

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
NORTH FORTY MANOR – PHASE 2

THIS DECLARATION of Covenants, Conditions and Restrictions (herein called "Declaration") is made effective as of the ____ day of November, 2023, by North Forty Undertaking, LLC, a Texas LLC, (herein called "Declarant").

WITNESSETH:

WHEREAS, Declarant owns that certain property described in Plat _____, recorded in Document No. _____, Official Records of Smith County, Texas (the "Property"); and

WHEREAS, in order to enable Declarant to implement a general plan of development and accomplish the development of such lands as a first-class residential development of high quality and standards in a consistent manner, with continuity, and to insure the creation of an architecturally harmonious subdivision, Declarant desires to subject the Property, as hereinafter defined, to the covenants, conditions and restrictions hereinafter set forth (herein collectively called the "Covenants");

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed Subject to the Covenants,

ARTICLE I
DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

A. "Covenants" shall mean the covenants, conditions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.

B. "Declarant" shall mean North Forty Undertaking, LLC, a Texas LLC, and any successor and assign of Declarant's rights and powers hereunder, but with respect to any Such Successor or assign (1) such successor or assign shall not be deemed to be a "Declarant" unless Such successor or assign is designated as such pursuant to a written instrument signed by Declarant (which written instrument shall be filed of record in the Official Public Records of Smith County, Texas, designating that part of the Property to which it relates) and (ii) Such Successor or assign Shall Only have those rights and powers of Declarant that are specifically assigned by such written instrument.

C. "Declarant Land" shall mean such part or parts of the Property, including but not limited to the Lots owned by Declarant, together with the buildings, structures and improvements thereon, if any, as may be owned now or at any time hereafter by the Declarant, for as long as the Declarant is the owner thereof. Declarant Land shall include any Lot or parcel of the Property which is reacquired by Declarant through foreclosure and reconveyance or assignment in lieu of foreclosure or in Cancellation of any purchase money indebtedness owed to Declarant.

D. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as amended or supplemented from time to time.

E : "Deed" shall mean a deed or other instrument conveying the fee simple title to all or any portion of the Property, including but not limited to a Lot.

F. "Dwelling Unit" shall mean any portion of a building situated on a Lot designed and intended for use and occupancy as a residence by a single family.

G. "Exempt Property" shall mean the following parts of the Property:

(1) All land and Permanent Improvements owned by or dedicated to and accepted by the United States, the State of Texas, the County of Smith, or any political subdivision thereof, for as long as such entity or political subdivision is the Owner thereof, or for so long as said dedication remains effective.

H. "Lot" shall mean any lot described in Plat _____, recorded in Document No. _____, Official Records of Smith County, Texas, together with any lots which may, from time to time, result from the resubdivision, combination or division of any of such lots, as may be shown upon a plat or plats of the Property or any part thereof now or hereafter filed for record in the Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time). The term "Lot" shall also include any other portion of the Property which may, from time to time, be shown upon the aforementioned plat or plats (as same may be amended from time to time) and which is designated on such plat or plats to be a Lot by a separate written instrument executed by Declarant, or its successors or assigns, filed of record in the Official Public Records of Smith County, Texas.

I. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot but excluding those having such interest merely as security for the performance of an obligation.

J "Permanent Improvements" shall mean with respect to any Lot or any other portion or parcel of the Property, any and all improvements, structures, and other materials and things (including, but without limitation, trees, berms, shrubs, hedges, and fences) which, at the time of each Assessment, are located thereon.

K. "Plat" shall mean the subdivision plat of any portion of the Property presently on file in the Map and Plat Records of Smith County, Texas, and any other plat or plats of all or any portion of the Property now or hereafter filed for record in the Plat Records of Smith County, Texas (as such plat or plats may be amended from time to time). The streets shown on the Plat, unless otherwise stated on the Plat, have been dedicated to the public.

L. "Person" shall mean and refer to an individual, corporation, partnership, association, trust or other legal entity or any combination thereof.

