

For Registration
Fredrick Smith
Register of Deeds
Mecklenburg County, NC
Electronically Recorded
2021 Mar 26 09:29 AM RE Excise Tax: \$ 0.00
Book: 35854 Page: 587 - 591 Fee: \$ 26.00
Instrument Number: 2021059109



RETURN TO:

Bishop, Dulaney, Joyner & Abner, P.A.
4521 Sharon Road, Suite 250
Charlotte, North Carolina 28211
Attention: Kenneth J. Abner, Esq.

TEMPORARY PARK EASEMENT AGREEMENT

THIS TEMPORARY PARK EASEMENT AGREEMENT (this "Agreement") is made as of the 25th day of March, 2021 (the "Effective Date"), by and between **WESLEY TOWNS, LLC**, a North Carolina limited liability company ("Wesley Towns") and **SKYTERRACE TOWNS OWNERS ASSOCIATION, INC.** (the "Association"). Wesley Towns and the Association, together with their respective successors in interest, in whole or in part, are referenced herein individually as an "Owner" and collectively as "Owners".

Background Statement

Wesley Towns is the owner in fee simple of that certain real property more particularly described as Parcel A and Parcel B on that certain plat recorded in Map Book 68 at Page 665 of the Mecklenburg County Public Registry (the "Wesley Towns Parcels").

Wesley Towns is also the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for SkyTerrace Towns recorded in Book 35853 at Page 494 of the Mecklenburg County Public Registry (the "Declaration"). Capitalized terms not otherwise defined herein shall have the meaning given such terms in the Declaration. The Association has been created for the purposes described in the Declaration.

The parties desire to enter into this Agreement to provide for a temporary easement for the use of a park in favor of the Association and its members subject to the terms hereof.

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual promises contained herein, and for other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. **Grant of Easement.** Wesley Towns hereby gives, grants and conveys, subject to the terms of this Agreement, to the Association and its successors and assigns for use by the members of the Association and their visitors, guests and invitees a temporary non-exclusive

easement (the “Easement”) for the purpose of using the Wesley Towns Parcels as a recreational park (the “Park”), subject to such rules and regulations as may be instituted by the Association from time to time.

2. **Indemnity.** The Association agrees to indemnify and hold harmless Wesley Towns, and its tenants, mortgagees, licensees, visitors, guests and invitees, from and against any and all claims, demands, liabilities, damages, losses, judgments and costs and expenses (including without limitation, reasonable attorneys' fees) arising out of or occasioned by any use of or activities carried on with respect to any person or entity claiming by or through the Association pursuant to this Agreement.

3. **Insurance.** The Association shall carry at its sole expense commercial general liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such insurance will include blanket contractual liability coverage and shall contain a separation of insureds clause or otherwise provide cross-liability coverage. The Association will furnish to Wesley Towns a certificate of insurance, at Wesley Towns’s request, evidencing existence of such insurance, with an endorsement naming Wesley Towns as an additional insured thereunder. The commercial general liability insurance will be issued by an insurance company licensed or admitted to do business in the State of North Carolina and have an A. M. Best rating of not less than A-VIII. The policy may not be canceled without Wesley Towns receiving written notice not less than thirty (30) days prior to any cancellation of said coverage except for non-payment of premium in which case not less than ten (10) days prior written notice will be given. The minimum limits of coverage required hereunder are subject to increase in an amount as the additional insureds may reasonably require from time to time, based on then-current limits for similar properties in the vicinity of the Wesley Towns Parcels. If the Association fails to provide an appropriate certificate of insurance prior to the date hereof and thereafter prior to the expiration of the policy, Wesley Towns may procure such insurance. All amounts incurred by Wesley Towns in connection with the failure of the Association to comply with such insurance requirements, together with simple annual interest in the amount of ten percent (10%) on such amounts from the date paid, shall be payable upon demand by Wesley Towns.

