

FIRST AMENDMENT TO THE GARDENS OF RIVEREDGE RESTRICTIONS AND COVENANTS

THIS FIRST AMENDMENT TO THE GARDENS OF RIVEREDGE RESTRICTIONS AND COVENANTS (this “Amendment”) is made as of this ____ day of _____, 2023, by the undersigned owners of lots in the **GARDENS OF RIVEREDGE**, for that certain residential development situated in Shelby County, Tennessee, more commonly known as **GARDENS OF RIVEREDGE** (“Gardens of Riveredge”), and **THE WALNUT GROVE FOREST HILL ASSOCIATION, INC.**, a Tennessee non-profit corporation (the “Association”).

WITNESSETH:

WHEREAS, Gardens of Riveredge is a residential subdivision situated in Shelby County, Tennessee, and is more particularly shown and depicted on those certain plats recorded in the Register’s Office of Shelby County, Tennessee (the “Register’s Office”) in: **(i)** Plat Book 115, Page 25 (Phase 1 – composed of 39 Lots) (the “Phase 1 Plat”); **(ii)** Plat Book 132, Page 88 (Phase 1A – composed of 21 Lots) (the “Phase 1A Plat”); **(iii)** Plat Book 132, Page 89 (Phase 1B – composed of 13 Lots) (the “Phase 1B Plat”); **(iv)** Plat Book 122, Page 62 (Phase 2A – composed of 30 Lots) (the “Phase 2A Plat”); **(v)** Plat Book 130, Page 30 (Phase 2B – composed of 13 Lots) (the “Phase 2B Plat”); **(vi)** Plat Book 124, Page 64 (Phase 3 – composed of 3 Lots) (the “Phase 3 Plat”); **(vii)** Plat Book 130, Page 54 (Phase 4 – composed of 14 Lots) (the “Phase 4 Plat”); and **(viii)** Plat Book 131, Page 8 (Phase 5 – composed of 5 Lots) (the “Phase 5 Plat”) (the Phase 1 Plat, Phase 1A Plat, the Phase 1B Plat, the Phase 2A Plat, the Phase 2B Plat, the Phase 3 Plat, the Phase 4 Plat, and the Phase 5 Plat, collectively, being the “Plats”); and

WHEREAS, the Gardens at Riveredge are encumbered by and subject to those certain The Gardens of Riveredge Restrictions and Covenants (collectively, the “CCRs”) which are contained and shown on the Plats; and

WHEREAS, while the CCRs separately apply to each of the Phases of Gardens of Riveredge, the covenants, conditions, and restrictions contained in the various CCRs applicable to Gardens of Riveredge are the same; and

WHEREAS, Section 5 of the CCRs provides that they may be amended by a majority vote of the Lot Owners in the Phase encumbered by such CCRs; and

WHEREAS, since the CCRs must be amended by Phase, it is possible that this Amendment may not apply to certain Phases in Gardens of Riveredge; and

WHEREAS, in addition to the CCRs, the Phases at Gardens of Riveredge are encumbered by those certain: **(i)** Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated July 6, 1987, recorded in the Register’s Office as Instrument No. Z8 2589 (Phase 1) (the “Phase 1 Assessment Declaration”); **(ii)** Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated April 8, 1991, recorded in the Register’s Office as Instrument No. CD 4927 (Phase 1A) (the “Phase 1A Assessment Declaration”); **(iii)** Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated April 8, 1991, recorded in the Register’s Office as Instrument No. CD 4928 (Phase 1B) (the “Phase 1B Assessment Declaration”); **(iv)** Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated August 5, 1988, recorded in the Register’s Office as Instrument No. AP

6756 (Phase 2A) (the “Phase 2A Assessment Declaration”); (v) Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated March 23, 1990, recorded in the Register’s Office as Instrument No. BN 6203 (Phase 2B) (the “Phase 2B Assessment Declaration”); (vi) Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated December 9, 1994, recorded in the Register’s Office as Instrument No. EV 3835 (Phase 3) (the “Phase 3 Assessment Declaration”); (vii) Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated September 1, 1995, recorded in the Register’s Office as Instrument No. FH 1995 (Phase 4) (the “Phase 4 Assessment Declaration”); (viii) Declaration of Covenants and Restrictions for Payment of Annual Lot Assessment, dated September 1, 1995, recorded in the Register’s Office as Instrument No. FH 1108 (Phase 5) (the “Phase 5 Assessment Declaration”) (the Phase 1 Assessment Declaration, the Phase 1A Assessment Declaration, the Phase 1B Assessment Declaration, the Phase 2A Assessment Declaration, the Phase 2B Assessment Declaration, the Phase 3 Assessment Declaration, the Phase 4 Assessment Declaration, and the Phase 5 Assessment Declaration, collectively, being the “Assessment Declarations”); and

WHEREAS, the Assessment Declarations expressly provide that the Association has a financial interest in Gardens of Riveredge; and

