

Prepared by and Hold for: Barringer Sasser, LLP (Box 16)

WAKE COUNTY FIRST AMENDED AND RESTATED
NORTH CAROLINA DECLARATION OF PROTECTIVE
COVENANTS FOR MacGREGOR DOWNS

THIS First Amended and Restated Declaration of Protective Covenants for MacGregor Downs, is made this the _____ day of _____, 2015, by the owners of lots in MacGregor Downs subdivision (hereinafter “MacGregor Downs”) and MacGregor Downs Homeowners Association, Inc. (hereinafter, “MacGregor Downs HOA”):

~~NORTH CAROLINA~~
~~WAKE COUNTY~~
~~_____ PROTECTIVE~~
~~COVENANTS~~
~~_____ MacGREGOR DOWNS~~

~~_____ THIS DECLARATION, made this 12th day of October, 1967, by MacGREGOR DOWNS, INC., a North Carolina corporation with a principal office in the City of Raleigh, North Carolina (hereinafter called MacGREGOR DOWNS”):~~

WITNESSETH

WHEREAS MacGregor Downs, Inc., the original developer of MacGregor Downs, recorded the first Declaration of Protective Covenants in Book 1788, Page 681, Wake County Register of Deeds for MacGregor Downs binding the lots therein identified;

WHEREAS a second Declaration of Protective Covenants was recorded in Book 1802, Page 538, Wake County Register of Deeds for MacGregor Downs binding the lots therein identified and those lots later bound via supplementary declarations recorded as the subdivision was developed; and

WHEREAS a third Declaration of Protective Covenants was recorded in Book 1818, Page 30, Wake County Register of Deeds for MacGregor Downs binding the lots therein identified and those lots later bound via supplementary declarations recorded as the subdivision was developed; and

WHEREAS a fourth Declaration of Protective Covenants was recorded in Book 1832, Page 181, Wake County Register of Deeds for MacGregor Downs binding the lots therein identified and those lots later bound via supplementary declarations recorded as the subdivision was developed; and

WHEREAS a fifth Declaration of Protective Covenants was recorded in Book 2516, Page 475, Wake County Register of Deeds for MacGregor Downs binding the lots therein identified and those lots later bound via supplementary declarations recorded as the subdivision was developed; and

WHEREAS the MacGregor Downs HOA was established and exists to serve the interests of residents and owners of lots within the MacGregor Downs subdivision (hereinafter, “MacGregor Downs”) in Wake County, North Carolina; and

WHEREAS MacGregor Downs, Inc. recorded an Assignment of Architectural Committee to MacGregor Downs HOA in Book 3049, Page 448, Wake County Register of Deeds, which assigned rights to enforce each of the foregoing protective covenants to the MacGregor Downs HOA; and

WHEREAS, each of the foregoing Declarations of Protective Covenants for MacGregor Downs contain substantially similar covenants; and

WHEREAS a majority of the lot owners of MacGregor Downs have agreed to amend and restate the existing Declarations of Protective Covenants and authorized MacGregor Downs HOA to execute and record same;

NOW THEREFORE, in consideration of said premises, the owners of lots within MacGregor Downs do hereby declare and set forth that paragraphs 1 through 19 of each of the five existing Declarations of Protective Covenants as set forth above shall be amended by striking the contents of each, and replacing same in its entirety with the text which follows:

WITNESSETH:

~~WHEREAS, MacGREGOR DOWNS is the owner of the real property described below and is desirous of subjecting said real property to the protective covenants hereinafter set forth:~~

~~NOW THEREFORE, MacGREGOR DOWNS hereby declares that the following described real property located in Wake County, North Carolina, is and shall be held, transferred, sold and conveyed, subject to the protective covenants hereinafter set forth:~~

~~Being all of Lots Nos. 53, 54, 55, 56, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375 and 376 according to that certain map entitled “MacGregor Downs, Unit One & Partial Street Layout, MacGregor Downs, Inc., Developers, Cary North Carolina” dated July 21, 1967, prepared by John A. Edwards & Company, Engineers, and recorded in Book of Maps 1967, Volume II, Page 207 of the Wake County Registry, North Carolina.~~

