.

12. **Stormwater Agreement Supersedes.** The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other Articles of these Covenants. However, such Articles may supplement the obligations of the Association as set forth in that Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by these Covenants.