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CERTIFIED-FILED FOR RECORD
Barbara J. Hall
Recorder of Deeds
St. Charles County, Missouri
BY: MKIMBLE \$45.00

File #: _____

RECORDING DOCUMENT IDENTIFICATION SHEET

TITLE: FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF GOVERNANCE, COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS FOR THE NEW TOWN AT ST. CHARLES

DATE: September 14, 2017

GRANTOR: NT HOME BUILDERS, LLC
3333-4 Rue Royale
St. Charles, Missouri 63141

GRANTEES: FHRA, LLC
239 Fox Hill Road, St. Charles, MO 63301

The New Town at St. Charles General Assembly
3333-4 Rue Royale, St. Charles, MO 63301

Legal Description: See the attached Exhibit A, incorporated herein by reference; and all of the real property subject to and legally described in that Amended and Restated Declaration of Governance, Covenants, Easements, Conditions, and Restrictions for The New Town at St. Charles recorded in Book 6739, page 1323 in the Recorder of Deeds' Office of St. Charles County, Missouri (the "Declaration"). The property described on Exhibit A is property being released from the Declaration.

Note: The labels and designations set forth on this cover page are for purposes of permitting recording only and shall not amend or change the substance of the document.



FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION
OF GOVERNANCE, COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS
FOR THE NEW TOWN AT ST. CHARLES

THIS FIRST AMENDMENT is made as of the 14th day of September, 2017, to that certain Amended and Restated Declaration of Governance, Covenants, Easements, Conditions, and Restrictions for The New Town at St. Charles recorded in Book 6739, page 1323, in the Recorder of Deeds' office of St. Charles County, Missouri, as amended from time to time (the "Declaration"). Terms defined in the Declaration are used herein as defined therein unless otherwise indicated.

RECITALS

- A. Pursuant to the Declaration, NT Home Builders, LLC, a Missouri limited liability company ("NTHB"), is the sole "Founder" under the Declaration.
- B. Article III, Section 5(a), of the Declaration permits the Declaration to be amended prior to the Turnover Date by the Founder, if at its sole discretion, the Founder believes that such changes will better accomplish the objectives of The New Town at St. Charles ("New Town" or "the Community"), adjust to market conditions, or respond to changing land use conditions both within and without the Community.
- C. This Amendment is made prior to the Turnover Date which is defined in Article I, Section 41 as follows:

"Turnover Date" shall mean and refer to the earlier of (a) the date on which neither the Founder nor any Affiliate of the Founder no longer owns any Parcel within the Community or (b) the date on which Founder elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Board of Governors pursuant to this Declaration and the Bylaws and (ii) all voting rights in the Assembly reserved to the Founder pursuant to this Declaration and the Bylaws.
- D. NTHB owns at least one Parcel within the Community, the Turnover Date has not yet occurred, and NTHB has not relinquished any rights set forth in the Declaration, including, without limitation the right to amend the Declaration and release property therefrom.
- E. The last paragraph of the Recitals of the Declaration states that "The Founder . . . may choose, as a result of market conditions, not to add to the Community, to remove property from the Community, to change the development plan for the Community by altering street patterns, commercial areas, housing stock, and park areas or to change architectural specifications and criteria within the Community, all rights that are expressly reserved to the Founder as contained in Article III, Section 5 herein."
- F. Article I, Section 36 of the Declaration which defines "Regulating Plan" states, "Until the Turnover Date, the Regulating Plan is subject to changes based on market conditions,



Governmental Regulations and any other modifications which the Town Architect may, in its sole discretion, elect to make to the Regulating Plan.”

- G. Article III, Section 5(a) of the Declaration, “Founder’s Rights,” provides that “prior to Turnover Date, the Founder may, in its sole discretion, at any time and from time to time, make changes that the Founder believes will better accomplish the objectives of the Community, adjust to market conditions, or respond to changing land use conditions both within and without the Community”, including, ... “(iv) release all or any portion of the Community from the provisions of this Declaration, including, without limitation, any Lot, Parcel or Commons.”
- H. FHRA, LLC a Missouri limited liability company (“FHRA”) is the owner of that certain real property legally described on the attached Exhibit A, incorporated herein by reference (the “Property”)
- I. FHRA desires to develop the Property as a conventional real estate development in a manner that meets the terms and conditions herein described and that is not a "New Urbanist" development.
- J. The development of The New Town at St. Charles has shifted to the south and west from the original boundaries with the inclusion of new real property now being part of The New Town at St. Charles.
- K. Given this shift in the focus of the development of the Community, the shifted layout of various uses in this mixed-use development, and other economic changes in and around New Town, the Founder is willing to release the Property from the Declaration as requested by FHRA upon the condition that the Property is not developed in a "New Urbanist" style and that any development of the Property be subject to certain limitations as set out hereinbelow, all of which are acceptable to FHRA.
- L. The Founder desires to provide that all Commons added to New Town be of a type and condition, and maintained in a manner, that is harmonious with the Commons existing in New Town, and that any such new Commons be made subject to all requirements under the Declaration for Commons.
- M. In accordance with Article III, Section 5, the Founder desires to amend the Declaration as set forth below.