1. Preamble. The real estate described above and other lots in MacGregor Downs subdivision now or hereafter made subject to similar protective covenants (hereinafter called “this subdivision”) ~~was~~ is developed in conjunction with MacGregor Downs Country Club, a private club, (hereinafter called “Country Club”), it being contemplated that all, or a great majority, of the lots in this subdivision will be owned by members of Country Club. In view of the mutual and parallel interest of MacGregor Downs and Country Club and the desire of each to develop a private, exclusive and harmonious club and community of people and homes, developer MacGregor Downs, Inc. reserves-reserved the authority to approve or disapprove architectural plans of proposed construction and the location of improvements on each lot as provided in Paragraph 4 hereof. That authority was transferred by MacGregor Downs, Inc. to the MacGregor Downs Homeowners Association, Inc. (hereinafter “MacGregor Downs HOA”) via Assignment of Architectural Committee dated September 20, 1982 and recorded in Book 3049, Page 448, Wake County Registry. Each and every owner of an improved lot and/or building site in this subdivision shall comply with the terms of these covenants, as may be lawfully modified or amended from time to time, and any

conditions or restrictions set forth herein and in the deed to said owner's improved lot and/or building site. Failure to comply with these covenants shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the MacGregor Downs HOA and/or its Board of Directors on behalf of the MacGregor Downs HOA, or where appropriate by an aggrieved owner of an improved lot and/or building site within MacGregor Downs. Failure of the MacGregor Downs HOA or any lot owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

2. _____ The real property above described, and all lots later bound to these covenants via supplementary declarations of protective covenants, is hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of Country Club, this subdivision and each improved lot or building site in this subdivision:

(a) _____ to protect Country Club, this subdivision and the owners of the improved lots and building sites against such improper use of surrounding improved lots and building sites as will depreciate the value of the property of each; to preserve, so far as practicable, the natural beauty of said property;

(b) _____ to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes;

(c) _____ to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on improved lots and building sites;

(d) to secure and maintain proper setbacks from streets, and adequate free spaces between structures; and

(e) in general to provide adequately for a high type and quality of improvements in said property, and thereby to enhance the values of investments made by purchasers of improved lots and building sites therein.

~~3. to protect COUNTRY CLUB and the owners of the building sites against such improper use of surrounding building sites as will depreciate the value of the property of each; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials, to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain property setbacks from streets, and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvements in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.~~

4.3. Each lot above described shall constitute a residential building site (hereinafter called “building site” where undeveloped, or an “improved lot” where a dwelling has been constructed thereon) and shall be used for residential purposes only.

The lay of the lots as shown on the recorded plat shall be substantially adhered to, provided, however, with the prior written approval of MacGregor Downs HOA, its

successors or assigns, ~~or the Architectural Committee, hereinafter referred to~~, the size and shape of any building site or improved lot may be altered provided that no building site or group of building sites may be resubdivided so as to produce a greater number of ~~building sites~~ lots. More than one lot may be used as one building site provided the location of any structure permitted thereon is approved in writing by the Architectural Review Committee referred to in Paragraph 4 hereof. Except as provided in this paragraph, no structure shall be erected, altered, placed or permitted to remain on any building site, other than one detached single family dwelling not to exceed two and one – half stories from finished ground elevation in height ~~in height, and a private garage for not more than four cars~~. It is expressly provided, however, that a detached dwelling or structure ~~an efficiency apartment~~ of not more than three rooms may also be constructed on any improved lot or building site, provided it is accompanied by the main dwelling referred to in the preceding sentence. In no event shall such detached structure be rented to third parties, and such detached structure may not be constructed unless said main dwelling has first been constructed or unless they are constructed at the same time. ~~which apartment may be occupied by domestic servants employed at said main dwelling on the same building site or may be used as a guest house. Such apartment shall not be used otherwise, and in no event shall such apartment be rented. Such efficiency apartment may not be constructed unless said main dwelling has first been constructed or unless they are constructed at the same time.~~

5.4. No exterior improvements including, but not limited to, erecting of fences, mail

boxes, placement of outside lighting, screen planting, and changes in exterior paint color, and tree removal, shall be erected, placed, planted, or altered on any building site or improved lot until the building plans, specifications and plot plans showing existing lot improvements AND the location of proposed alterations to the lot, the extent of proposed tree removal on the lot, or paint chips accurately depicting proposed exterior color changes, have been approved in writing by the MacGregor Downs HOA, its successors or assigns.

Such approval shall not be unreasonably withheld for improvements which are: 1) consistent with the external design, materials and existing structures in MacGregor Downs; 2) in harmony with the topography and environment of the building site or improved lot; and, 3) consistent with any finished ground elevation of existing neighborhood improvements both on the subject lot/building site and within MacGregor Downs.

