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Pamlico, NC
Lynn H. Lewis Register of Deeds
BK **586** PG **140-158**

SECOND AMENDED AND RESTATED
FIFTH SUPPLEMENTAL DECLARATION TO
MASTER DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
FOR ARLINGTON PLACE

THIS SECOND AMENDED AND RESTATED FIFTH SUPPLEMENTAL DECLARATION TO MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS for Arlington Place (the "Fifth Supplemental") is made as of October 25, 2013, by Burton Farm Development Company, LLC, a North Carolina limited liability company (the "Declarant"). All capitalized terms used herein and not defined herein shall have the meanings set forth in the Master Declaration.

RECITALS:

A. Declarant is the developer of those lots (referred to as "Homesites"), Common Elements and private streets of those subdivisions known as Arlington Place and Mill Creek as more particularly described on: that plat of Arlington Place Phase I recorded in Plat Cabinet A at Slide 153, pages 17-20 and 154, images 1-8, Pamlico County Registry; that plat of Mill Creek Subdivision Phase II recorded in Plat Cabinet A at Slide 164, pages 2-7, Pamlico County Registry; and that Amended Final Plat of Mill Creek Subdivision Phase I recorded in Plat Cabinet A at Slides 172, pages 2-13, Pamlico County Registry. Declarant furthermore is the

developer of those lots described in that Plat of Mill Creek Subdivision Phase 1 – Lots 62A-62E recorded in Plat Cabinet A at Slides 163-20 and 164-1. (The above recorded plats are referred to collectively herein as the “Plats,” and all of the property described in the Plats is referred to collectively herein as the “Community”.)

B. Declarant executed that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for Arlington Place recorded in Book 481 at Page 375, Pamlico County Registry, that Supplemental Declaration of Covenants, Conditions, Restrictions and Easements for Phase I of Arlington Place recorded in Book 481 at Page 408, Pamlico County Registry (the “First Supplemental”), that Supplemental Declaration of Covenants, Conditions, Restrictions and Easements for Phase II of Arlington Place recorded in Book 505 at Page 311, Pamlico County Registry (the “Second Supplemental”), that Third Supplemental Declaration to Master Declaration of Covenants, Conditions, Restrictions and Easements for Arlington Place recorded in Book 544 at Page 762, Pamlico County Registry (the “Third Supplemental”), that Fourth Supplemental Declaration of Covenants, Conditions, Restrictions and Easements for Arlington Place recorded in Book 568, Page 163, Pamlico County Registry, re- recorded in Book 585, Page 354, Pamlico County Registry (the “Fourth Supplemental”), and that Amended and Restated Fifth Supplemental Declaration of Covenants, Conditions, Restrictions and Easements for Arlington Place recorded in Book 575, Page 803, Pamlico County Registry (the “First Amended Fifth Supplemental”). The Master Declaration as amended by the First Supplemental, the Second Supplemental, the Third Supplemental, the Fourth Supplemental and the First Amended Fifth Supplemental is hereinafter referred to as the “Master Declaration”.

C. Article XI, Section 3 of the Master Declaration provides that the Declarant may unilaterally amend the Master Declaration so long as the amendment has no material adverse effect on the substantive rights of any other Owner.

D. The Declarant desires to amend the First Amended Fifth Supplemental and the Master Declaration at Section 2 of Article V to delete the restriction on length of occupancy.

E. The initial subdivision plat of Arlington Place Phase 1 recorded in Plat Cabinet A, Slide 153, images 17-20 and Slide 154, images 1-8, Pamlico County, filed October 5, 2006, shows the unsubdivided area described in Recital D above on image 8 of 12 as being designated for "Future Development." This area was not subdivided into lots at the time the plat was recorded.

F. Declarant filed the subdivision map entitled "Plat of Mill Creek Subdivision Phase 1 – Lots 62A-62E" in Plat Cabinet A, Slides 163-20 through 164-1 on September 20, 2007, which subdivided the area designated for the Villas into five lots which were not designated as Homesites and are not restricted to single family residential use.

