

Prepared by:  
Return to:

STATE OF NORTH CAROLINA  
COUNTY OF BUNCOMBE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
RIVERBEND FOREST HOMEOWNERS' ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVERBEND FOREST (the "Declaration") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between RBF DEVELOPMENT, LLC, A North Carolina Limited Liability Company (herein "Declarant") and all Future Owners of Lots in RIVERBEND FOREST.

WITNESSETH:

THAT WHEREAS, Declarant is the Owner of certain property located in Buncombe County, North Carolina, referred to as "RIVERBEND FOREST", said property (the "Property") consisting of Tract 1-A being 20.89 acres as referenced in Deed Book 5749, at Page 1439 and Tract 1-B being 2.88 acres as referenced in Deed Book 5749, at Page 1442 and as also shown on that plat of survey for RIVERBEND FOREST recorded in Plat Book 195, at Page 107, Buncombe County Public Registry; and

WHEREAS, the Declarant desires for the protection and benefit of all persons who may hereinafter become Owners of Lots located within the Subdivision that the Property be developed with limitations and restrictions. These covenants are to run with the land and be binding upon all parties purchasing Lots and all persons claiming by, through or under the Declarant until December 31, 2049, at which time said covenants shall automatically be extended for successive periods of ten (10) years unless this Declaration is otherwise modified or amended in whole or in part as permitted herein.

AGREEMENT:

NOW, THEREFORE, the Declarant does hereby make the following declaration as to limitations and restrictions to which the Subdivision shall be and are hereby subjected:

ARTICLE I: Definitions

"Association" shall mean and refer to RIVERBEND FOREST HOMEOWNERS' ASSOCIATION, INC., an incorporated non-profit association comprised of all of the Lot Owners.

"Board", "Executive Board", or "Board of Directors" shall mean and refer to the Executive Board of the Association.

"By-Laws" shall mean and refer to the By-Laws of the Association, attached as Exhibit A to the Declaration.

“Common Elements” shall mean and refer to the (i) private streets designated on any subdivision Plat hereinafter recorded by Declarant, as well as any other private street constructed by the Declarant serving the Subdivision or any property adjoining the Subdivision; (ii) the entrance areas as shown on such Plat; (iii) trails, walking paths, or recreational areas which are shown on the Plat; (iv) all furnishings, fixtures, and equipment used in connection with the use and maintenance of the Common Elements; (v) any other property designated as such by the Declarant, and (vi) any real estate owned by the Association, other than a Lot.

“Declarant” shall mean RBF Development, LLC, or its successors and/or assigns, including any person or entity that succeeds to any Special Declarant Rights as set forth herein. Any consent to be obtained from Declarant pursuant to these restrictions must only be obtained from RBF Development, LLC, or its successors, in its capacity as Declarant.

“Directors” shall mean and refer to the members of the Executive Board of the Association.

“Design Review Committee” or “DRC” shall mean a committee appointed by the Association Board of Directors to approve all improvements on a Lot except for the initial (first) construction of a single-family dwelling on a Lot.

“Limited Common Elements” shall mean and refer to those special portions of the Common Elements of the Subdivision designated as being either for (i) the exclusive use by one or more but fewer than all of the Lot Owners, or (ii) designated by Declarant, in its sole and absolute discretion, as benefiting, either directly or indirectly, one or more but fewer than all of the Lot Owners.

“Lot” shall mean and refer to any numbered parcel of land within the Subdivision shown on the Plat or any plat hereinafter recorded by Declarant of all or part of the Property and all other Lots which may be added pursuant to any other expansion right of Declarant as described herein, and designated for separate Ownership or occupancy by a Lot Owner.

“Lot Owner” and/or “Owner” shall mean and refer to the person(s) or entity(ies) that own all or a portion of the fee simple title to any Lot which is part of the Subdivision; but does not include a person or entity having an interest in a Lot solely as security for an obligation.

“Member” shall mean and refer to each Lot Owner or Owner of a Lot within the Subdivision who shall also then be a Member of the Association for the period of Ownership of the Lot. If a Lot is owned of record by more than one person or entity, then such person(s) or entity(ies) collectively shall be deemed the one "Member" associated with that Lot and shall be entitled to vote only those voting shares allocated to such Lot.

“Restrictions” or “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for RIVERBEND FOREST, as same may be released, amended or changed, either in whole or in part, as provided for herein.

“Riverbend Forest Club Association” or “RCA” shall mean and refer to Riverbend Forest Club Association, Inc., an incorporated non-profit association.

“Special Declarant Rights” shall mean and refer to those rights as defined in Chapter 47F-1-03(28) of the North Carolina General Statutes as the same are reserved herein for the benefit of the Declarant.