NOW, THEREFORE, in accordance with Article III, Section 5, of the Declaration, the Founder states that all of the terms and conditions described in the foregoing Recitals are true and correct, and hereby amends the Declaration as follows:

- 1. Removal. Pursuant to the authority vested in the Founder by the Declaration and in accordance with the terms of the Recitals; Article I, Section 36; Article V, Section 5, and in particular Subsection (a)(iv) of that Section of the Declaration, and strictly subject to the conditions set forth in



Paragraph 2 below, the Founder amends the Declaration to remove the Property from the Community that is subject to the Declaration and from the terms and provisions of the Declaration, and states that the Property is not subject to the Declaration.

2. The Restriction. The foregoing release of the Property from New Town, as set forth in Paragraph 1, is subject to the strict conditions subsequent that (i) all portions of the Property lying within a distance of five hundred (500) feet from the boundary line between the Property and New Town be developed in a manner that is consistent with the style and density and minimum lot sizes of 7,500 square feet that has been approved for Charlestowne Crossing as of the date of this Amendment (ii) no part of the Property shall be developed in a manner or style similar to New Town or using the principles of "New Urbanism" as determined by the Founder unless otherwise agreed to by the Founder; and (iii) any portion of the Property developed as common grounds or common areas shall be developed in a manner that is harmonious with the Commons in New Town (the "Conditions"). In the event that the Property is developed in a manner that violates the Conditions set forth in this Paragraph 2, then the removal and release of the Property provided under the terms of this Amendment shall be automatically rescinded and terminated, the Property shall be added to the Community, and the Property shall immediately be subject to all of the terms, covenants, easements, conditions, and restrictions of the Declaration, including, without limitation, all set-back rules, architectural requirements, the approval of the New Town Architect for any improvements, and any and all assessments levied by the New Town General Assembly (the "Restrictions"). In such event, FHRA acknowledges and agrees that the Declaration may be amended by Founder, or by the General Assembly acting through its Board, as applicable, without the consent of any party including FHRA, to add the Property to the Community and thereafter be subject to the Declaration. FHRA shall thereafter promptly take all such actions as may be necessary to cause the Property to comply with the Restrictions, including, without limitation, filing such applications and obtaining such approvals as may be necessary to comply with the Restrictions.

3. Mutual Benefit. FHRA expressly acknowledges and agrees (i) to the Conditions and Restrictions set forth in Paragraph 2 above; (ii) that the Conditions and Restrictions are for the mutual benefit of Grantee and the Property; and (iii) that but for the Conditions and Restrictions, the Founder would not release the Property from the Community or from the Declaration.

4. Covenants running with the Land. FHRA and the Founder agree that the Restrictions shall be binding upon FHRA, its successors and assigns and the Property, shall be included in any declaration, indentures, or restrictions for the Property, shall run with the land and shall be for the benefit of the New Town at St. Charles, the Founder, and the General Assembly.

5. Enforcement. Upon any violation or attempted violation of the Restrictions, the Founder or the General Assembly acting through its Board of Directors, shall have the right to seek injunctive relief from the Circuit Court of St. Charles County enjoining any violation of the Restrictions, the parties acknowledging that damages at law would be inadequate and difficult to calculate. If the Founder or the General Assembly brings an action for the enforcement of the Restrictions, Grantee shall pay any and all attorney's fees and costs of suit incurred by the Founder or the General Assembly in such action.



6. Venue and Jurisdiction. FHRA and the Founder agree that venue and jurisdiction in each action brought to enforce any term of agreement contained in this Amendment, the Conditions, or the Restrictions shall be in the Circuit Court of St. Charles County, Missouri.