Unless otherwise approved by the MacGregor Downs HOA, all fencing must be black metal, picket or privacy-type fencing. Privacy fencing shall be limited to enclosure of the rear yard area of improved lots, and should not extend towards the front lot line any further than the mid-point of the depth of the primary residence on an improved lot. For those building sites and/or improved lots which directly abut the golf course or the lake, fencing shall be either wrought iron or powder-coated aluminum and shall not exceed a height of forty-eight (48) inches. The MacGregor Downs HOA Board of Directors or its designee may publish guidelines detailing acceptable fence styles or other specifications, but in no event may a chain link fence or free-standing hog wire fence be approved.

As used herein, the term "tree removal" shall refer to the cutting down and removal of established trees including clear cutting and tree removal with or without stump grinding. Tree

~~removal of any tree with a trunk measuring greater than six (6) inches in diameter is prohibited, unless and until approved by the MacGregor Downs HOA. Nothing herein shall prohibit the removal of any number of trees from a lot or building site which have fallen or were otherwise irreparably damaged in the wake of a storm or other accidental event from which said trees cannot recover.~~

~~Proposed plans and specifications for the improvements and removals addressed in this Paragraph 4 shall be submitted to MacGregor Downs HOA by delivering same to the attention of MacGregor Downs HOA at the MacGregor Downs Country Club at least forty-five (45) days prior to the start date for the proposed improvement or removal. The MacGregor Downs HOA shall confirm receipt of said submittals in writing, and shall then issue a written response to the submittal no more than thirty (30) days after the date of the confirmation. Neither MacGregor Downs HOA, nor the members of its Architectural Review Committee, shall be entitled to any compensation for services performed pursuant to this covenant.~~

~~6. — No building, fence, mail box, outside lighting, newspaper box, screen planting or other improvements shall be erected, place or altered on any building site until the building plans, specifications and plot plans showing the location of such improvements on the building site have been approved in writing as to conformity and harmony of external design, and external materials with existing structures in the area and as to location with respect to topography, lake, golf course, finished ground elevation and neighboring structures by an architectural committee (herein called “the Architectural Committee”) composed of three (3) persons designated and appointed by MacGREGOR~~

~~DOWNS, or its successors or assigns. In the event the Architectural committee fails to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted to it, Or, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required, and this covenant will be deemed to have been fully complied with. Members of such Architectural Committee shall not be entitled to any compensation for services performed pursuant to this covenant.~~

5. Except with the prior written approval of the ~~Architectural Committee~~ MacGregor Downs HOA, no building of any kind, including garages, shall be located on any improved lot or building site less than fifty (50) feet from the front lot line, and no building shall be located less than fifteen (15) feet from any side lot line, or less than seventy (70) feet from the maintenance easement line of any lake or the property line on any golf course property, or less than fifty (50) feet from any rear lot line.

6. No residential structure, which has a minimum area of less than ~~2,259~~2,500 square feet of heated area for two-story structures and split-level structures and ~~2,000~~2,250 square feet of heated area for one-story structures, exclusive of porches, basements and garages, shall be erected or place on any improved lot or building site.

Any improvements made to a building site or improved lot in this subdivision shall be completed within twelve (12) months of the date on which the requisite building permit for such construction is issued by the appropriate permitting authority, unless written waiver of this time limitation is obtained from the Board of Directors of MacGregor Downs HOA. In the event an approved improvement does not require permits, the project shall be completed within six (6) months of commencement.

7. All improved lots and building sites shall be used for single-family residential purposes exclusively, and no trade, business or business activity of any kind shall be carried on or conducted from an improved lot or building site, or any part of this subdivision, at any time, without the prior written approval of MacGregor Downs HOA except that the improved lot or building site owner may conduct such ancillary business activities within the residence on an improved lot so long as:

(a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the residence; and

(b) the business activity does not involve regular, frequent or conspicuous visitation of the improved lot by employees, clients, customers, suppliers or other business invitees for business purposes; and

(c) the business activity conforms to all applicable zoning requirements; and

(d) the business activity does not increase traffic in the subdivision, other than by deliveries by couriers, parcel deliveries, overnight/express mail carriers and the like; and

(e) the business activity is consistent with and does not alter the residential character of the subdivision, does not constitute a nuisance or other hazardous or offensive use, does not threaten the safety or security of other residents of the subdivision, as may be determined in the sole discretion of the Board of Directors of the MacGregor Downs HOA.