“Subdivision” and/or “Property” shall mean and refer only to that certain real property described as being all of that real property as shown and depicted on that plat of survey that is recorded in Book 195, at Page 107, Buncombe County Public Registry. The Declarant shall not be deemed to have subjected any other property, which the Declarant may now or hereafter own or acquire, to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is

recorded in the Buncombe County Registry of Deeds. The Declarant specifically reserves the right to subject any other property, which the Declarant may now own, or which Declarant may hereafter acquire, to this Declaration, and the Declarant may do so by recording additional plats reflecting additional individual Lots and Common Elements of the Subdivision. Nothing herein shall require or shall be construed so as to require the Declarant or its successors to subject all or any part of its remaining adjoining property to the Declaration.

“County” shall mean Buncombe County, an incorporated municipality.

## ARTICLE II: Creation of a Residential Community

1. Submission of the Property and Creation of the Subdivision: Declarant hereby creates a residential subdivision initially comprised of the Property. Declarant hereby submits all of the Property to the terms of this Declaration.
2. Name: The name of the Subdivision created hereunder is RIVERBEND FOREST.
3. Designation of Lots and Common Elements: The Declarant does hereby designate the Property as shown on a final, approved, and recorded Plat of the Subdivision as separate Lots, Limited Common Elements, and Common Elements.
4. Reservation of Special Declarant Rights: Declarant hereby reserves unto itself and its successors in interest as Special Declarant Rights, the following:
  - a. Those Special Declarant Rights as set forth in Chapter 47F-1-102(28) of the North Carolina General Statutes;
  - b. Those rights, subject to the terms of Article VII herein, during the Declarant's Control Period, to modify, amend, change, vary, or release all or any part of these Declaration; and
  - c. The right to re-designate a previously designated Lot as an easement or right-of-way for access to adjoining property whether now or hereafter owned by the Declarant.

## ARTICLE III: Ownership and Maintenance of the Limited Common Elements and Common Elements

1. Owners' Easements of Enjoyment: Every Owner shall have the right of ingress to and egress from the Common Elements, together with the right of enjoyment in and to the Common Elements, which rights shall be appurtenant to and shall pass with the title to every Lot.
2. Delegation of Use: Any Owner may delegate his rights of enjoyment of the Common Elements to the members of his family, his tenants, contract purchasers who reside on the Lot, or his guests. A Lot Owner who has delegated rights to the Common Elements to his tenant shall not in addition to his tenant have rights to the Common Elements.
3. Rules and Regulations: The Board shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Limited Common Elements and Common Elements on behalf of the Association and available to the Members for inspection during normal business hours, or at the designated office of the Association, if there is no property manager.

4. Operating Common Elements Facilities: The Board shall have the power to promulgate rules regarding the safe use and enjoyment of any Limited Common Elements and Common Elements.
5. Declarant's Conveyance of Title to the Common Elements: At such time as it deems appropriate, Declarant may convey fee simple title to the Limited Common Elements or Common Elements to the Association and the County or place a conservation easement over such Limited Common Elements or Common Elements. Any benefits received by the Declarant for the conservation easement shall be passed along, provided it is permissible by the agency receiving the conservation easement and the governing taxing authorities, to all Lot Owners on a pro rata share of the total acreage of the Lots. Upon conveyance of the Limited Common Elements or Common Elements to the Association, the Association shall accept the conveyance of all such Limited Common Elements and Common Elements pursuant to this Section and shall be obligated to accept the obligation to maintain the Common Elements as set forth herein.
6. Mortgaging Common Elements: The Association shall not borrow money for the purpose of improving the Limited Common Elements or Common Elements.

#### ARTICLE IV: Residential Design Standards

1. Design Review Committee: All improvements within the Association shall be subject to design standards established to provide guidelines for creating and maintaining a residential community in keeping with the vision of the Declarant as developer (the "Design Guidelines"). No site work shall be initiated and no landscaping, dwelling structures, improvements, or other structures or items shall be constructed, placed, installed, or altered on a Lot in a manner or location visible from outside of any existing structures on the Lot (the "Improvements") until the plans and specifications for such Improvements have been approved in writing by the Declarant or the Design Review Committee of the Association, as described herein.

For the first (initial) construction of a single-family dwelling on a Lot, the Declarant shall have the sole authority (i) to receive, review, and approve/reject all proposed plans and specifications for proposed Improvements on Lots in the Subdivision, (ii) to issue and/or withdraw permits to initiate construction of Improvements, (iii) to interpret and apply the requirements of this Declaration and the Design Guidelines (if completed) to applications for approval of plans for proposed Improvements, and (iv) to administer generally the provisions of this Declaration relating to the construction of Improvements.