7. Common Grounds. Article III, Section 1 of the Declaration is hereby amended by adding thereto the following Subsection (g):

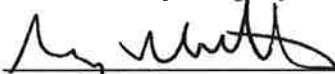
“g. Restriction on Additional Commons. No real property shall be added to the Community as Commons or changed to Commons within the Community and accepted by the General Assembly unless such additional Commons, including, without limitation, the improvements, water bodies and landscaping constructed or installed therein, are of a type, quality and condition and are maintained in a manner, that is harmonious with the Commons then existing in Phases 1, 2 and 3 of the Community. Any such addition of Commons or designation as Commons shall be reviewed by the Town Architect and approved by the Founder prior to such addition or designation. Furthermore, any real property added to the Community as Commons is hereby expressly made subject to any and all of the terms, conditions, and restrictions required for Commons as provided under this Declaration. Finally, no conveyance of any real property to the General Assembly shall be effective unless and until the General Assembly accepts such conveyance in writing in an instrument in recordable form signed by an officer or Board Member of the General Assembly and such instrument is recorded in the office of the St. Charles County Recorder of Deeds.”

8. No Other Change. The Declaration shall remain unchanged and in full force and effect except as otherwise provided herein.


IN WITNESS WHEREOF, the undersigned has set their hands the date first above written.

FOUNDER:

NT HOME BUILDERS, LLC,
a Missouri limited liability company

By: 
Greg Whittaker, Manager

FHRA, LLC

By: 
Its: MANAGER

STATE OF MISSOURI)
) SS
COUNTY OF ST. CHARLES)



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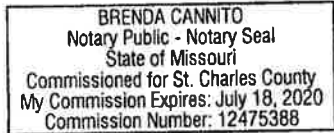
On this 1 day of September, 2017, before me appeared Greg Whittaker, to me personally known, who by me duly sworn, did say that he is the Gregory G Whittaker of NT HOME BUILDERS, LLC, a Missouri limited liability company, and said Greg Whittaker acknowledged that he executed the same on behalf of said limited liability company as the Manager thereof and said Greg Whittaker acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

Brenda Cannito
Notary Public

My term expires: 7-18-20

STATE OF MISSOURI)
) SS
COUNTY OF St. Charles)



On this 1st day of Sept., 2017, before me appeared TR Hughes, to me personally known, who by me duly sworn, did say that he is the Manager of FHRA, LLC, a Missouri limited liability company, and said TR Hughes acknowledged that he executed the same on behalf of said limited liability company as the Manager thereof and said TR Hughes acknowledged said instrument to be the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid the day and year first above written.

Marsha A. Wilkes
Notary Public

My term expires: Oct. 20, 2019





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EXHIBIT A
THE PROPERTY

A TRACT OF LAND BEING FHRA SUBDIVISION, ACCORDING TO PLAT BOOK 49 PAGES 7 AND 8 OF THE ST. CHARLES COUNTY RECORDS, SITUATED IN PART OF U.S. SURVEYS 223 THRU 227, 229 THRU 232, 234 THRU 237 AND 3280 OF THE ST. CHARLES COMMON FIELDS, TOWNSHIP 47 NORTH, RANGE 5 EAST, CITY OF ST. CHARLES, ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHWEST RIGHT OF WAY LINE OF BOSCHERTOWN ROAD, VARIABLE WIDTH, WITH THE NORTH RIGHT OF WAY LINE OF ISLAND HARBOR DRIVE, 60 FEET WIDE AND PRIVATE;

THENCE ALONG SAID NORTH RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 74.37 FEET, A RADIUS OF 195.00 FEET AND A CHORD BEARING NORTH 37 DEGREES 33 MINUTES 27 SECONDS WEST, 73.92 FEET; NORTH 48 DEGREES 28 MINUTES 57 SECONDS WEST, 144.65 FEET; NORTH 53 DEGREES 55 MINUTES 11 SECONDS WEST, 158.37 FEET; ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 85.72 FEET, A RADIUS OF 730.00 FEET AND A CHORD BEARING NORTH 57 DEGREES 17 MINUTES 00 SECONDS WEST, 85.67 FEET; NORTH 60 DEGREES 38 MINUTES 50 SECONDS WEST, 253.59 FEET; ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 367.38 FEET, A RADIUS OF 1638.15 FEET AND A CHORD BEARING NORTH 67 DEGREES 04 MINUTES 18 SECONDS WEST, 366.61; ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 406.11 FEET, A RADIUS OF 595.00 FEET AND A CHORD BEARING SOUTH 86 DEGREES 57 MINUTES 10 SECONDS WEST, 398.27 FEET; ALONG A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 82.51 FEET, A RADIUS OF 260.00 FEET AND A CHORD BEARING SOUTH 58 DEGREES 18 MINUTES 31 SECONDS WEST, 82.16 FEET AND NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 440.52 FEET TO THE SOUTHEAST LINE OF THE NEW TOWN AT ST. CHARLES PLAT SIX, A SUBDIVISION ACCORDING TO PLAT BOOK 44 PAGE 104 THRU 110 OF THE ST. CHARLES COUNTY RECORDS;

