

Revised and return to: Heyward Wall
132 Partlo St,
Garner, NC 27529

NORTH CAROLINA
WAKE COUNTY

**RESTRICTIVE COVENANTS FOR
ELMWOOD HOMEOWNERS' ASSOCIATION,
INC.**

THIS DECLARATION is made and executed this 28 day of January,
2022, by Slippery Elm Properties LLC;

WITNESSETH:

THAT WHEREAS, Slippery Elm Properties LLC (hereinafter referred to as the "Declarant"), is the owner and developer of the lands hereinafter described, and desires to declare and place the restrictions hereinafter described upon the development, improvement, and use thereof.

NOW, THEREFORE, the Declarant, for itself, its successors and assigns, does hereby covenant and agree with all persons, firms, and corporations, who or which may acquire any interest in or title to any of the property hereinafter described, as an inducement to said property, that the property and each and every lot described below are hereby made subject to the following Restrictive Covenants as to the development, improvement, and use thereof, by whomsoever owned. The real property to which these Restrictive Covenants shall be applicable being described as follows:

BEING all of Lots 1-52 of Elmwood Subdivision, as said lots are shown on map recorded in **Map Book 2021, Pages 1250-1252**, Wake County Registry.

DEFINITIONS

1. "Association" shall mean and refer to Elmwood Homeowners' Association, Inc., its successors and assigns.
2. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
4. "Permanent Common Open Space" shall consist of those areas designated on recorded plats of Elmwood Subdivision as easements. It shall also mean the open space areas designated on the recorded plat as "City of Raleigh greenway easements".
5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Permanent Common Open Space.
6. "Declarant" shall mean and refer to Slippery Elm Properties, LLC, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.
7. "Common Expense" shall mean and include:
 - a. All sums lawfully assessed by the Association and its Members.
 - b. Expenses of the common area and administration, maintenance, repair, or replacement of the Permanent Common Open Space;
 - c. Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
 - d. Expenses agreed by the members to be common expenses of the Association.
 - e. Ad valorem taxes and public assessment charges lawfully levied against common areas;
 - f. Expenses agreed by the members to be common expenses of the Association.
 - g. Utilities used in connection with the common areas.

ARTICLE I

Real Property. The real property hereinabove described is subject to the protective covenants and restrictions hereby declared to ensure the best use and the most appropriate development and improvement of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures; to ensure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to prevent haphazard and inharmonious improvement of lots; to secure and maintain proper setbacks from streets and adequate free spaces between structures; and, in general, to provide adequately for a high type and quality of improvement in said property, thereby to enhance the values of investments made by purchasers of lots therein.

ARTICLE II

Elmwood Homeowners' Association, Inc. Elmwood Homeowners' Association, Inc. shall be composed of three (3) persons designated and appointed by the Declarant or such person, firm, or corporation to whom the Declarant has expressly assigned this right. The initial Elmwood Homeowners' Association shall be comprised of **Carla Sevilla, Mitchell Murphy and Thomas Quackenbush**. When all lots in the Subdivision have been sold or the City of Raleigh has added the subdivision roads to the City's maintenance system, the initial Elmwood Homeowner's Association, Inc. shall dissolve and the permanent Elmwood Homeowner's Association, Inc. shall be granted the rights and responsibilities given to the initial Elmwood Homeowner's Association, Inc. The permanent members of the Association shall be elected annually in January of each year. The restrictions on any lot in the subdivision may be removed or waived only by the written consent, duly acknowledged, and recorded of the Declarant or its successors and the Elmwood Homeowner's Association, Inc.

ARTICLE III

Land Use and Building Type. Except as provided herein, no lot shall be used except for single-family residential purposes, except the Declarant or its designees may maintain a temporary business office and a model home on a lot. No building or structure shall be erected, altered, placed, or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed three (3) stories in height; a private garage for not less than two (2) cars, but not more than three (3) cars; and (with the approval of the Elmwood Homeowners' Association and in compliance with Wake County regulations) an accessory

building or structure for storage or other appropriate residential uses, not in excess of two hundred fifty (250) square feet in area. Nothing in this document shall be deemed to prohibit the conversion of a lot to a street. Motor homes, Campers, Travel and work-related trailers must have Association approval. All monuments must have Association approval.