For any construction after the first (initial) construction of a single-family dwelling on a Lot, the Design Review Committee shall have authority (i) to receive, review, and approve/reject all proposed plans and specifications for proposed Improvements on Lots in the Subdivision, (ii) to issue and/or withdraw permits to initiate construction of Improvements, (iii) to interpret and apply the requirements of this Declaration and the Design Guidelines (if completed) to applications for approval of plans for proposed Improvements, and (iv) to administer generally the provisions of this Declaration relating to the construction of Improvements. The Declarant shall be the initial member of the Design Review Committee, and during the Declarant Control Period, the Declarant shall have the exclusive authority to review and act upon all applications submitted by Lot Owners for approval of proposed Improvements. The Declarant may appoint other persons to serve with or on behalf of the Declarant on the Design Review Committee and may delegate all or a portion of the Declarant's authority under this Article to such appointees; such appointees shall serve at the pleasure of the Declarant and may be removed at any time by the Declarant. Upon the termination of the Declarant Control Period, the Association shall appoint the members to serve on the Design Review Committee and shall delegate such review authority to the Design Review Committee as the Association deems appropriate in its discretion.

2. Design Guidelines: The Declarant shall establish the initial Design Guidelines in a written instrument and shall have the exclusive right and authority to modify and amend the Design Guidelines at any time, and from time to time during the Declarant Control Period; provided, however, that any amendments to the Design Guidelines shall be applied and enforced prospectively. Upon the termination of the Declarant Control Period, the Association shall succeed to the authority of the Declarant in regard to the modification, amendment, and enforcement of the Design Guidelines, and in that event any modifications and amendments to the Design Guidelines shall be subject to the consent of the Board of Directors of the Association.

The Design Guidelines are merely intended to provide architectural and aesthetic guidelines to the Design Review Committee in reviewing and acting upon an application for proposed Improvements on a Lot. As such the Design Guidelines are not intended to be the sole source of standards for the construction of Improvements on a Lot within the Subdivision, and the Design Review Committee may impose other requirements for Improvements consistent with the intent of the Design Guidelines and this Declaration.

#### ARTICLE V: Land Use and Occupancy

1. Residential Use: All Lots shall be known as single-family residential Lots and no part of the Lot shall be used for any commercial use that would disrupt the character of the Subdivision community or threaten the safety and peace of the community. This restriction shall not prohibit certain home occupations.

Single-family homes shall be constructed on Lots and such homes shall not be leased on a short-term basis (less than twelve (12) months). Only 10% of the homes of the community may be rented to an unrelated third party at any given time without the express written consent of the Association. All Owners must submit the requisite form to the Board prior to renting their home. Said form shall acknowledge the existence of the Association and the renter must agree to comply with all covenants, restriction, and rules of the Association. The rental contract must be for a period of at least twelve (12) months and the Owner must give the renter a copy of the By-Laws and Declaration. No Lot or home shall be purchased with the intention of using it as a rental property. No home that is for sale shall be described as a rental property or other than a single-family dwelling.

Unfinished basements, garages, outbuildings, or partially completed dwellings shall not at any time be used as dwellings, temporary or permanently.

2. Modification of the Boundaries of a Lot: No Lot shall be subdivided, or its boundary lines changed after a Subdivision Plat depicting the Lot has been approved and recorded in the Public Records without the Declarant's prior written consent. Lots may be combined. In the event a Lot Owner is permitted to combine Lots, setbacks shall be applicable to the outside boundaries of the resultant Lot, and easements may be released or moved with the permission of the Declarant and any agencies or utilities then using the easement. Any such division, boundary line change or re-platting shall not be in violation of the applicable Subdivision or zoning regulations.

3. Nuisances: No noxious, noisy, or offensive activities shall be carried on or upon any Lot, nor shall anything be done thereon which is likely to become an annoyance or nuisance to the neighborhood. No Lot shall be used in whole or part for the storage of rubbish, trash, refuse, junk, unlicensed motor vehicles, or any other items that will cause the Lot to appear in an unclean or unkept condition. No substance, thing, or material shall be kept upon the Lot which will emit foul or obnoxious odors discernable on any adjoining Lot or which will cause unreasonable noise which would disturb the peace, quiet, comfort, or serenity of any occupant of another Lot. Trash, garbage, debris, and other waste shall be kept in covered, clean, and sanitary containers either underground, in the garage, or placed at the rear of the dwelling and placed in such a manner so as not to be visible from adjacent Lots or the street and shall be regularly emptied there from and removed from the Lot. All containers for the storage or

disposal of waste materials shall be kept in a covered, clean, and sanitary condition and must not be visible from adjacent Lots or the street. This provision shall not be, and is not, violated by the construction of dwellings on Lots in a customary manner; provide, however, all contractors constructing improvements on a Lot shall secure or remove trash, refuse, and other materials from the construction site to prevent such items from accumulating on other Lots or the Common Elements. No garbage or trash shall be burned on any Lot.