WHEREAS, the Association was formed on June 23, 1987, with the filing of its Charter with the Tennessee Secretary of State as Control No. 000190584, a copy of which is recorded in the Register’s Office as Instrument No. Z8 2593; and

WHEREAS, as of the recordation of this Amendment, restrictions on long-term leasing in CCRs shall be governed by the provisions of Tenn. Code § 66-27-701, *et seq.* (the “Act”); and

WHEREAS, the terms and provisions of this Amendment comply with the Act

WHEREAS, the Association joins in this Amendment to evidence its consent to the provisions applicable to it; and

WHEREAS, a meeting of the Lot Owners of the Gardens of Riveredge has been held, or this Amendment has been approved by such Lot Owners in accordance with the terms and provisions of Tenn. Code § 48-57-108 without a meeting, and this Amendment was properly approved by Lot Owners holding not less than a majority of the total Lot Owners in the separate Phases of Gardens of Riveredge with their signatures evidenced by those certain attachments attached hereto and made a part hereof, collectively, as **EXHIBIT “A”** (which attachments are separately divided by Phase, with only the Phases adopting this Amendment attached to **EXHIBIT “A”**), as acknowledged and confirmed by the signatures of the President and Secretary of the Association below.

NOW, THEREFORE, the CCRs are hereby amended as follows:

1. **RECITALS:** The foregoing recitals are true and accurate.
2. **CAPITALIZED TERMS:** All capitalized terms not otherwise defined in this Amendment shall have the same meanings provided for in the CCRs.
3. **PROHIBITION AGAINST LEASING:** The CCRs are hereby amended to add the following Section 19:

SECTION 19
PROHIBITION AGAINST LEASING

(i) Notwithstanding anything to the contrary herein stated, any person (including any individual or business entity permitted by Tennessee law to hold title to real estate) who becomes an Owner of a Lot at Gardens of Riveredge after the date of recordation of this Amendment is prohibited from leasing, or entering into a lease-purchase or similar contract for, that Lot or any portion thereof. It shall be a violation of this Section subject to written waiver by the Board of Directors of the Association, in their sole and absolute discretion, if an Owner, or if more than one Owner, at least one of the Owners (including an Owner who may own less than 100% of the ownership interest in any Lot) shall not occupy the Lot on a permanent basis. It shall also be a violation of this Section, subject to written waiver of the Board of Directors in their sole and absolute discretion, if any person lives on any Lot without paying any rental or lease payment unless an Owner also occupies such Lot. For purposes of the preceding sentence, it shall not be a violation of this Section if, while an Owner is temporarily absent from the Lot, a person who is not an Owner of that Lot temporarily resides on such Lot. A person who “temporarily resides” on the Lot without violating this Section is meant to include persons commonly known as house sitters or other persons who stay in the Lot while the Owner is absent for the purpose of providing security, or caring for pets, or the like which belong to the Owner, and remain in the Lot while the Owner is absent. Such “Temporary Residence” by a person not an Owner shall not exceed a total of six weeks in any one calendar year.

(ii) Notwithstanding the foregoing, in the event that an Owner, due to medical or health reasons, or for any other good cause, desires to lease a Lot or any part thereof, or if an Owner wishes to extend any period of Temporary Residence as described in the preceding paragraph for a period longer than six weeks, then such Owner shall make application to the Board of Directors of the Association which may, by a majority vote, grant to such Owner an exception to the prohibition against leasing set forth in this Section upon such conditions and under such circumstances as the Board of Directors of the Association, in its sole and absolute discretion, may deem proper or necessary. The Board shall provide written approval or disapproval to any Owner who makes application for an exception to the prohibition against leasing under this Section.

(iii) It is the express intent of this Section that the prohibition against leasing shall apply only to persons who obtain title to their Lot subsequent to the date of recordation of this Amendment. Lot Owners who acquired title to their Lot prior to the date of recordation of this Amendment or who are otherwise exempted from the prohibitions of this Amendment shall be permitted to lease such Lot acquired prior to the date of recordation of this Amendment except as expressly provided in Section 19(vi) below.

(iv) Further, the prohibition contained herein shall not apply to institutional holders of a mortgage or deed of trust who obtain title to a Lot pursuant to foreclosure of such mortgage or deed of trust, as a result of a judicial sale, or any proceeding in lieu of foreclosure (the provisions of this prohibition against leasing shall apply to the holders of a mortgage or deed of trust, involved in seller financing or a similar transaction, who obtain title to a Lot pursuant to foreclosure of such mortgage or deed of trust, as a result of a judicial sale, or any proceeding in lieu of foreclosure). The prohibition against leasing herein contained shall also not apply to: a) individual persons who acquire title to a Lot by devise, inheritance, or operation of law from an Owner who is an Owner on the date of recordation of this Amendment in the Register’s Office of Shelby County, Tennessee; b) to any person who is an Owner on the date of recordation of this Amendment and who conveys their Lot to a living trust the beneficiaries of which are the Owners or their spouse, child, parent or sibling; or c) to any spouse, child, parent, or sibling of an Owner who acquires title by *inter vivos* conveyance from an Owner who is an Owner on the date of recordation of this Amendment. In the event of any inconsistencies or contradictory language between this Section and any other provisions of the Protective Sections, then the provisions of this Section shall control.