M. "Property" shall mean:

(1) The land described in Plat _____, recorded in Document No. _____, Official Records of Smith County, Texas; and

(2) Additional adjacent land subjected to this Declaration, if any.

O. "Subdivision" shall mean the residential subdivision located in Smith County, Texas, and known as North Forty Manor – Phase 2, according to the Plat of said subdivision on that

certain Plat ____, recorded in Document No. _____, Official Records of Smith County, Texas, as the same may be amended or supplemented from time to time, and where the context requires, any other subdivision within the Property as shown by a plat filed for record by Declarant in the Plat Records of Smith County, Texas.

P. "Subsidiary Declaration" shall mean any declaration of Covenants conditions, assessments, or restrictions applicable to any portion of the Property which is recorded after the effective date hereof or which is otherwise subject hereto.

Q. "Supplemental Declaration" shall mean a supplement to this Declaration recorded as provided herein.

ARTICLE II

COVENANTS BINDING ON PROPERTY AND OWNERS

2.01 Property Bound. From and after the date of recordation of the Declaration, the Property shall be subject to the Covenants, and the Covenants shall run with, be for the benefit of, bind, and burden the Property.

2.02 Owners Bound. From and after the date of recordation of the Declaration, the Covenants shall be binding upon and inure to the benefit of each Owner and his heirs, executors, administrators, personal representatives, successors, and assigns, whether or not so provided or otherwise mentioned in the Deed. Except with respect to the Exempt Property, each Owner of a Lot for himself, his heirs, executors, administrators, personal representatives, successors, and assigns, expressly agrees to pay, and to be personally liable for, the Assessments provided for hereunder, and to be bound by all of the Covenants herein set forth.

ARTICLE III

GENERAL RESTRICTIONS

3.01 Single-Family Residential Purposes. All Lots in the Property shall be used only for single-family residential purposes. No noxious or offensive activity of any sort shall be permitted, nor shall anything be done on any Lot which may be or become an annoyance or nuisance to the neighborhood. No Lot in the Property shall be used for any commercial, business or other professional purposes, even though such business, professional, or commercial use be subordinate or incident to the use of the premises as a residence.

3.02 Types of Structures. No building shall be erected, altered, or permitted to remain on any Lot in the Property other than one (1) detached single-family residential dwelling not to exceed two and one-half (2 1/2) stories in height. Provided, however, that each Lot may contain an outbuilding or shop so long as the side of the building facing the road is composed of the same exterior materials as the residence. Manufactured homes are strictly prohibited.

3.03 Minimum Square Footage. The heated and cooled living area of each residence

(exclusive of porches, patios, garage, terraces, or driveways) on each Lot shall not be less than Three Thousand (3,000) square feet.

3.04 Minimum Setbacks. As to any Lot, except with respect to driveways, retaining walls, fences, planters, hedges, or other screening material, no Permanent Improvement or any part thereof, shall violate the setback lines that are set forth on the Plat. As to any additional land, if any, subjected to this Declaration, the plat regarding that additional land shall govern. Except as otherwise may be designated on said plat, the front setback line for Lots 9-11 and 198-204 shall be seventy-five feet (75') from the street, the front setback line for Lots 7, 8, 12 and 197 shall be fifty feet (50') from the street the side setback line shall be fifty feet (50') from the adjoining property line or a side street, and the rear setback line shall be fifty feet (50') from the rear property line.

3.05 Entrances and Driveways. Any improvement located at the entrance to the Lot shall be made with rock or stone. All driveways must be concrete, asphalt or crushed rock and shall be maintained in a condition that is free of standing water and/or mud. Each Owner shall repair at his expense any damage to the street occasioned by connecting the driveway thereto.

3.06 Construction Materials. All structures shall consist of no less than fifty percent (50%) brick, acceptable stone veneer, or acceptable "stucco-type" material, including EIFS (exterior insulating finishing system). The use of cross ties or timbers in any retaining wall is prohibited.

3.07 Prohibited Activities. The firing of any rifle or pistol and hunting of any kind shall be prohibited. The firing of a shotgun is permissible provided that it can be done in a safe environment and in compliance with all applicable laws and ordinances. The use of all-terrain vehicles (ATV) shall be prohibited. Provided, however, that golf carts and wide by sides are permissible.