4. Structures: No trailers, single-wide or double-wide mobile homes, tents, shacks, or any structure of a temporary character shall be placed or allowed to remain upon a portion of the Subdivision at any time; provided, however, that this provision shall not serve to prohibit (a) temporary trailers used by any contractors building a dwelling on a Lot during an active construction period, (b) tree house or playhouse, (c) outdoor fire pit (separated from the house) (d) recreational equipment such as basketball goals, slack lines, or trampolines, (e) pool or spa or (f) shelter with the Declarant's written consent and compliance with all ordinances of the County.5. Dwellings: All dwellings (main and ancillary) shall conform to the standards set forth by the Association and the County. In addition, every dwelling structure shall have an attached or detached enclosed garage or carport for at least one passenger motor vehicle. The minimum total square footage of a single-family dwelling, exclusive of any open porches, terraces, and decks shall be 1,700 square feet for the main house and the maximum total square footage of a dwelling structure, exclusive of any open porches, terraces, and decks shall be 7,000 square feet.

6. Setbacks: The setback lines shall be the more restrictive setback lines required by the then effective zoning ordinance for Buncombe County or other government entity shall have jurisdiction over the Subdivision or provided on the recorded Subdivision Plat.

7. Utility Easements: Utility and drainage easements affecting the Lots in the Subdivision are reserved unto Declarant and its designees as shown on the Plat and within the Subdivision street right of ways; or, if not shown on the Plat, said easements shall be ten (10) feet in width along and within each side of all interior and rear Lot lines for installation and maintenance of various utility and drainage facilities. Neither Declarant, nor any utility company using the easements herein referred to, shall be liable for any damage done by them or their assigns, agents, employees, or servants within the easement areas to the shrubbery, trees or flowers, or to the property of the Lot Owner of the Lot encumbered by any said easements. None of the easements for utilities and drainage shown on said Plat, including the easements shown on said Plat for future utility and water line extension, are intended or dedicated for use by utility service providers or others to provide any utility service to land other than the Subdivision unless the Declarant, its successors and assigns, hereafter convey such rights or easements. Declarant in its discretion reserves the right to relocate these utility and drainage easements for the benefit of a Lot Owner or the Subdivision; provided, however the Declarant shall first obtain the consent of the Lot Owner across whose Lot the relocated easement shall run or be located.

8. Signs: Any sign placed upon any Lot shall conform to the sign standards adopted by the Association and the County and shall not exceed the overall size of 36" x 48", in any case. Nothing in this Section shall be construed to prevent Declarant from erecting entrance display signs, street signs, trail signs, and signs related to the use of the Common Elements.

9. Trees, Grass, and Weeds: The Declarant intends to preserve as many of the mature trees in the Subdivision as may be practical and feasible. It is the duty of each Lot Owner to maintain properly and preserve maturing trees on their respective Lots. No clear cutting of the entire Lot is permitted. Trees whose diameter, measured one foot above the ground, exceeds six (6) inches diameter breast height ("DBH") or more shall be preserved if not within the building area of the home or there is a risk of fall onto the house without the express written consent of the Association.. To the extent reasonably practical, the native appearance of each Lot shall be preserved, as no clear cutting shall be allowed. Further, to the extent reasonably practical, large trees shall remain on each Lot and the Lot shall be maintained to reasonably conform to its natural surroundings unless it is within the footprint of the house to be constructed on the Lot. Grass, weeds, and all plant growth are to be kept reasonably trimmed on

all Lots to prevent unsightly and unsanitary conditions. This is an obligation of each Lot Owner, including the Declarant, and is to be done at each Owner's expense.

For trees that exceed six (6) inches DBH, selective tree trimming or removal of is permitted, with the consent of the Association, to establish views from the main floor of a single-family dwelling.

10. Fences and Site Lines: No fence shall be constructed without the approval of the Design Review Committee and the Riverbend Forest Club Association, as set forth in Article IV-1, above. The Association shall adopt varying styles and materials however; the approval of one fence style and material does not constitute an approval for any succeeding fence style or material on any other Lots.

11. Animals: Only household pets up to four (4) dogs and/or cats may be kept and maintained on a Lot. Without limitation, animals persistently barking or loud animals, and potentially vicious or dangerous animals, all as determined by the Association in their absolute discretion, may be deemed an event of nuisance, and following a written warning to the Lot Owner, the Association may require the removal of the offending animal.

12. Watercraft, Motorcycles, and Other Vehicles: Watercraft, recreational vehicles, campers, motorcycles, mini-bikes, dune buggies, motorized bikes, motorized scooters, golf carts, or similar recreational vehicles may be operated within the bounds of the Subdivision. Persistent engine "revving" and other intrusive operation shall not be permitted. Such vehicles shall always be stored in a garage but may be placed on the driveway for up to six (6) hours for every one-hundred and sixty-eight (168 hours) for the purpose of maintenance, cleaning, and equipping for use.

