

Prepared by and return to: Lori P. Jones, P.O. Box 10669, Raleigh, NC 27605

STATE OF NORTH CAROLINA

AMENDMENT TO AMENDED AND
RESTATED DECLARATION OF
RESIDENTIAL COVENANTS,
RESTRICTIONS AND EASEMENTS
FOR 5401 NORTH

COUNTY OF WAKE

THIS AMENDMENT to the Amended and Restated Declaration of Residential Covenants, Restrictions and Easements for 5401 North is made this 30th day of September, 2021, by 5401 East Development, L.L.C., a Louisiana limited liability company and successor by merger to EV-5401 NORTH, L.L.C., in its role as Declarant.

WITNESSETH:

WHEREAS, EV-5401 NORTH, L.L.C. caused to be recorded an Amended and Restated Declaration of Residential Covenants, Restrictions and Easements for 5401 North in Book 16481, Page 1398 in the Wake County Registry, which was thereafter amended and supplemented, including in Book 16773, Page 1488; Book 16864, Page 2587; Book 17029, Page 2284; Book 17118, Page 2428; Book 17268, Page 839; Book 17363, Page 2353; Book 18191, Page 2441; and Book 18408, Page 79, all of the Wake County Registry (as amended and supplemented of record, collectively, the "Declaration"); and

WHEREAS, Article 18.1 of the Declaration states that during the Declarant Control Period, the Declaration may be amended, changed or added to at any time and from time to time by an instrument executed by Declarant and recorded in the Wake County Registry without the requirement of the consent of any Owners or their mortgagees; and

WHEREAS, the Declarant Control Period has not expired; and

WHEREAS, Declarant desires to amend the Declaration as set forth below, in furtherance of Declarant's intent that the residential real property subject to the Declaration be primarily owner-occupied;

NOW, THEREFORE, the undersigned does hereby declare that the Amended and Restated Declaration of Residential Covenants, Restrictions and Easements for 5401 North is amended by deleting Article 16 entitled "Leasing and Occupancy of Units" and inserting in lieu thereof the following new Article 16:

16. **LEASING AND OCCUPANCY OF UNITS.** No Owner other than Declarant may occupy or lease a Unit except as set forth below. For the purposes of this Article 16, the term "lease" refers to the regular, exclusive occupancy of a Unit by any person other than the Owner, whether such person is paying rent to the Owner. However, occupancy by a roommate of an Owner when the Owner occupies the dwelling as the Owner's primary residence, or occupancy by an immediate family member of the Owner whether or not the Owner resides on the property, shall not be deemed a lease. The term "immediate family member" refers to a spouse or domestic partner of the Owner, or a child, stepchild, grandchild, grand-stepchild, or parent of the Owner or of the Owner's spouse or domestic partner.
- 16.1 Residential Use Only. Use and occupancy of the Units is restricted to residential uses only. These use restrictions shall not be construed in such a manner as to prohibit an Owner or a Permitted User from maintaining his personal professional library, keeping his personal business or professional records or accounts or handling his personal, business, or professional telephone calls, electronic transmissions, or correspondence in and from his Unit to the extent permitted by applicable law; provided such activities do not interfere with the quiet enjoyment of other Units. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be permitted to use Units which Declarant owns or leases as model apartments, as sales, leasing, construction, management or other offices.
- 16.2 Leased Units. An Owner may lease his Unit, but only in accordance with the following provisions:
- 16.2.1 Leasing Cap. Except as set forth herein, no more than twenty percent (20%) of Units shall be leased at any given time (the "Leasing Cap"). As long as Declarant owns any property subject to the Declaration, or any property that is part of the Future Development Property, Declarant may issue additional Leasing Permits over and above a figure that is twenty percent (20%) of Units, as long as Declarant's issuance of permits does

not exceed twenty percent (20%) of the total number of Units that are permitted to be built pursuant to the Site Plan. Notwithstanding the foregoing, any Owner identified on Exhibit A or any Owner who acquired title to a Unit before March 19, 2021, may rent that Owner's Unit even if such rental would exceed the Leasing Cap, and no Leasing Permit shall be required for that rental. However, such Units shall be counted towards determining the level of the Leasing Cap.