ARTICLE IV

Building Design. No building (including an accessory building or structure and a garage) shall be erected, placed, or altered on any premises in said development until the building plans, specifications, and plat showing the location of every such building have been approved by the Elmwood Homeowners Association, in writing, as to conformity and harmony of external design with existing structures in the subdivision, including, without limitation, proposed exterior materials and colors, and as to location of the building with respect to topography and finished ground elevation. In the event the Association fails to approve or disapprove the design or location within thirty (30) days after the plans and specifications have been submitted to it, or, in any event, if no suit to enjoin the erection of any 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 the Association shall not be entitled to any compensation for services performed pursuant to this covenant. Only brick and block foundations with crawl spaces shall be permitted. Manufactured and modular housing is prohibited on all lots. With Elmwood Homeowners' Association's approval, a detached storage building may be built off site and transported to the lot. All single family residences shall be stick built on site, except that panelized walls, roof trusses and pre-engineered floor joists are permissible with the Association's approval.

ARTICLE V

Dwelling Size. The living area of the main residential structure, exclusive of porches, garages, and basements, shall not be less than one thousand two hundred and eighty-three (1283) square feet for any approved residential structure. See Article III for additional detached garage. No more than one (1) dwelling shall be built on any lot or building site. All driveways are to be constructed of poured concrete.

ARTICLE VI

Building Location. All building locations must have Elmwood Homeowners Association's approval and must meet minimum Wake County setback requirements. Detached accessory buildings and detached garages must have their location approved by the Elmwood Homeowners Association. Nothing herein shall mean that the Elmwood Homeowners Association cannot withhold its approval of the location of a building, regardless of the fact that such building meets minimum Wake County setback requirements.

ARTICLE VII

Lot Area and Width. All lots as shown on the recorded map hereinabove referred to are hereby approved. Adjustments may be made, however, in the line between any two (2) lots so long as the area of any lot is not reduced by more than ten (10%) percent and so long as all other restrictions herein set forth are observed. Upon any recombination of lots, the setbacks and sideline clearances from old lot lines shall no longer be required. No recombination of lots may be made in a manner which results in any increase in the number of lots above those existing when these covenants became effective.

ARTICLE VIII

Easements. Easements for installation and maintenance of utilities, drainage facilities, and sign and landscape easements are reserved as shown on the recorded plat. Within the utility and drainage easements, no structures, plantings, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, change the direction of flow of drainage channels in the easement, or obstruct or retard the flow of water through drainage channels in the easements. Easements may not be piped without receiving plan approval from Wake County. It shall be the responsibility of the property owners to maintain the drainage easements located on their lot. It shall be the responsibility of the Association to maintain the areas designated as SCM on the recorded map.

For the maintenance of the SCM areas shown on the recorded map and the sign and landscape easements, the Association shall:

- (1) Make routine inspections for compliance with Wake County regulations.
- (2) Determine an annual budget for each calendar year and set the amount of the dues to be collected from the property owners.
- (3) Hire and supervise landscaping and maintenance of the entrance to the subdivision and SCM areas.

ARTICLE IX

Assessments. Obligations for Assessments. (a) Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not is shall be so expressed therein, is deemed to consent and agree to pay to the Association or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) special assessments; (4) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (5) individual assessments for any expenses under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner;

(6) late payments charges, interest on unpaid assessments, costs of collection, including without limitations, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (7) all other assessments and charges imposed or allowed to be imposed by this Declaration. The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment to the City.

(b) Purpose of Assessments. The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for Payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) Budgets; Amount of Assessments. The Association is at all times empowered to levy assessments against the Lots and the Owners of the Lots within the Properties for the payment of Common Expenses.

Notwithstanding the foregoing, for calendar year 2021, the annual assessment per Lot is \$360.00 (three hundred and sixty dollars) per year or \$30.00 (thirty dollars) per month. In addition, each lot will pay an initial Capital Contribution of \$50.00 upon execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot.

The Board of Directors shall adopt an annual proposed budget for the Association. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters.) The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty (80%) percent of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in G.S. 47F-2-121 of the Act.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty (30) days or longer, together with late charges, interest and the costs of collection thereof, including attorney's fees, shall be in charge on the Owner's Lot as provided in G.S. 47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S. 47F-3-116(g), shall be a continuing lien up the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

ARTICLE X

Business, Manufacturing, Commercial, and Professional Uses Prohibited; Nuisances Prohibited. Except as hereinafter provided, no part of said property shall be used for business, manufacturing, commercial, or professional purposes. All in-house businesses must be approved, in writing, by the Elmwood Homeowners Association, with a written proposal being submitted by the lot owner to the Elmwood Homeowners Association prior to approval. Upon such approval by the Association, in-house businesses may be conducted so long as:

- a) The business is conducted by the homeowners or occupants of the house.
- b) Vehicular traffic associated with said business must be kept to a minimum, as determined solely by the Elmwood Homeowners Association.