G. Declarant owns all of Lots 62A-62E except Lot 62C and wishes to designate Lot 62, Lot 62A and 62E (hereinafter referred to as "Cottage Lots") to be developed, at the option of the owner of each such lot, either for a Homesite or for two or three cottages, as herein further described, subject to the covenants, restrictions, conditions and easements set out in this Fifth Supplemental and those set out in the Master Declaration not inconsistent with this Fifth Supplemental.

H. Declarant desires to establish a committee (the "Cottage Committee") of the Arlington Place Property Owners Association (the "Association") to govern certain aspects of the Cottage Lots and to designate on the Cottage Lots certain Limited Common Elements as defined in the Master Declaration.

Article I

Designation and Conveyance of Cottage Lots

1. Designation. Lot 62, Lot 62A and Lot 62E are each hereby designated for development as a Cottage Lot or as a Homesite as defined in the Master Declaration. The Declarant shall designate the lot as a Cottage Lot or a Homesite at the time Declarant conveys title to the Lot or to a Cottage Unit as hereinafter described to an owner (the "Owner").

2. Rights and Obligations. If the Declarant designates the lot as a Homesite, the Owner shall have all of the rights and be subject to the same covenants and restrictions as any other Homesite Owner under the Master Declaration and the lot shall not be further subject to this Fifth Supplemental. If the Declarant designates the lot as a Cottage Lot, in addition to the rights, covenants, and restrictions of this Fifth Supplemental, the Owner of the Cottage Lot shall have all of the rights and be subject to the same covenants and restrictions as any other Homesite Owner under the Master Declaration except as such rights, covenants or restrictions are changed by or inconsistent with any right, covenant or restriction of this Fifth Supplemental. In the event of any inconsistency between the terms of this Fifth Supplemental and the Master Declaration as applied to any Cottage Lot, the terms of this Fifth Supplemental shall govern and control.

3. Survey Plat. Prior to conveyance of a Cottage Unit, the Declarant shall prepare, or a prospective purchaser shall prepare and submit to Declarant for approval in a form acceptable to Declarant, a survey plat suitable for recording in the Pamlico County Registry (the "Lot Survey Plat") which shall depict the boundary of the land on which a residential unit is to be located (a "Cottage Unit") which shall be the outside line of the foundation of the proposed cottage, including any steps, porches, or decks other than the Connecting Breezeway (as hereinafter defined). The Lot Survey Plat shall also depict any proposed Connecting Breezeway, driveways and parking areas and any other proposed structures or development on the Lot, in each case with metes and bounds descriptions sufficient to identify the location thereof. The actual residential structure on each Cottage Unit shall be referred to as a "Cottage". Each Cottage Lot shall contain either two (2) or three (3) Cottage Units. Each Cottage shall be connected to the adjacent Cottage or Cottages on the same Cottage Lot by an elevated porch covered by a roof ("Connecting Breezeway") compatible in design with the connected Cottages. The Connecting Breezeway shall not be a part of a Cottage Unit or Cottage but instead shall be a Limited Common Element. The Lot Survey Plat must be approved by the Arlington Place Architectural Review Committee (the "APARC") before a Cottage Unit can be conveyed. All areas except the land designated as a Cottage Unit are hereby designated as "Limited Common Elements" as defined by the Master Declaration, and shall be subject to the covenants and restrictions applicable to such Limited Common Elements set out herein. The Cottage constructed on each Cottage Unit shall be constructed on the entire Cottage Unit, with no part of the Cottage to be located outside the Cottage Unit. In the event that a Cottage shall not be constructed as required hereby, the owner of the Cottage Unit shall cause a revised Lot Survey

Plat of the Cottage Lot to be prepared and recorded which depicts the corrected boundary of the Cottage Unit and other structures and development required hereunder to be depicted on a Lot Survey Plat. The foregoing provision shall not be deemed to permit any variance from the requirements hereof or to waive any rights any owner of a Cottage Unit may have for the breach of the terms hereof.

4. Conveyance. Following Declarant's preparation or approval of the required survey plat, as applicable, Declarant may convey to a purchaser fee simple title to the Cottage Unit. Any conveyance shall be subject to an easement allowing the Declarant and its successors the right to go on the Cottage Lot and a Cottage Unit in order to perform any of the rights, duties or obligations of Declarant under the Master Declaration or this Fifth Supplemental.