16.2.2 Leasing Permits. Except as otherwise set forth herein, prior to leasing a Unit, the Owner shall apply in writing to the Board for a "Leasing Permit". The Board will consider written requests for a Leasing Permit at the next regularly scheduled Board meeting following the receipt of such request. If granting of the permit would exceed the Leasing Cap, no Leasing Permit shall be issued. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list and shall be issued a Leasing Permit if they so desire when the number of outstanding Leasing Permits falls below the Leasing Cap. Leasing Permits shall be issued for a one (1) year period and shall be renewed for an additional one (1) year period upon request. A Leasing Permit shall not be granted for any subsequent consecutive year if there are other Owners on the waiting list that desire to lease.

16.2.3 Hardship Permits. Under demonstrated hardship conditions, the Board in its sole discretion may waive the rental cap requirements of Section 16.2.1 and allow a Unit to be rented in excess of the Leasing Cap via a "Hardship Permit". In determining whether hardship conditions have been demonstrated, the Board shall consider: (1) the nature, degree and likely duration of the hardship; (2) the harm, if any, which will result to the community if the Hardship Permit is granted; (3) whether the owner has been granted a Hardship Permit previously; (4) the owner's ability to cure the hardship; and (5) the overall number of leased Lots, including via Hardship Permits. Any lease allowed pursuant to a Hardship Permit shall have a term of not more than one (1) year. Owners may thereafter apply for an additional Hardship Permit, but such permit is not guaranteed.

16.2.4 Revocation of Permits. A Leasing Permit or Hardship Permit shall be automatically revoked if (i) the Owner fails to lease the Unit within 90 days of the permit having been issued; (ii) the

Owner fails to have the Unit leased for any consecutive 90-day period thereafter; (iii) the Owner sells or otherwise conveys the Unit to another person or entity whether voluntarily or involuntarily; or (iv) the Owner advises the Board that the Owner no longer wishes to lease the dwelling. In the event a permit is revoked or surrendered, permission to lease shall be granted to the next Unit on the waiting list, on a first-come, first-served basis. In addition to a wait list, the Board shall maintain a list of Units that are leased, and the terms of the respective leases, for the purpose of determining the number of Units that are leased at any given time.

- 16.2.5 Lease Requirements. All lease agreements shall be in writing and shall be for a term of not less than twelve (12) months. Only entire Units may be leased, and no subleases or assignments of leases are allowed. All lease agreements shall incorporate the requirements of the Declaration, Bylaws, and rules and regulations of the Association, and shall require any lessee to abide by all the obligations set forth in those documents as a condition of the lease agreement. The lease agreement must state that any failure of a Tenant to comply with the terms of such documents shall be a condition of default under the lease.
- 16.2.6 Provision of Documents to Lessees; to Board. Owners are required to provide Tenants with a copy of the Declaration, Bylaws, and rules and regulation of the Association prior to the commencement of the lease term; provided, however, Tenant's obligations shall not be affected by the failure to receive the foregoing documents. A copy of the executed lease agreement shall be filed with the Board within fifteen (15) days of the date of signing such agreement or the date the Tenant first takes up occupancy, whichever occurs first.
- 16.2.7 Rights of Association. Pursuant to Section 11.9 of this Declaration, the Association has the right to collect all rental payments due the Owner and apply them against unpaid Assessments if, and to the extent that, the Owner is in default in the payment of Assessments. The Board of Directors shall also have the power and authority to terminate the lease and/or bring proceedings to evict the Tenant in the name of the Owner if either the Tenant defaults under the lease or the Association forecloses a lien for unpaid Assessments on the Unit. All tenancies are hereby made subordinate to any lien filed by the

Association, whether prior or subsequent to such lease. If an Owner fails to include any of the required provisions set forth in this Article 16 in a lease, the provisions shall be deemed to be included and part of such lease.

16.2.8 Transient Rental Prohibited. No Unit may be leased for hotel or transient purposes. It is the intent of this Declaration that all leases or rentals of Units be for residential purposes of at least six (6) months in term, and not for short-term habitation (including via programs such as Airbnb and similar enterprises).