13. Driveways and Parking Areas: Driveway and parking areas shall be gravel, gravel fines, asphalt, pavers, or concrete as approved by the Association.

14. Parking: Each Lot Owner shall park licensed motor vehicles in an approved garage building or in an approved driveway on the Lot Owner's Lot. The Lot Owner and his guests are permitted to park licensed motor vehicles temporarily on Subdivision streets. Routine parking of motor vehicles by Lot Owners or their guests in front of Lots not owned by the Lot Owner is not permitted without the expressed consent of the affected Lot Owner(s). No parking or storage of unlicensed, un-inspected, or non-operable vehicles shall be allowed on any Lot or street other than inside an approved garage building. The Association shall have the right and authority to formulate other rules governing the parking and storage of vehicles within the Subdivision.

15. Construction on Lots in the Subdivision: Once begun, construction of the dwelling on a Lot must be completed in accordance with the permit issued by the Design Review Committee and the governmental authority having jurisdiction of building construction within the Subdivision, and a Certificate of Compliance must be issued within eighteen (18) months of the commencement thereof unless otherwise approved in writing by the Declarant. All landscaping must be completed within three (3) months after issuance of the Certificate of Compliance.

Prior to initiating construction of a residential dwelling or other improvements on a Lot, the Lot Owner shall submit to the Association, the name, address, and contact information of the builder/general contractor proposed to be employed on the Lot to construct the residential dwelling and improvements.

Upon such terms as may be established by the Declarant with a Lot Owner, a temporary construction office may be maintained on a Lot upon which construction of a dwelling structure is being conducted.

Declarant shall be responsible for erosion control on all Lots prior to the sale of the Lot; provided, however, that once a Lot is purchased by a Lot Owner, erosion control on such Lot shall be Lot Owner's responsibility. An approved erosion control plan shall be installed prior to the beginning of construction

on a Lot. Sediment control measures shall be maintained by Lot Owner on each purchased Lot until such Lot has been permanently stabilized with respect to soil erosion.

A Lot Owner shall not dump or otherwise deposit any building materials or other debris upon the Common Elements, Limited Common Elements, or upon any Lots that have not been conveyed to it, and each Lot Owner agrees that, upon at least ten (10) days prior written notice from the Declarant, Lot Owner will promptly remove any and all such materials and debris placed there by the Lot Owner, or by its employees, agents, contractors and/or subcontractors. If Lot Owner fails to remove such building materials or other debris, the Association may, but shall not be required to, remove such building materials or debris, and Lot Owner shall reimburse the Association for all actual and reasonable out of pocket costs specifically associated with such removed building materials or debris within five (5) days from the receipt of an invoice from the Association setting forth such costs.

Each Lot Owner agrees that it shall be responsible for repairing any damage to the public hardscape (including, without limitation, pavements, curb, streets and gutters), bio-retention areas, storm drainage system, and other Subdivision improvements caused by or arising out of actions by Lot Owner, its employees, agents, contractors, and subcontractors. If Declarant or Association notifies Lot Owner in writing of any such damage, Lot Owner shall repair the damage, at Lot Owner's sole cost and expense, within thirty (30) days after receipt of Declarant's or Association's notice.

During construction on a Lot, the Lot Owner, its employees, agents, contractors, and subcontractors, shall not obstruct the normal passage of motor vehicles, including other construction and service trucks, upon and along the streets in the Subdivision.

#### ARTICLE VI: RIVERBEND FOREST HOMEOWNERS' ASSOCIATION, Inc.

The Declarant does hereby establish an incorporated association, which shall be known as the Riverbend Forest Homeowners' Association, Inc. (herein "Association") which shall be governed by its articles of incorporation and its By-Laws which are attached hereto. The purpose of the Association shall be to provide for the orderly enforcement of these covenants, conditions, and restrictions, including, but not limited to, the maintenance, upkeep and repair of the street and pedestrian rights of way within the Subdivision and any Common Elements or other areas of common interest. Upon conveyance and/or assignment by the Declarant, the Association shall be obligated to accept ownership of the Common Elements and rights reserved to the Declarant in this Declaration, and/or the By-Laws of the Association. The Board of Directors as established in the By-Laws of the Association shall constitute the Executive Board

#### ARTICLE VII: Membership and Voting Rights

1. Every Owner of a Lot, which is subject to assessment, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, which is subject to assessment.
2. The Association shall have two (2) classes of voting membership:
  - a. Class A: Class A Members shall be all the Lot Owners, with the exception of Declarant as set forth in Section 2(b) below, who shall be entitled to one (1) vote for each Lot owned. Each Lot is entitled to cast one (1) vote on all matters before the Members. When there is more than one Lot Owner of a Lot, said Lot Owners shall designate the person authorized to vote for said Lot. When there is more than one person or entity owning a Lot, each person or entity constituting the Lot Owner(s) of the Lot



may vote his or her percentage interest in said Lot. If multiple Owners owning any Lot are unable to agree on their vote, their vote shall not be counted; and,

- b. Class B: The Class B member shall be Declarant, and Declarant shall be entitled to ten (10) votes for each Lot Declarant owns within the Subdivision. The Class B membership shall cease when the Declarant does not own any Lot.