5. Conversion of Lot. A Lot approved and conveyed as a Cottage Lot may be converted to a single family Homesite upon presentation to Declarant of a written request for conversion from all owners of record of the Cottage Lot and any structure thereon. Upon Declarant's approval, any Cottages or other structures shall be removed and an amended survey plat prepared to recombine the Cottage Units and remainder of the Cottage Lot into one Homesite. The Homesite thereafter shall be developed in compliance with all restrictions, covenants and conditions of the Master Declaration applicable to a Homesite and shall be subject to approval by the APARC. After a Cottage Lot has been converted in accordance herewith, it shall remain a Homesite permanently.

Article II

Nature of Title

1. Interest of Owners. The Owner of each Cottage Unit on a Cottage Lot shall own his Cottage Unit in fee simple together with a perpetual, appurtenant undivided interest in common with the owners of the other Cottage Unit(s) on such Cottage Lot in and to an easement over the Limited Common Elements on the Cottage Lot. Such undivided interest shall be one-third or one-half, as applicable, the extent of the interest to depend on whether there are three or two Cottage Units on the Cottage Lot, respectively.

2. Association. The legal title to the Limited Common Elements on each Cottage Lot shall be owned by the Association subject to the easement rights of the owners of the Cottage Units on such Cottage Lot.

Article III

The Cottage Committee

1. Creation of the Committee. The Cottage Committee is hereby created to perform the functions hereinafter set out regarding Association and Cottage Assessments, management of Limited Common Elements, and maintenance and repair of the Cottage Lots, the Cottages and the Limited Common Elements. The Cottage Committee shall be structured and shall operate as set out in this Article. It is the intention that all decisions relating to the operation and maintenance of the Cottage Lots, including adoption of budgets and establishment of fees and assessments, shall be determined by the Cottage Committee and enforced by the Association.

2. Membership of the Committee. The Cottage Committee shall consist of up to five (5) members. The Association shall appoint one member to the Cottage Committee who is not a Cottage Unit owner, and each owner of a Cottage Unit shall become a member of the Committee upon conveyance of the Cottage Unit until such time as there are more than four (4) improved Cottage Units. At such time as there are more than four (4) improved Cottage Units, the Owners of all Cottage Units shall select four Owners to fill the four seats on the Cottage Committee allotted to Owners. If there are more than one Owner of a Cottage Unit, the Owners of the Cottage Unit shall designate the member of the Cottage Committee to represent that Cottage Unit and if they are unable to designate the member, no member shall be recognized.

3. Funds. All funds related to the Cottage Units shall be maintained in a designated separate bank account or accounts of the Association until disbursed in accordance with the provisions contained herein and other operating procedures as may be adopted from time to time.

4. Budgets. The budget proposed by the Cottage Committee shall be submitted by the Cottage Committee to the Association to be included in the overall Association budget and approved in the manner required for approval of the Association budget.

Article IV

Assessments and Insurance

1. Cottage Assessments. The Cottage Committee shall provide in a timely fashion to the Association the amount of all dues and assessments relating to the Cottage Units to be charged to owners of Cottage Units (the "Cottage Assessments"), and the Association shall use due diligence and all of its legal powers to collect such dues and assessments so imposed. Each Cottage Unit shall be assessed the percentage of the Cottage Committee's total Operating Expenses equal to the percentage the Cottage Unit bears to the total number of Cottage Units. For example, if there are two Cottage Lots containing a total of five Cottage Units, the amount of the assessment for each Cottage Unit shall be twenty percent (20%) of the total of the Committee Operating Expenses. The operating expenses of the Cottage Committee ("Operating Expenses") shall include all costs incurred by the Cottage Committee in performing maintenance and repairs of the Limited Common Elements as required hereby and any expenses expressly designated as Operating Expenses hereunder. The Cottages Assessments shall also include an amount for such reserves as the Cottage Committee deems appropriate.