Further, ~~N~~no noxious or offensive trade or activity shall be carried on upon any

building site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No signs or billboards shall be erected or maintained on ~~the premises~~any building site or improved lot unless approved in advance by the ~~Architectural Committee~~MacGregor Downs HOA, and in no event shall same violate the applicable ordinances of the Town of Cary. Neither political signage nor signage related to the sale of any building site or improved lot need be approved prior to placement, but must comply with all applicable Town of Cary ordinances, as amended or changed from time to time. Commercial, vendor, or contractor signs may be allowed while work is in process, but must be removed when the work is complete. No trade materials or inventories may be stored outside or otherwise in plain sight upon any building site or improved lot ~~, upon the premises~~ and no commercial equipment, utility trailers, recreational vehicles, and no trucks, boats, or tractors may be stored or regularly parked on ~~the premises~~any building site or improved lot except in a garage, ~~garage or well screened enclosures. All trash and garbage must be kept in underground receptacles unless within the utility yard referred to in Paragraph 15 hereof. No business activity or trade of any kind whatsoever shall be carried on upon any building site.~~

All trash and garbage receptacles, recycling receptacles and the like shall be removed from the street or curb and stored out of sight within forty-eight (48) hours of the completion of waste removal services in the subdivision. Construction dumpsters, and any other oversized waste removal receptacles must be placed at all times on the lot or building site and in no event any closer than fifteen (15) feet of any lot line or portion thereof. At no time may such dumpsters or oversize receptacles obstruct all or any

portion of any right of way, including but not limited to, existing easements, sidewalks or streets.

7.8. No trailer, basement (unless said basement is part of a residence erected at the same time), tent, shack, barn or other outbuilding shall be erected or placed on any building site covered by these covenants, except as specifically permitted herein.

8.9. No animals, livestock or poultry of any kind, other than house pets, shall be raised, bred, kept or maintained in any part of said property.

9.10. No fence, wall, hedge, or ~~mass-screen~~ planting shall be permitted to extend beyond the minimum building set-back line established herein or within seventy (70) feet of the rear lot line or within seventy (70) feet of the maintenance easement line of the Country Club lake, except upon the approval by the ~~Architectural Committee~~ MacGregor Downs HOA.

11. Adequate off-street parking shall be provided by the owner of each building site or improved lot for the parking of automobiles owned by such owner, any long term guests of the owner(s), and any non-owner occupants of dwellings erected on improved lots, and owners of building sites and improved lots agree not to park their automobiles on the streets in this subdivision, and to prohibit the parking of automobiles owned or operated by long term guests or non-owner occupants of their dwelling in the streets of the subdivision. Additionally, lot or building site owners shall prohibit the parking of vehicles, recreational vehicles and any other motorized vehicles in any unpaved area of the lot or building site, including but not limited to front yards, side yards, back yards and natural areas and excepting only any existing gravel or loose stone areas within a lot or building site which ordinarily function as a driveway for vehicles.

Nothing herein shall be construed so as to permit the addition of a parking area for the exclusive purpose of storing vehicles in circumvention of these covenants.

Any vehicles which are inoperable, or otherwise obviously not in good working condition, shall not be stored or kept on an improved lot or building site within plain view of the street. Vehicles which are stored outside of garages, or otherwise in plain view of the street must at all times be properly registered and otherwise compliant with applicable municipal and state laws and regulations regarding motor vehicles.

~~10.12.~~ The MacGregor Downs lake shall remain the exclusive property of Country Club and no lot owner in this subdivision shall have any right to use the lake, or other facilities of Country Club, unless such lot owner is a member of Country Club; such use to be in accordance with Rules and Regulations as may be established by Country Club.

~~11.13.~~ For the purposes of avoiding an unsightly or undesirable waterfront, no boathouse, bathhouse, private dock, pier, raft or landing state or other structure shall be erected or maintained at or upon the shoreline of any building site having direct water frontage or upon land under water in front of such building site.

~~12.14.~~ Each owner shall keep his, her or its building site or improved lot and the lake bank adjacent thereto, if any, free of tall grass, undergrowth, dead trees, trash and rubbish and properly maintained so as to present a pleasing appearance, and maintain the property contour of the lake bank and prevent erosion. In the event an owner does not properly maintain his, her or its building site or improved lot as above provided, ~~in the opinion of the Architectural committee,~~ then MacGregor Downs HOA may have the required work done and the costs thus incurred by MacGregor Downs HOA shall be paid

by the owner. The shoreline contour of the lake, either above or below water, may be changed only with the approval of MacGregor Downs [HOA](#).