(v) If a Lot is owned by a limited liability entity (the “Limited Liability Entity”) including, but not limited to, a corporation, whether for profit or not for profit, a limited liability company, limited liability partnership, professional corporation or professional limited liability company, it shall be a violation of this Section, subject to written waiver by the Board of Directors of the Association, if

the Lot is not occupied on a permanent basis by one of the following: an officer, director, shareholder, member or partner of such Limited Liability Entity.

(vi) The foregoing notwithstanding, all Lot Owners, including those who took title prior to the recordation of this Amendment, are prohibited from leasing all or any portion of their Lot for any period of less than thirty (30) days (the "Temporary Leasing Prohibition"). It is the intent of this paragraph to prohibit transient or short term rentals under arrangements such as a home exchange or time share, and also under such programs commonly known as "vacation rental by owner" (VRBO), Airbnb, and the like. Notwithstanding the provisions of this Section 19(vi), any Lot Owner may apply for a waiver under Section 19(ii) to the Temporary Leasing Prohibition of this Section 19(vi).

(vii) In the event of any violation of this Article by an Owner, the Association shall be entitled to any remedy available at law or in equity from such Owner including, but not limited to, damages and injunctive relief together with any attorney's fees (including appellate attorneys' fees) incurred by the Association and all costs and expenses of whatever type, kind, or nature expended by the Association to enforce any of the provisions of this Article, whether such enforcement is by way of non-judicial or judicial action. Further, in the event the Association is required to defend any actions taken by it or initiated against the Association, to interpret, enforce, or otherwise address, the terms and provisions of this Article, the Association shall be entitled to recover the costs of the proceeding and its attorneys' fees (including appellate attorneys' fees).

4. FULL FORCE AND EFFECT: Except as modified herein, all other terms and provisions of the CCRs shall remain in full force and effect as if this Amendment had been incorporated in the CCRs as originally executed.

5. CONFLICT: In the event of any conflict between the terms and provisions of this Amendment and the CCRs, the terms and provisions of this Amendment shall control.

6. CERTIFICATION OF MAILING: By executing this Amendment, the President and Secretary of the Association acknowledge and certify that, in accordance with the Bylaws of the Association, all members of the Association were mailed notice of this Amendment prior to any vote being held on this Amendment in accordance with the Act.

IN WITNESS WHEREOF, a meeting of the Lot Owners of the Gardens of Riveredge has been held, or this Amendment has been approved by such Lot Owners in accordance with the terms and provisions of Tenn. Code § 48-57-108 without a meeting, and this Amendment was properly approved by Lot Owners holding not less than a majority of the total Lot Owners in the separate Phases of Gardens of Riveredge with their signatures evidenced by those certain attachments attached hereto and made a part hereof, collectively, as **EXHIBIT "A"** (which attachments are separately divided by Phase, with only the Phases adopting this Amendment attached to **EXHIBIT "A"**), as acknowledged and confirmed by the signatures of the President and Secretary of the Association below.

[THE FOLLOWINGS PAGE ARE THE SIGNATURE PAGES]

THE ASSOCIATION:

THE WALNUT GROVE FOREST HILL
ASSOCIATION, INC.,
a Tennessee non-profit corporation

By: _____
Name: _____
Title: President

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, of the state and county mentioned, personally appeared _____, President of THE WALNUT GROVE FOREST HILL ASSOCIATION, INC., a Tennessee non-profit corporation, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the President of THE WALNUT GROVE FOREST HILL ASSOCIATION, INC., a Tennessee non-profit corporation, the within named bargainer, a corporation, and that she/he as such President, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as its President.

WITNESS MY HAND AND OFFICIAL SEAL at office, this ____ day of _____, 2023.

NOTARY PUBLIC
My Commission Expires: _____

By: _____
Name: _____
Title: Secretary

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned, of the state and county mentioned, personally appeared _____, Secretary of THE WALNUT GROVE FOREST HILL ASSOCIATION, INC., a Tennessee non-profit corporation, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the Secretary of THE WALNUT GROVE FOREST HILL ASSOCIATION, INC., a Tennessee non-profit corporation, the within named bargainer, a corporation, and that she/he as such Secretary, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as its Secretary.

WITNESS MY HAND AND OFFICIAL SEAL at office, this ____ day of _____, 2023.

NOTARY PUBLIC
My Commission Expires: _____

EXHIBIT "A"
EVIDENCE OF APPROVAL BY LOT OWNERS BY PHASE

PHASE 1

PHASE 1A

PHASE 1B

PHASE 2A

PHASE 2B

PHASE 3

PHASE 4

PHASE 5