2. Arlington Place Property Owners Association Assessments. The owner of each Cottage Unit shall pay to the Association all assessments due under the Master Declaration (the "Association Assessments") by the owner of a Homesite based on whether the Unit is improved or unimproved. For example, if there are three Cottage Units on a Cottage Lot, one improved and two unimproved, the owner of the improved Cottage Unit shall pay the same assessment as the owner of an improved Homesite, and the owner of each unimproved Cottage Unit shall pay the same assessment as the owner of an unimproved Homesite.

3. Insurance. The Association shall obtain public liability insurance for the Limited Common Elements on all Cottage Lots insuring the Association and the Owners. Such insurance

may be provided under policies covering the other properties of the Association. The costs of the insurance on all of the Cottage Lots shall be paid by the Association and shall not be deemed an Operating Expense allocable to the owners of the Cottage Units.

4. Lien and Personal Obligation for Assessments. Each assessment shall be a charge and continuing lien on the real property and improvements thereon against which such assessment is made, provided that the lien for the Cottage Assessments shall be subordinate to the lien for any Association Assessments paid by all members of the Association.

Article V

Use Restrictions on Cottage Lots

1. General. In addition to the other provisions of this Fifth Supplemental, all Cottage Lots and Cottage Units shall be subject to the specific use restrictions and easements set forth in this Article and to all other use restrictions on Homesites set forth in the Master Declaration that are not inconsistent with those set forth herein. Each Cottage Lot and Cottage Unit shall also be subject to any additional or further restrictions and easements applicable to such Cottage Lot or Cottage Unit as set forth on any plat depicting the Cottage Lot or Cottage Unit or contained in any amendment hereto or supplemental declaration referring to such plat and the Master Declaration and this Fifth Supplemental, made in accordance with the provisions of the Master Declaration and recorded in the land records of Pamlico County.

2. Land Use and Building Type. A Cottage Lot shall be used for residential purposes only and no building shall be allowed other than Cottages and the Connecting

Breezeway as approved hereunder. No Cottage on a Cottage Unit shall be erected or allowed to remain on any Cottage Lot unless the construction of such dwelling is substantially performed on the Cottage Lot. No modular home, mobile home, manufactured home, or geodesic dome shall be erected or allowed to remain on any Cottage Lot. No street shall be constructed or opened across or through any Cottage Lot. No Cottage Lot or any structure thereon shall be used for manufacture or sale of any article or for conducting any business, trade or profession that involves coming and going of customers or suppliers to or from the Cottage Lot, provided that this provision shall not prohibit or restrict the ability of an owner from renting a Cottage or prevent Declarant from using a Cottage Unit for an open house or as a sales office or model.

3. Minimum Cottage Size. No Cottage Unit shall be constructed or allowed to remain on a Cottage Lot unless the total floor area of the heated space within the roofline of the main structure, excluding any basement, garage, deck or porch, is at least 900 square feet. This minimum Cottage Unit size replaces and supersedes the minimum dwelling size for Homesites set out in the Master Declaration.

4. Alterations. No person shall undertake, cause or allow any substantial alteration of any structure on a Cottage Unit except at the direction or with the express written consent of the APARC and by all owners of other Cottage Units on the same Cottage Lot. For purposes of this provision, substantial alternation shall include, but not be limited to, any exterior structural changes or modifications in materials such as sidings, windows, doors, decking, steps, foundation, roofing and other building components.

Article VI

Maintenance of Cottage Units

1. Maintenance and Repair. The Owner of each Cottage Unit shall be responsible for the maintenance and repair of the Cottage on the Cottage Unit and for obtaining and maintaining property and casualty insurance on the Cottage Unit in an amount adequate to repair or restore the Cottage on the Cottage Unit if it is damaged or destroyed. Unless the Cottage Committee agrees to waive the requirement, the owner of a Cottage Unit must repair, restore or replace the Cottage if it is damaged or destroyed.

2. Failure to Maintain or Repair. In the event the owner of a Cottage Unit fails to maintain the Cottage on the Cottage Unit or to repair or replace it as set out in paragraph 1 above, the Cottage Committee may cause the Association to perform the necessary maintenance, repair or replacement and assess the Cottage Unit owner for the costs thereof. Such sums advanced shall be immediately due and payable and shall bear interest from the date paid by the Association until repaid by the owner of the Cottage Unit. The obligation shall be a lien on the Cottage Unit, which lien shall be subordinate to any lien for an Association Assessment.