~~13. — Each residential structure shall have attached thereto one or more utility yards. At least one such utility yard shall be constructed at the same time the main residence is constructed, unless provision is made for the housing of the items set forth below either in the main residence or garage. Each utility yard shall be walled or fenced, and the entrance thereto shall be screened, using material and with a height and design approved by the Architectural Committee.~~

15. The following buildings, structures and objects may be erected and maintained and allowed to remain on a building site [or improved lot](#) only if the same are located wholly within the main residence or wholly within [an outdoor area which obscures view of said equipment from the street in a manner and design to be approved by the MacGregor Downs HOA prior to installation per the same process set forth in paragraph 4 above](#); ~~a utility yard; Pens~~ [pens](#), yards and houses for pets; ~~;~~ [;](#) above ground storage of construction materials; ~~;~~ [;](#) ~~wood, coal, oil and other fuels, clothes racks and clotheslines, clothes washing and drying equipment, laundry rooms, tool shops and workshops, garbage and trash cans,;~~ [;](#) ~~boats and boat trailers and receptacles (other than the underground receptacles referred to in Paragraph 7 hereof) and~~ above ground exterior air-conditioning and heating equipment and other mechanical equipment; [;](#) and any other structures or objects determined by the ~~Architectural Committee~~ [MacGregor Downs HOA](#) to be of an unsightly nature or appearance.

16. All telephone, electric and other utility lines and connections between the

main utility lines and residence and other buildings located on each building site shall be concealed and located underground so as not to be visible.

17. MacGregor Downs, [Inc.](#), for itself and its successors and assigns, hereby reserves, and is given a perpetual easement, privilege and right for utility purposes on, in and under a five (5) foot strip along the rear line of each building site and on, in and under a five (5) foot strip along the interior side lot line of each building site; and on in and under a fifteen (15) foot strip along the shore line of MacGregor Downs lake for maintenance of the shoreline.

18. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, ~~1990~~[2020](#), at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the building sites [and improved lots](#) in the entire MacGregor Downs residential development, whether covered by these or substantially similar covenants, it is agreed to change said covenants in whole or in part.

[Potential violations of these covenants shall be reported to the MacGregor Downs HOA, and handled in accordance with the current published Grievance Policy of MacGregor Downs HOA \(the “Grievance Policy”\), as amended from time to time. However, nothing herein shall preclude the MacGregor Downs HOA from addressing any violations of these covenants prior to, or independently of, receipt of a notice of violation from a lot owner or owners.](#)

If the parties hereto, or any of them, or their heirs, successors, or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property which is subject to these ~~or substantially similar~~ covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to

violate any such covenant, and either to prevent it, her, him or them from so doing or recover damages or other dues for such violation. Nothing herein shall require any person otherwise entitled to seek a remedy at law or in equity for any violation of the covenants herein to first seek resolution under the Grievance Policy prior to initiating an action in law or equity.

In the event of an emergency or other unsafe condition, in addition to any other remedies provided for herein, the MacGregor Downs HOA, or its duly authorized agent, shall have the power to enter upon an improved lot or building site which is subject to these covenants, as lawfully amended from time to time, to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this First Amended and Restated Declaration of Protective Covenants for MacGregor Downs. Where an emergency does not exist, the MacGregor Downs HOA shall have the right to enter upon an improved lot or building site to abate or remove any structure, thing or condition which violates these covenants only after adherence to the Grievance Policy, including provision of thirty (30) days' prior written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees actually incurred, shall be reimbursed by the violating improved lot and/or building site owner.

18.19. Invalidation of any of these covenants or any part thereof by judgments or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

~~IN WITNESS WHEREOF, MacGREGOR DOWNS has caused this Agreement to be executed in its corporate name by its proper officers thereunto duly authorized, all as of the day and year first above written.~~

IN WITNESS WHEREOF, a majority of the lot owners have approved this First Amended and Restated Declaration of Protective Covenants for MacGregor Downs, and have authorized MacGregor Downs HOA to execute this Agreement on their behalf in its corporate name by its proper officers thereunto duly authorized, all as of the day and year first above written.