3.08 Air Conditioners and Heaters. No window or wall type air Conditioners or heater shall be permitted on any Lot.

3.09 Damages During Construction. Each Owner shall take care not to cause damage to any street, easement or any other portion of or improvement on the Property during construction or alteration or any improvement on any Lot. In the course of any such construction or alteration, such Owner shall repair any damage so caused. Each Owner shall indemnify and hold harmless the Declarant from any and all costs, losses, damages and attorneys' fees incurred by the Declarant or Association in connection with or arising out of any such construction or alteration.

3.10 Architectural Control. Each Owner shall submit plans and any drawings for any proposed improvements to be constructed on any Lot to the Declarant for approval. If Declarant has not denied the plans within ten (10) days of the actual receipt of the plans, the proposed construction shall be deemed to have been approved.

3.11 Animals. No animal, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, except horses, chickens, dogs, cats, or other household pets. They may be kept, provided that they are not kept in such numbers as to be a nuisance to area property owners. Cows and pigs are prohibited. Notwithstanding anything contained herein, no Owner shall keep on any Lot any dog of a Rottweiler or Pit Bull breed (or any cross bred dog of these breeds).

3.12 Recreational Vehicle Parking. Any recreational vehicle (RV) must be parked inside a garage or other building.

3.13 Fences. Any fence located along the side or back of a Lot shall be a four (4) rail, 2'x4' field fence with 2 3/8" galvanized posts and 6' cedar pickets. Any fence along the front of the Lot along the roadway must be five (5) rail, 2 3/8" pipe fence with field on the bottom three feet (3'). Each Owner shall maintain the fences and fence line in good repair and the cedar pickets shall be stained at least once every two (2) years..

3.14 Agricultural and Timber Exemption. Each Owner shall use its best efforts to take such actions as may be necessary to maintain an Agricultural and Timber Exemption for ad valorem tax purposes with the applicable taxing authority.

3.15 Erosion Control. Each Owner shall take all reasonable steps necessary to prevent any erosion of soil or any part of any Lot onto the Lot of another Owner. Each Owner shall takes all reasonable steps necessary to repair any erosion that may take place.

ARTICLE IV

TERM, AMENDMENTS, TERMINATIONS

4.01 Term; Method of Termination. This Declaration shall be effective upon the date of recordation, hereof and, as amended from time to time, shall continue in full force and effect to and including December 31, 2045. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting eighty percent (80%) of the total votes (each Owner other than Declarant having one vote per Lot owned with Declarant having three votes per Lot owned), present at the meeting held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. However, no amendment shall have retroactive application.

4.02 Amendments. This Declaration may be amended or changed in whole or in part at any time by obtaining (i) the affirmative vote of fifty-one percent (51%) of the total votes each Owner other than Declarant having one (1) vote per Lot owned with Declarant having three (3) votes per Lot owned present at a special meeting called pursuant to Section 4.03.

4.03 Election Procedures for Amendments and Termination. The affirmative votes required under Section 4.01 or 4.02 shall be obtained and evidenced by the requisite vote by the Owners (including Declarant) present at a meeting of Owners duly called by at least ten (10) Owners or by the Declarant pursuant to notice to all of the Owners on or prior to ten (10) days before the date of the meeting at which meeting the requisite percentage of Owners, in person or by proxy, vote to so amend or terminate this Declaration (and the Covenants herein). The notice of the meeting must set forth the proposal as to amendment of this Declaration (and/or the Covenants contained herein) and such affirmative vote of the requisite percentage of Owners must be evidenced by minutes of the meeting duly certified by the Owners who called the meeting or the Declarant. In any event, a copy of the minutes must be delivered to the Declarant. There shall be no quorum requirements for any meetings held pursuant to this Section.