3. Ad Valorem Taxes. Each Owner of a Cottage Unit shall be responsible for payment of ad valorem taxes for the Cottage Unit if Pamlico County establishes the Cottage Unit as a separate tax parcel and bills the Owner. If the Cottage Unit is not established and billed as a separate tax parcel, the Owner of each Cottage Unit shall be responsible for paying a proportionate share of the taxes on the Cottage Lot based on the number of Cottage Units on the Cottage Lot, i.e., one-third or one-half, as applicable. In the event a Unit Owner fails to pay his

share of taxes on the Cottage Lot, the Association may pay the taxes on the Unit Owner's behalf and assess the Unit Owner for such amount.

Article VII

Use and Maintenance of Limited Common Elements

1. Limited Common Elements Use. The Limited Common Elements on a Cottage Lot shall be used only for the purposes for which they are intended and reasonably suited, including lawn, driveway and parking areas and other purposes described herein, all of which shall be incidental to the use and occupancy of the Cottages, subject to any rules or regulations that may be adopted by the Cottage Committee pursuant hereto. No person shall undertake, cause or allow any construction or alteration of structures in or upon any portion of a Limited Common Element and no Owner of a Cottage Unit or other person shall place, store, use or allow the storage, placement or use on the Limited Common Elements of any personal property, including without limitation grills, fences, picnic tables and furniture, except at the direction or with the express written consent of the Cottage Committee. The use of the Limited Common Elements on any Cottage Lot shall be subject to any additional terms and conditions shown on any Lot Survey Plat depicting the Cottage Lot.

2. Maintenance of Limited Common Elements. The Cottage Committee shall be responsible for maintenance, repair and replacement of Limited Common Elements and of any improvements built thereon, including the on-site waste treatment system regardless of where it is located on the Cottage Lot. The Owner of each Cottage Unit shall, subject to the prior review and approval of the location and screening by the APARC, have the right and easement to place

the HVAC equipment (the "HVAC") serving the residence on the Cottage Unit on the Cottage Lot immediately adjacent to the Cottage Unit and shall screen such HVAC from the street and other Cottage Units on the Cottage Lot to the extent practicable, and the Owner of such Cottage Unit and related HVAC shall have the sole responsibility for maintenance, repair and replacement of the HVAC.

3. Landscaping. The Owners of the Cottage Units on a Cottage Lot may plant trees, shrubs, flowers and grass in the Limited Common Elements on the Cottage Lot only with the prior approval of the Cottage Committee. The Cottage Committee shall provide landscaping maintenance on the Cottage Lots and the costs of such services shall be Operating Expenses.

4. Fire Pit. One outdoor fire pit may be located on each Cottage Lot at a location approved by the Declarant and such fire pit shall be available for the use and enjoyment of the Owners of the Cottage Units on the Cottage Lot and their guests. The Cottage Committee shall maintain, repair and replace the fire pit on the Cottage Lots and the costs of such services shall be Operating Expenses. With the approval of the owners of all Cottage Units on a Cottage Lot, the fire pit may be removed.

5. Access. In order to enable the Cottage Committee to accomplish the foregoing, there is hereby reserved to the Cottage Committee, their agents, employees or contractors, the right to unobstructed access over and upon each Cottage Lot at all reasonable times for inspections and to perform maintenance repair, and other functions as provided in this Fifth Supplemental.

Article VIII

Utilities and Waste Treatment

1. Water and Electric. Each Cottage Unit shall have separate water and electricity service which shall be separately metered, and the Owner of each Cottage Unit shall be responsible for their maintenance and repair and for payment of all fees, bills and charges of any nature relating thereto.

