

7-10-18

**FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
FOXWOOD**

**PREPARED BY:
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1565 US Highway 1
Sebastian, Florida 32958**

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County Indian River

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FOR
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THIS First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Foxwood is made this 28th day of August, 2018, by FOXWOOD DEVELOPMENT, LLC, a Florida foreign limited liability company, hereinafter referred to as the “Developer”.

W I T N E S S E T H:

WHEREAS, Developer is the owner of the real property described in Exhibit “A” (the “Property”) that is being developed as a residential town home community known as “Foxwood”; and

WHEREAS, the Developer filed an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Foxwood as recorded on August 8, 2014, at Official Records Book 2779, Page 2077 of the Public Records of Indian River County, Florida (hereinafter referred to as the “Amended and Restated Declaration”); and

WHEREAS, the Developer is in control of the Association and desires to amend and modify the Amended and Restated Declaration and has the authority to do so under and by virtue of the reserved authority contained in Article XIV, Section 2. Amendments by Members of the Amended and Restated Declaration; and

WHEREAS, the Developer is amending the Amended and Restated Declaration to further protect, preserve and enhance the value of the Property.

NOW, THEREFORE, Developer hereby declares that all the Property shall be held, transferred, sold, conveyed, developed and occupied subject to easements of record, restrictions, covenants, liens, terms and conditions hereinafter set forth, all of which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding upon all parties having any right, title and interest therein and their devisees, successors and assigns, as follows:

- A. The full text of Article III, Sections 3 and 4 of the Amended and Restated Declaration is hereby deleted in its entirety, and the following language is substituted in its place:

Section 3. Classification of Membership.

A. The qualification of members, the manner of their admission to and termination of such membership, and voting by members shall be as follows:

1. All Owners shall be members of the Association, and no other persons or entities shall be entitled to membership, except as otherwise provided herein.

2. Subject to the provisions of the Declaration and the Bylaws of this Association, membership shall be established by the acquisition of the ownership of fee title to or fee interest in a residence, whether by conveyance, devise, judicial decree, or otherwise and by the recordation amongst the Public Records of Indian River County, Florida, of the deed or other instruments validly establishing such acquisition and designating the Residence affected thereby, and by the delivery to the Association of a true copy of such deed or other instrument, and shall be terminated automatically upon his or her being divested of title to all Residences owned by such member. Membership is nontransferable, except as an appurtenance to a Residence.

B. The Corporation shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Developer, and shall be entitled to one (1) vote for each Residence owned. When more than one (1) person holds an interest in any Residence, all such persons shall be members. The vote for such Residence shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Residence.

Class B. The Class B member shall be the Developer or successor and shall be entitled to one (1) plus nine (9) votes (for a total of ten (10) votes) for each Residence or residential lot owned by the Developer, including Residences or residential lots in all future phases. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) Three (3) months after ninety percent (90%) of the Residence, including those in all future phases of the project, have been conveyed by the Developer to an Owner or Owners; or
- (b) Thirty (30) years from the date of the first conveyance to an Owner or Owners by Developer of a Residence; or
- (c) Sooner at the election of the Developer.

Except as hereinafter set forth, from and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one (1) vote for each Residence or residential lot in which it holds the interest required for membership in the Association.

B. The full text of Article III, Section 4 of the Amended and Restated Declaration is hereby deleted in its entirety, and the following language is substituted in its place:

Section 4. Developer Control. Initially, Developer shall have the right to retain control of appointment of members of the Board of Directors of the Association (the period of "Developer Control"). Members other than Developer are entitled to elect at least a majority of the members of the Board of Directors of the Association based on the happening of either of the following events, whichever occurs earlier:

- (a) Three (3) months after ninety percent (90%) of the Residences, including those in all future phases of the project have been conveyed by the Developer to an Owner or Owners; or
- (b) Thirty (30) years from the date of the first conveyance to an Owner or Owners by Developer of a Residence; or
- (c) Sooner at the election of the Developer.

Members other than the Developer are entitled to elect at least one (1) member of the Board of Directors of the Association if fifty percent (50%) of the Residences in all phases of the community have been conveyed by the Developer to an Owner or Owners.

The Developer is entitled to elect at least one (1) member of the Board of Directors of the Association as long as Developer hold for sale, in the ordinary course

of business, at least five percent (5%) of the Residences, including those in all future phases of the project. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer owned voting interest in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors. During the period of Developer Control, Developer shall have, in addition to such other rights as it may have under this Declaration, the Articles of Incorporation, Bylaws and as otherwise provided by law, the following rights with respect to the Association:

1. The right to appoint all members of the Board of Directors of the Association and fill all vacancies on the Board;

2. The right to approve the appointment of all Officers of the Association. After turnover of control of the Association, no action shall be taken or decision adopted by the Board which would adversely impact on the construction, development, sale or marketing of the Property, or on the condition or appearance of the Property without the prior written consent of Developer for a period of six (6) months following recording of the Notice of Turnover. The Board shall submit such decisions and actions in writing within twenty (20) days after receipt thereof. In the event Developer fails to act within such time period, such failure shall be deemed an approval by the Developer of such action.

3. The right to enter into agreements with the Owner of any Residence (without the consent of the Owner of any other Residence or the Association) to modify the conditions, restrictions, limitations and agreements set forth in the Amended and Restated Declaration, including amendments thereto, and any such deviation or variance shall be evidenced by agreement in writing. Such variance shall not constitute a waiver of any such condition, restriction, limitation or agreement as to the remaining Residences the same shall remain fully enforceable as to all other Residences on the Property, except as against the Residence where such deviation is permitted. The Developer reserves the right to add additional restrictions

in the Conveyance of title to any Residence or Residences. The foregoing provisions may not be amended without prior written approval of the Developer.

C. All other terms and conditions of the Amended and Restated Declaration shall remain the same except as amended herein.

IN WITNESS WHEREOF, the Developer has caused this First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Foxwood to be executed this 28th day of August, 2018.

Signed, sealed and delivered
in the presence of:

WITNESSES:

[Signature]
Print Name: Deborah Joutaw

[Signature]
Print Name: Henny Soto

STATE OF Texas
COUNTY OF Harris

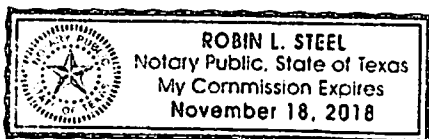
DEVELOPER:

Foxwood Development, LLC, a Florida
foreign limited liability company

By: [Signature]
Lloyd S. Moody, Managing Member

"SEAL"

The foregoing instrument was acknowledged before me this 28th day of August, 2018, by Lloyd S. Moody, as Managing Member, of Foxwood Development, LLC, a Florida foreign limited liability company, on behalf of the company, who ☒ is personally known to me or ☐ produced a _____ driver's license as identification.



SEAL

[Signature]
Notary Public, State of Texas
Print Name: Robin Steel
My Commission Expires: 11/18/18
My Commission No.: _____

Exhibit A
Legal Description of Property
Foxwood

The west ten acres of tract 13 of the INDIAN RIVER FARMS COMPANY SUBDIVISION, in Section 32, Township 32 South Range 39 East, recorded in Plat Book 2, page 25, of the Public Records of St Lucie County, Florida; said land now lying and being in Indian River County, Florida.

LESS AND EXCEPT Road Right-of-Way and LESS portions to Indian River County as recorded in Official Records Book 1086, page 2551 and Official Records Book 1736, page 1305, both of the Public Records of Indian River County, Florida.