4.04 Recording of Amendments. Upon the requisite percentage of Owners duly voting to

amend this Declaration (and/or the Covenants contained herein) and upon the other conditions set forth in Section 4.01 and 4.02 (as the case may be) and Section 4.03 of this Article being satisfied, then this amendment shall be executed by the Declarant, placed in recordable form, and filed of record in the Official Public Records of Smith County, Texas, accompanied by a statement that the requisite percentage of Owners have voted to make Such amendment to this Declaration.

4.05 Effect. Upon the filing of an amendment in accordance with Section 4.04, this Declaration and the Covenants, as amended, shall remain in full force and effect.

ARTICLE V

RESERVATION OF RIGHT TO RESUBDIVIDE AND REPLAT RESERVED AREA AND LOTS

Subject to the approval of any and all appropriate governmental agencies having jurisdiction, Declarant hereby reserves the right at any time while it is the Owner thereof to subdivide or resubdivide, as the case may be, and/or plat or replat, as the case may be, all or any portion of Declarant Land, the Common Areas and any Lot or Lots without the consent of any Owner.

ARTICLE VI

MISCELLANEOUS

6.01 Interpretation of the Covenants. Except for judicial Construction, the Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the Covenants and provisions hereof.

6.02 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

6.03 Rule Against Perpetuities. If any interest purported to be created by this declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) if applicable, those of the issue of the Declarant who are living at the time the period of perpetuities starts to run on the challenged interest.

6.04 Change of Circumstance. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstance shall operate to extinguish, terminate, or modify any of the provisions of this Declaration.

6.05 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Declarant shall have the right to

adopt rules and regulations with respect to all other aspects of the Declarant's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

6.06 Declarant's Disclaimer of Representations. Anything to the Contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the Official Public Records of Smith County, Texas, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

6.07 Limitation of Liability. In the absence of gross negligence or willful misconduct attributable to Declarant or its successors or assigns, neither Declarant nor its successors or assigns shall have any liability arising out of the performance or nonperformance of any of the rights and powers reserved unto Declarant, its successors or assigns pursuant to this Declaration.

6.08 Successors and Assigns of Declarant. Any reference in this Declaration to Declarant Shall include any successors or assigns of any of Declarant's rights and powers hereunder.

6.09 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

6.10 Captions and Titles. All captions, titles, or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only, and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof, or to be used in determining the intent or context thereof.

6.11 Notices. Any notice required or permitted to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, delivery shall be deemed to have been made twenty-four (24) hours after a copy of the notice has been deposited in the United States mail, postage prepaid, registered or certified mail, addressed to each such person at the address given by such person to the party sending the notice or to the address of the Dwelling Unit of such person if no address has been given. Such address may be changed from time to time by notice in writing.

6.12 Prior Recorded Instruments. This Declaration and all of the provisions hereof are expressly Subject to all prior recorded documents affecting the Property, including without limitation, the Reservation of Architectural Control as 'defined herein.

6.13 Enforcement of the Covenants. Notwithstanding anything to the contrary herein, in the event of any violation or attempted violation of any of the provisions hereof, including any of the Covenants, enforcement shall be authorized by any proceedings at law or in equity against any person or persons violating or attempting to violate any of such provisions, including proceedings to restrain or prevent such violation or attempted violation by injunction, whether

prohibitive in nature or mandatory in commanding compliance with such provisions; and it shall not be a prerequisite to the granting of any such injunction to show inadequacy of legal remedy or irreparable harm. Likewise, any person entitled to enforce the provisions hereof may recover such damages as such person has sustained by reason of the violation of such provisions.

IN WITNESS WHEREOF, the undersigned have hereunto caused their names to be signed by the signature of their duly authorized official as of the day and year first above written.

**North Forty Undertaking, LLC, a
Texas limited liability company**

By: _____

Name: Dustin Davis

Title: Managing Member

STATE OF TEXAS,

COUNTY OF SMITH

This instrument was acknowledged before me on the ____day of November, 2023, by Dustin Davis, as Managing Member of North Forty Undertaking, LLC.

NOTARY PUBLIC STATE TX

Printed Name of Notary:

My commission expires: _____

After recording, return to:

North Forty Undertaking, LLC