#### ARTICLE VIII: Assessments

1. Creation of the Lien and Personal Obligation of Assessments: Until the Association levies a Common Expense assessment, Declarant shall pay all accrued expenses of the maintenance, upkeep, and undertaking of the Association related to the Common Elements (herein "Common Expenses"). Thereafter, each Lot Owner shall be personally and severally liable for the Common Expenses that are levied against his Lot while a Lot Owner except as provided in Section 2 of this Article. Each Lot shall be assessed in accordance with that Lot's fractional interest as determined with all numbered Lots within the Association being the denominator (except Lots excluded in Section 2 of this Article) and the Lot being the numerator of 1.

Except as otherwise provided in this Declaration, the Declarant, for each Lot owned, hereby covenants, and every other Owner of any Lot subject to this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association:

- a. Annual assessments or charges, as determined by the Board;
- b. Special assessments for capital improvements, or anticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided; and,
- c. The annual and special assessments on a Lot together with interest thereon and costs of collection thereof; as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot. In addition, the Association shall have all those powers provided for in the Act, including the ability to impose fines.

2. Purpose of Assessments: The Assessments levied by the Association may be used for the following purposes:

- a. For the promotion of the recreation and welfare of the residents of the Subdivision;
- b. For payment of ad valorem taxes and public assessments levied on the Common Elements or Limited Common Elements, if any;
- c. For the maintenance and operation of any utility equipment or systems owned by the Association;
- d. For the maintenance of private streets, walkways, fences, and retaining walls within the Subdivision, as well as all signs and lighting located thereon and adjacent thereto;
- e. For the maintenance of the Common Elements or Limited Common Elements and the cost of labor, materials, and equipment necessary for the proper use, enjoyment, and maintenance of the Common Elements;

- f. For snow removal regarding all private streets and sidewalks within the Subdivision;
- g. For the maintenance of the entrance areas; provided, that it is understood that any gate that may be constructed at the entrance areas shall not be construed as any representation or guaranty of security to residents or guests of the Subdivision;
- h. For the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws such liability insurance to insure the Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Association requires for the employment of professionals, such as accountants, attorneys, and management firms to represent the Association as necessary;
- i. For the employment of professionals, such as accountants, attorneys, and management firms to represent the Association as necessary; and
- j. To maintain reasonable reserve funds, including initially a reserve fund to be known as the "Association Reserve Fund", for the repair, replacement, and improvement of the Common Elements and for the operations of the Association.

3. Annual Assessments: Annual assessments shall be fixed by the Board of Directors of the Association. At least thirty (30) days in advance of each annual assessment, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot and send written notice of such assessment to every Owner subject thereto. The due dates of such assessments shall be established by the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Board. Until the Board directs otherwise, the annual assessments shall be due and payable on a quarterly basis. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due and payable. In no event shall a Lot Owner be entitled to credit or offset any assessment payment due the Association by reason of an alleged obligation owed by the Association or Declarant to the Lot Owner. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether the assessments for a specified Lot are due or have been paid.

4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, and to pay any costs or expenses incurred in enforcing the Declaration or the By-Laws; provided that any such assessment shall have the assent of sixty-seven (67%) percent of the votes of Class A and Class B Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all Members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting.

5. Purchaser of a Lot from the Declarant: As to any Lot Owner purchasing a Lot from the Declarant, the regular annual assessment shall accrue beginning with the calendar month following the date of closing of the Lot purchase and shall be due and payable on the next due date for payment of the annual assessment.

6. Uniform Rate of Assessments: Both annual and any special assessments must be fixed at a uniform rate for all Lots unless a Lot is subject to additional assessment to provide for expenses associated with a Limited Common Element that benefits that Lot.

7. Lien for Assessments: Remedies for Non-Payment of Assessments: Every assessment shall constitute a lien upon each Lot assessed, having priority over all other liens and encumbrances except (i) real estate taxes and other governmental assessments or charges against the Lot, (ii) liens and encumbrances recorded before the recordation of the Declaration and prior to the docketing of any claim of lien as set forth herein, and (iii) all duly perfected mortgages or deeds of trust securing a loan upon the

Lot recorded before the recording of the Declaration and all duly perfected mortgages or deeds of trust securing a loan that constitute a first lien mortgage upon the Lot.