THENCE ALONG SAID SOUTHEAST LINE, NORTH 47 DEGREES 05 MINUTES 43 SECONDS EAST, 227.71 FEET TO THE SOUTHWEST LINE OF THE NEW TOWN AT ST. CHARLES PLAT SEVEN, ACCORDING TO PLAT BOOK 44 PAGE 239 OF THE ST. CHARLES COUNTY RECORDS;

THENCE ALONG SAID SOUTHWEST LINE AND THE SOUTHEAST LINE AND THE NORTHEAST LINE AND THE NORTHWEST LINE OF SAID PLAT SEVEN THE FOLLOWING COURSES AND DISTANCES: SOUTH 47 DEGREES 24 MINUTES 36 SECONDS EAST, 200.62 FEET; NORTH 47 DEGREES 05 MINUTES 43 SECONDS EAST, 139.43 FEET; SOUTH 47 DEGREES 24 MINUTES 36 SECONDS EAST, 50.15 FEET AND NORTH 47 DEGREES 05 MINUTES 43 SECONDS EAST, 327.01 FEET; NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 250.77 FEET; AND SOUTH 47 DEGREES 05 MINUTES 43 SECONDS WEST, 213.66 FEET TO THE NORTHEAST LINE OF SAID PLAT SIX;

THENCE ALONG SAID NORTHEAST LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 128.31 FEET; NORTH 42 DEGREES 35 MINUTES 24 SECONDS EAST, 9.00 FEET; NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 187.29 FEET; SOUTH 42 DEGREES 35 MINUTES 24 SECONDS WEST, 60.00 FEET; NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 37.00 FEET; SOUTH 42 DEGREES 35 MINUTES 24 SECONDS WEST, 32.00 FEET; NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 277.40 FEET; SOUTH 54 DEGREES 51 MINUTES 18 SECONDS WEST, 73.62 FEET; NORTH 35 DEGREES 08 MINUTES 42 SECONDS WEST, 109.00 FEET; NORTH 54 DEGREES 51 MINUTES 18 SECONDS EAST, 3.76 FEET; AND NORTH 35 DEGREES 08 MINUTES 42 SECONDS WEST, 106.23 FEET;



THENCE LEAVING SAID NORTHEAST LINE THE FOLLOWING COURSES AND DISTANCES: NORTH 42 DEGREES 35 MINUTES 24 SECONDS EAST, 26.55 FEET; NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 115.00 FEET; SOUTH 42 DEGREES 35 MINUTES 24 SECONDS WEST, 21.00 FEET; ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 21.99 FEET, A RADIUS OF 14.00 FEET AND A CHORD BEARING SOUTH 87 DEGREES 35 MINUTES 24 SECONDS WEST, 19.80 FEET TO SAID NORTHEAST LINE;

THENCE ALONG SAID NORTHEAST LINE, NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 450.70 FEET;

THENCE LEAVING SAID NORTHEAST LINE THE FOLLOWING COURSES AND DISTANCES: ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 12.21 FEET, A RADIUS OF 14.00 FEET AND A CHORD BEARING NORTH 22 DEGREES 24 MINUTES 54 SECONDS WEST, 11.83 FEET; NORTH 47 DEGREES 24 MINUTES 36 SECONDS WEST, 28.00 FEET; SOUTH 57 DEGREES 37 MINUTES 03 SECONDS WEST, 211.03 FEET TO SAID NORTHEAST LINE;