2. Waste Treatment System. Each Cottage Lot shall have either one or two on-site waste treatment systems and each Unit on the Lot shall be connected to and use one of those systems. The waste treatment system(s) on each Cottage Lot shall be installed by the Declarant or the successor owner of the Cottage Lot and the waste treatment system(s) on all of the Cottage Lots shall be maintained and repaired by the Cottage Committee as an Operating Expense. The waste treatment system(s) serving Lot 62E shall be located on the Open Space adjacent to the said lot as shown on the Plats, and the Owners of the Cottage Units on Lot 62E shall have an easement over and upon the said Open Space for the purpose of locating the waste treatment system(s) thereon and for the operation, maintenance, repair and/or replacement of such system(s) from time to time. The Declarant and its successor as owner of the Outfitter Center shown on the Plats shall have the right to use the waste treatment system(s) on Lot 62A and shall have an easement for the purpose of constructing an underground line connecting to such system(s) and for the operation, maintenance, repair and/or replacement of such line from time to time.

Article IX

General

1. Amendment. Any provision contained in the Master Declaration and this Fifth Supplemental may be amended or revoked as provided in the Master Declaration.

2. Effect of Provisions of Master Declaration. Each provision of the Master Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of the Master Declaration, shall be deemed a land use restriction running with the land as a burden and upon the title to the land subject thereto.

3. Cottages Association. The Declarant reserves the right, but is not obligated, to organize a North Carolina nonprofit corporation as a sub association of the Association (the "Cottages Association") to perform the duties and responsibilities and exercise the rights of the Cottage Committee. All or part of the rights and duties granted to the Association hereunder, including the rights to impose and collect assessments, may be transferred to such Cottages Association.

4. Conveyance and Transfer. Conveyance, assignment or transfer of Declarant's rights, reservations, easements and/or obligations regarding the Limited Common Elements established hereunder shall be subject to applicable provisions of the Master Declaration not inconsistent with the provisions hereof.

5. Binding Effect. The restrictions set forth herein shall be binding upon and inure to the benefit of the owners of property within the Community, their heirs, or successors and assigns.

6. Severability. Invalidity or unenforceability of any provision of this Fifth Supplemental in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Fifth Supplemental.

7. Governing Law. This Fifth Supplemental shall be governed by and interpreted in accordance with the law of the State of North Carolina.

8. Ratification. The Master Declaration is hereby ratified and affirmed and, except as modified hereby, shall remain in full force and effect.

9. Amendments, Waivers and Enforcement. This Fifth Supplemental shall be subject to the provisions of Articles X, XI and XII of the Master Declaration, and other applicable provisions thereof, including without limitation, the provisions regarding rights and reservations of Declarant, amendments, disclaimers, waiver of and consent to violations, and enforcement, all of which are incorporated herein by reference.

10. Application of Restrictions. This Fifth Supplemental shall apply only to Arlington Place and Mill Creek and not to any other property now or hereafter owned by Declarant. Without limiting the generality of the foregoing, this Fifth Supplemental shall not apply to any property designated on the Plat for future development.

11. First Amended Fifth Supplemental. This Fifth Supplemental supersedes and replaces the First Amended Fifth Supplemental which shall be of no further force or effect.

(Signatures are on the following pages.)

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the day and year below described.

BURTON FARM DEVELOPMENT COMPANY, LLC,
a North Carolina limited liability company

BY: BODDIE-NOELL ENTERPRISES, INC.

A Member acting on behalf of the Management Committee
of Burton Farm Development Company, LLC

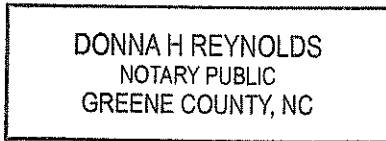
By: *Douglas E Anderson* (SEAL)
Douglas E. Anderson, Exec. Vice President

STATE OF NORTH CAROLINA

COUNTY OF Greene

I, Donna H. Reynolds, a Notary Public for the aforesaid County and State, do hereby certify that Douglas E. Anderson, personally appeared before me this day, and acknowledged that he is the Executive Vice President of Boddie-Noell Enterprises, Inc., a North Carolina corporation, a Member acting on behalf of the Management Committee of Burton Farm Development Company, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the Company in its capacity as Member of the Management Committee of the said Burton Farm Development Company, LLC, he executed the foregoing instrument for the purposes therein expressed for and on behalf of the said Boddie-Noell Enterprises, Inc., acting on behalf of the Management Committee of Burton Farm Development Company, LLC.

Witness my hand and official seal, this 25 day of October, 2013.



Donna H Reynolds

Notary Public

My Commission expires: 2/11/2017