If any assessment, or installment thereof, remains delinquent for thirty (30) days or longer, then that assessment, and all other assessments levied against that Lot, shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of Buncombe County pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes. The Association may, but shall not be obligated, foreclose on an Association assessment lien pursuant to Article 2A of Chapter 45 or Article 29A of Chapter 1 of the North Carolina General Statutes. The Association may impose reasonable charges for late payment of assessments, not to exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid. All fees, late charges, costs, attorneys' fees, fines, or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate. The Board may at its sole discretion, waive the imposition of interest to any delinquent assessment. Cost and reasonable attorney's fees as provided for above for any such action shall be collected in addition to the amount of such assessment. No Owner may waive or otherwise avoid liability for the assessment provided for herein by non-use of the Common Elements, or abandonment of his dwelling unit or Lot. The Association may delegate billing and collection of assessments to a duly-appointed property manager.

8. Annual Budget: By majority vote of the Directors, the Board shall adopt an annual budget for each year of operation of the Association, which budget shall provide for the allocation of expenses in such a manner that the obligations imposed by this Declaration and any and all amendments hereto shall be met.

9. Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligations to pay any assessments.

10. Subordination of Assessment Liens: The lien of the assessments provided for herein shall be subordinate to (i) real estate taxes and other governmental assessments or charges against the Lot, (ii) liens and encumbrances recorded before the recordation of the Declaration, and (iii) all duly perfected mortgages or deeds of trust securing a loan upon the Lot recorded before the recording of the Declaration and all duly perfected mortgages or deeds of trust securing a loan that constitute a first lien mortgage upon the Lot. Sale or transfer of any Lot shall not affect the assessments lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due and from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a Lot Owner. Upon receipt of a written request from a mortgagee, the Declarant or Association shall notify by certified mail, return receipt requested, a mortgagee of any delinquent obligations or any default in the payment of any obligations of an Owner prior to taking any action against such Owner, which would affect the mortgagee.

#### ARTICLE IX: Insurance

All Owners of Lots on which dwelling structures are located are required to have fire and extended coverage insurance, including standard premises liability insurance coverage, in an amount sufficient to cover the full replacement cost thereof. In the event of damage to or destruction of any dwelling unit which would be covered by a standard fire and extended coverage insurance policy, the Owner of such dwelling unit shall have the affirmative responsibility of reconstructing or repairing it regardless of whether such Owner has such a standard fire and extended coverage insurance policy. In the event of the Owner's failure to repair or reconstruct such dwelling unit, the Association may, at its discretion, clean up the

debris or repair the damage and add the costs thereof to the assessment against the Lot upon which said dwelling unit is located, and collect such assessments pursuant to the provisions of Article VIII.

#### ARTICLE X: Easements

1. Easements Established: All Lots and Common Elements within the Subdivision shall be subject to such easements for driveways, walkways, parking areas, water line, sanitary sewers, storm drainage facilities, natural gas, telephone, cable television, and electric power lines and ingress and egress and for other purposes that may be established by the Declarant.
  - a. Streets in RIVERBEND FOREST: All streets in RIVERBEND FOREST shown on the Plat may be constructed to standards adopted by the County and may be dedicated as public rights-of-way.
  - b. Storm Water System: The Association shall be required to maintain the underground storm water system until such time as it has been accepted by the County.
2. Easements of Buncombe County and Public or Private Utilities: A perpetual easement is hereby established for the county, state, or public or private utilities serving the area, their agents, and employees, covering all Common Elements hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.
3. Easement for Construction Purposes: Declarant shall have full rights of ingress and egress to and through, over and about the Common Elements in the Subdivision during such period of time as Declarant is engaged in any construction or improvement work on or within the property. Declarant shall further have an easement for the purpose the storage of materials, vehicles, tools, equipment, etc., which are being utilized. No Owner, his guests, or invitees shall in any way interfere or hamper the Declarant, its employees, successors, or assigns, in connection with such construction, it being understood and agreed that the construction activities of Declarant or its contractors or subcontractors, so far as practical, shall not interfere with the quiet enjoyment of the Lots within the Subdivision.
4. Utility Contracts: The Declarant reserves the right to subject the Subdivision to a contract with City of Asheville, Metropolitan Sewer District, Duke Energy, Blossman Gas, Spectrum or other such utilities for the installation of service lines or equipment necessary to provide utilities to the Lots.