THENCE ALONG SAID NORTHEAST LINE THE FOLLOWING COURSES AND DISTANCES: ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 23.42 FEET, A RADIUS OF 14.00 FEET AND A CHORD BEARING NORTH 74 DEGREES 28 MINUTES 01 SECONDS WEST, 20.79 FEET; NORTH 26 DEGREES 31 MINUTES 19 SECONDS WEST, 645.94 FEET TO A POINT ON THE NORTHEAST LINE OF THE NEW TOWN AT ST. CHARLES PLAT TWO, A SUBDIVISION ACCORDING TO PLAT BOOK 43 PAGE 203 AND 204 OF THE ST. CHARLES COUNTY RECORDS;

THENCE ALONG SAID NORTHEAST LINE THE FOLLOWING COURSES AND DISTANCES: ALONG A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 21.99 FEET, HAVING A RADIUS OF 14.00 FEET AND A CHORD BEARING NORTH 18 DEGREES 28 MINUTES 41 SECONDS EAST, 19.80 FEET; NORTH 63 DEGREES 28 MINUTES 16 SECONDS EAST, 6.00 FEET AND NORTH 26 DEGREES 31 MINUTES 19 SECONDS WEST, 258.78 FEET TO THE SOUTHEAST LINE OF THE NEW TOWN AT ST. CHARLES PLAT NINE, A SUBDIVISION ACCORDING TO PLAT BOOK 48 PAGES 108 AND 109 OF THE ST. CHARLES COUNTY RECORDS;

THENCE ALONG SAID SOUTHEAST LINE, THENCE NORTH 42 DEGREES 33 MINUTES 39 SECONDS EAST, 395.55 FEET TO THE SOUTHWEST LINE OF THE NEW TOWN AT ST. CHARLES PLAT EIGHT, A SUBDIVISION ACCORDING TO PLAT BOOK 48 PAGE 243;

THENCE ALONG SAID SOUTHWEST LINE AND THE SOUTHEAST AND NORTHEAST LINE OF SAID PLAT THE FOLLOWING COURSES AND DISTANCES: SOUTH 47 DEGREES 26 MINUTES 21 SECONDS EAST, 124.74 FEET; SOUTH 26 DEGREES 31 MINUTES 19 SECONDS EAST, 28.47 FEET; NORTH 63 DEGREES 28 MINUTES 41 SECONDS EAST, 380.63 FEET; AND NORTH 40 DEGREES 03 MINUTES 39 SECONDS EAST, 218.83 FEET TO THE SOUTH LINE OF LOT "A" OF SAID FHRA SUBDIVISION;

THENCE ALONG THE SOUTHWEST LINE AND NORTHWEST LINE OF SAID LOT "A" THE FOLLOWING COURSES AND DISTANCE: NORTH 47 DEGREES 26 MINUTES 21 SECONDS WEST, 611.68 FEET AND NORTH 42 DEGREES 33 MINUTES 39 SECONDS EAST, 1,009.24 FEET TO THE SOUTHWEST RIGHT OF WAY LINE OF MISSOURI STATE HIGHWAY "B", 60 FEET WIDE;

THENCE ALONG SAID SOUTHWEST RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: SOUTH 47 DEGREES 26 MINUTES 21 SECONDS EAST, 2,003.58 FEET AND SOUTH 47 DEGREES 18 MINUTES 08 SECONDS EAST, 2,820.42 FEET TO THE NORTHWEST RIGHT OF WAY LINE OF BOSCHERTOWN ROAD, VARIABLE WIDTH;



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THENCE ALONG SAID NORTHWEST RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: SOUTH 49 DEGREES 14 MINUTES 57 SECONDS WEST, 160.19 FEET; SOUTH 50 DEGREES 31 MINUTES 57 SECONDS WEST, 388.95 FEET; SOUTH 53 DEGREES 04 MINUTES 57 SECONDS WEST, 773.14 FEET; SOUTH 52 DEGREES 34 MINUTES 57 SECONDS WEST, 74.23 FEET; NORTH 37 DEGREES 25 MINUTES 03 SECONDS WEST, 18.00 FEET AND SOUTH 52 DEGREES 34 MINUTES 57 SECONDS WEST, 532.93 FEET TO THE POINT OF BEGINNING;

THE ABOVE LOT "B" CONTAINING 211.486 ACRES IS BASED UPON A BOUNDARY RE-TRACEMENT SURVEY EXECUTED BY COLE AND ASSOCIATES, INC. DURING THE MONTHS OF AUGUST, 2014 AND FEBRUARY 2016 AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND CONDITIONS OF RECORD, IF ANY.