16.2.9 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10).

Except as amended hereinabove, the remaining portions of the Declaration are and shall remain unchanged and in full effect. This Amendment to the Amended and Restated Declaration of Residential Covenants, Restrictions and Easements for 5401 North shall be effective from the date of its recording in the Wake County Registry; provided, however, that Sections 16.2.1, 16.2.2, 16.2.3, and 16.2.4 shall not become effective as to any Owner identified on Exhibit A or any Owner who acquired title to a Unit before March 19, 2021, until that Owner's Unit is transferred to a third party, whether such transfer is voluntary or involuntary. Upon transfer or conveyance of the Unit, all provisions of this amendment shall apply in full force.

[Signature Page Follows]

IN WITNESS WHEREOF, Declarant hereby executes this instrument by and through its duly authorized representatives this 30th day of September, 2021.

Declarant:

5401 EAST DEVELOPMENT, L.L.C.
a Louisiana limited liability company

By: Engquist Management, LLC, a Louisiana limited liability company, Its Manager

By: [Signature]
Todd Waguespack,
its Authorized Representative

STATE OF Louisiana

PARISH
COUNTY OF East Baton Rouge

ACKNOWLEDGEMENT

I, JACQUES R. WAGUESPACK a Notary Public of the County and State aforesaid, certify that Todd Waguespack of whose identity I have personal knowledge, personally appeared before me and acknowledged that the signature on the record presented is his signature and that he voluntarily executed the foregoing instrument for the purpose stated therein and in the capacity indicated and with full authority to do so.

Witness my hand and official stamp or seal, this 30th day of September, 2021.

[Signature]
Notary Public

JACQUES R. WAGUESPACK
Printed Name

My Commission Expires: for life

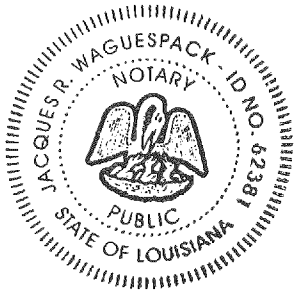


EXHIBIT A

- 1) Beda Jain – 6133 Giddings Street (Cottage 2226)
- 2) Jayakumar Srinivasan – 6608 Perry Creek Rd (TH 1239)
- 3) Jyotsna Kundur – 6606 Perry Creek Rd (TH 1240)
- 4) Gurrarakonda Naidu – 6301 Perry Creek Rd (TH 2296)
- 5) Bharath Mandadi – 6303 Perry Creek Rd (TH 2297)
- 6) Santhana Jeyapaul and Devakani Santhana – 6307 Perry Creek Rd (TH 2299)
- 7) Siddartha Narayan Das and Pranavi Rameshkumar – 6309 Perry Creek (TH 2300)
- 8) Varun Ramanujam and Sushma Bandarupalli – 6311 Perry Creek Rd (TH 2301)
- 9) Veerasatyasree Chilemanani and Jagga Rao Polamarasetty – 6317 Perry Creek Rd (TH 2303)
- 10) Yu-Ju Chang and Donald Wright – 6321 Perry Creek Rd (TH 2305)
- 11) Jitna Valvekar and Archana Reddy Jala – 5922 Kayton Street (TH 2330)
- 12) Shanker Gorakanti and Parimala Ganney – 5920 Kayton Street (TH 2331)
- 13) Chandana Bujinga Tummala and Srikanth Makineni – 5916 Kayton Street (TH 2333)
- 14) Jaibhavani Tummala and Jaikrish Rajendran – 5912 Kayton Street (TH 2335)
- 15) Finn Investment LLC – 6513 Academic Avenue (TH 1064)
- 16) Laura Salovaara – 5501 Wallace Martin Way (TH 1183)
- 17) Cassandra Johnson – 6004 Giddings Street (TH 2250)
- 18) Jayant Apte and Charu Apte – 5905 Giddings Street (TH 2322)
- 19) Jayant Apte and Charu Apte – 5919 Giddings Street (TH 2327)