#### ARTICLE XI: Riverbend Forest Club Association

1. Riverbend Forest Club Association: Owners of Lots in the Subdivision will become members of the Riverbend Forest Club Association automatically upon the acceptance of a Lot. The primary purpose of Riverbend Forest Club Association is to own, manage, and maintain open space, trail system, and certain and occasional residential Lot(s) on land between Moffitt Road and the Swannanoa River, have the ability to increase the open space and trail system with other adjacent or nearby properties, and to increase the membership of Riverbend Club Association. The initial land of the Riverbend Forest Club Association is shown on Exhibit B. Members are described in the Riverbend Forest Club Covenants, Articles of Incorporations, and By-Laws of the Riverbend Forest Club Association. RCA, acting through its Board of Directors, shall have certain powers, rights, and duties with respect to the Property as more particularly set forth in the Riverbend Forest Club Covenants.
2. Lien Rights: RCA is entitled to a lien upon a Lot for any unpaid assessment for expenses incurred by RCA in the fulfillment of their maintenance, operation, and management responsibilities, as set forth in the Riverbend Forest Club Association.

3. Collection of Assessments: For the convenience of the Owners, the Board of Directors of the Associations shall agree to collect assessments due the Riverbend Forest Club from the Owners in the same manner and at the same time as assessments due the Association are collected. Collection of assessments due the Association shall not in any way limit or impair the rights of RCA to enforce collection of assessments as provided in this Declaration or the Riverbend Forest Club Covenants.

4. Responsibilities of this Association: If for any reason the Association refuses or fails to perform the obligation imposed on it under the terms of this Declaration, and under any other documents relevant to the Property, RCA shall be and is authorized to act for and in behalf of the Association in such respect that the Association refuses or failed to act, and any expenses thereby incurred by RCA shall be reimbursed by the Association.

#### ARTICLE XII: Obligations to Mortgagees

1. The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include the Deeds of Trust or other security instruments) encumbering any Lots located within the Subdivision:

- a. Declarant or Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Lot, upon request of such holder, of any default by the Lot Owner in the performance of any of such Owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty (60) days from the date of such default;
- b. First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against a Lot or any of the Common Elements and may pay overdue premiums on hazard insurance policies on the Common Elements or secure new hazard insurance coverage on the lapse of a policy for such Common Elements; and
- c. No provision herein shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in RIVERBEND FOREST pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Elements.

#### ARTICLE XIII: General Matters

1. Land Use Ordinances: The Ownership and use of Lots in the Subdivision shall be subject to the requirements, limitations, and conditions imposed by the applicable land use statutes, laws, ordinances, and regulations of the County of Buncombe and/or other governmental authorities with jurisdiction of the Subdivision, and each Lot Owner, its employees, agents, contractors, and subcontractors, shall be obligated to comply with the same.

2. Enforcement: Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, to recover damages, and/or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Association or any Lot Owner. In addition, the Association may impose reasonable fines pursuant to the Act against any Lot Owner for violation of the Declaration. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other Lot Owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions, or conditions contained herein, however long continued, shall not be deemed a waiver of the right to do so

hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of the covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fee as a part of such action.

3. Amendment and Modification: The Declarant does hereby declare the advantages accruing to the Subdivision from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in the Declaration, during the Declarant Control Period, the Declarant hereby reserves the absolute right to modify and/or amend the Declaration in whole or in part in the Declarant's sole and absolute discretion as the Declarant may deem proper and appropriate. After the end of the Declarant Control Period, any amendment to the Declaration may be adopted if proposed and approved at an annual meeting or specially called meeting of the Members upon (i) the affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, or (ii) the consent or action of the Declarant alone if necessary for the exercise of any development right or special right reserved to the Declarant herein, and such amendment once made, shall become effective only upon the recordation of the amendment in the Office of the Buncombe County Registry of Deeds. Whenever herein the Declarant has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Declarant. Nothing herein shall require or shall be construed so as to require the Declarant or its related persons or entities to subject all or any part of its remaining adjoining property to the Declaration.

4. Declarant Control: The "Declarant Control Period" shall mean that period of time from the date of the recording of these restrictions through the earlier of (i) that date upon which Declarant no longer owns any Lot as shown on the Plat of the Subdivision, or (ii) date upon which Declarant releases in writing its Declarant Control rights.

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IN WITNESS WHEREOF, the Declarant has caused this instrument to be duly executed on behalf of the Declarant with the consent and duly given authority of all its Managers the day and year first above written.

RBF Development, LLC, a North Carolina limited liability company

By: \_\_\_\_\_  
Robert L. Sulaski, Jr., Manager

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, a notary public of the above state and county, do hereby certify that Robert L. Sulaski, Jr., Manager of RBF Development, LLC, a North Carolina limited liability company, personally appeared before me and being personally known by me and who voluntarily executed the foregoing instrument as managers of the company as the authorized and official act of the company.

This the \_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

NOTARY SEAL