4. **Maintenance.** The Association shall be responsible for performing at its cost the maintenance of the Wesley Towns Tract in the same manner as the Association is required to maintain landscaped areas comprising the Common Areas under the Declaration. Without limiting the generality of the foregoing, the Association shall cause the grass to be mowed and vegetation to be trimmed from time to time. If the Association fails to perform such maintenance obligations, Wesley Towns may give written notice of such failure and if the Association does not cure such failure within thirty (30) days after such notice is given, then Wesley Towns shall have the right to perform such maintenance. Upon completion of such maintenance payment shall be made to Wesley Towns by the Association within thirty (30) of written demand from Wesley Towns, with such written demand to include applicable invoices documenting such expenditures.

5. **Appurtenant.** The Easement granted hereunder shall operate as a covenant running with the land, and such Easement shall be appurtenant to the Common Areas and shall encumber the Wesley Towns Parcels for the benefit of the Association and its members.

6. **No Public Rights.** Nothing contained in this Agreement is intended to evidence or be, or shall ever be construed or interpreted as, a dedication of any right or interest in or to the easement granted herein to the public, nor give any member of the public any rights or interests whatsoever under this Agreement.

7. **No Continuing Liability.** Wesley Towns and its successors and assigns shall be bound hereby only during their respective periods of ownership of the Wesley Towns Parcels or portion thereof, it being expressly intended that there shall be no continuing liability except for acts or omissions arising during such respective periods of ownership.

8. **No Waiver.** No delay or omission of any Owner in the exercise of any right accruing upon default shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by an Owner of a breach or a default of any of the terms and conditions of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other provision of this Agreement or a waiver by any other Owner.

9. **Attorneys' Fees.** In the event of litigation between the Owners, the prevailing party will be entitled to recover from the losing party reasonable attorneys' fees and reasonable out-of-pocket litigation expenses and court costs all as awarded by the court. In addition, the court may decide that there is no true prevailing party and that neither party is entitled to its attorneys' fees or litigation expenses.

10. **Severability.** If any term or provision of this Agreement (or the application of any term or provision of this Agreement to any person or circumstances) shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable) shall not be affected and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. **Term.** Wesley Towns shall have the right to terminate this Agreement at any time by delivery of written notice to the Association given at least thirty (30) days prior to the effective date of termination. In addition, upon any termination of the Declaration in accordance with its terms, this Agreement shall terminate automatically.

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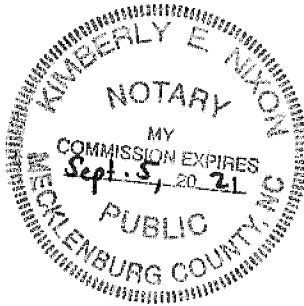
IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed this 24th day of March, 2021.

WESLEY TOWNS:

WESLEY TOWNS, LLC,
a North Carolina limited liability company

By: JTELove, LLC, a North Carolina limited liability company, its Manager

By: *Thomas J. Larsen, Jr.*, MANAGER (SEAL)
Thomas J. Larsen, Jr., Manager



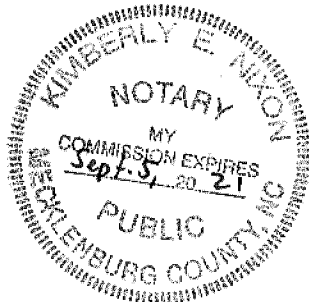
STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Thomas J. Larsen, Jr.

Date: March 24, 2021

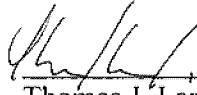
Kimberly E. Nixon
Official Signature of Notary
KIMBERLY E. NIXON
Notary's printed or typed name, Notary Public

(Official Seal)



ASSOCIATION:

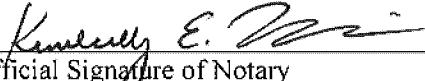
SKYTERRACE TOWNS OWNERS
ASSOCIATION, INC.,
a North Carolina non-profit corporation

By:  PRESIDENT (SEAL)
Thomas J. Larsen, Jr., President

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Thomas J. Larsen, Jr.

Date: March 24, 2021


Official Signature of Notary
KIMBERLY E. NIXON
Notary's printed or typed name, Notary Public

(Official Seal)