- c) Examples of in-house businesses are general contractors, real estate agents, architects, and other such similar professionals. In-house daycare is prohibited. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Except as herein above provided, no signs or billboards shall be erected or maintained on the premises other than temporary For Sale signs. No trade materials or inventories may be stored or regularly parked on the premises.

ARTICLE XI

Temporary Structures: Satellite Dishes. No exterior structure, except a private garage for not less than two (2) cars, but not more than three (3) cars, and an accessory building or structure as authorized by the provisions of Article III shall be erected or placed on any lot covered by these covenants. No detached garage or other structure shall at any time be used for human habitation, either temporarily or permanently. Satellite dishes shall be allowed on the premises only in locations approved by the Elmwood Homeowners Association in writing, with type and style being submitted by the lot owner to the Elmwood Homeowners Association prior to approval. Large satellite dishes and communication towers will not be permitted.

ARTICLE XII

Trucks: Boats: Trailers. No unlicensed vehicles or trailers shall be parked or kept on any lot or street in the subdivision. Street parking is prohibited in said subdivision. It shall not be permissible for a tractor-trailer or tractor cab to be parked in the subdivision, at any time, either permanently or temporarily. The operation of motor bikes and all-terrain vehicles shall be prohibited both on the streets of the subdivision and on the individual, lots comprising said subdivision. Travel trailers, campers, boats, and utility trailers will require Elmwood Homeowners Association's approval.

ARTICLE XIII

Garbage Containers. Garbage containers shall be kept in the back yard and shall not be visible from the street or an adjacent lot.

ARTICLE XIV

Fences. Fences may be maintained on portions of the lots only with the written consent of the Elmwood Homeowners Association as to location, material, and height, and the decision of such Association to approve or reject a fence shall be conclusive. The Elmwood Homeowners Association reserves the right to have a uniform fence requirement for all lots.

ARTICLE XV

Animals. No animals of any kind, other than dogs and cats shall be kept or maintained on any part of said subdivision. No more than two (2) house pets shall be allowed, and all dogs kept outside must be kept within a fence which is approved pursuant to Article XIII. All lot owners must abide by the Wake County Leash Laws. Excessive barking by dogs will not be permitted.

- No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not bred or maintained for any commercial purposes.

ARTICLE XVI

Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date on which the Declaration is filed for registration in the Registry of Wake County, after which period said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the owners of the lots has been recorded agreeing to change said covenants in whole or in part; provided, however, that any such instrument must be recorded within a six (6) month period preceding the end of the twenty-five (25) year period or a ten (10) year extension period.

ARTICLE XVII

Underground Utilities. All public service or other utilities requiring wiring, pipes, or other instrumentalities of conveyance will be placed underground where practicable. The Declarant reserves the right to subject the real property in this subdivision to a contract with Duke Progress Energy for the installation of underground electric cables, which may require an initial contribution, and/or the installation of street lighting and sign lighting, which will require a continuing monthly payment to Duke Progress Energy by each residential customer.

ARTICLE XVIII

Gas and Oil Tanks. Other than an appropriately sized tank for a standard gas fireplace and tanks not exceeding 100lbs, whenever any homeowner desires to use any fuel which necessitates the location of any tanks on the lot, all tanks shall be buried or hidden by an attractive structure before the closing of the permanent loan on said lot, the construction of said structures to be in accordance with specifications approved by the Elmwood Homeowners Association.

ARTICLE XIX

Road Maintenance Certification. There are certain rights-of-way and streets in said Subdivision as shown on map recorded in **Map Book 2021, Pages 1250-1252**, Wake County Registry. These streets will be maintained in an all-weather condition by the Declarant until such time as said rights-of-way and streets are taken over as a part of the roadway system by the State of North Carolina Department of Transportation.

ARTICLE XX

Appearance. Each owner shall keep their building site free of tall grass and weeds, undergrowth, dead trees, trash, and rubbish, and the property shall be maintained so as to present a pleasing appearance. If, in the opinion of the Elmwood Homeowners Association, an owner is not properly maintaining his building as provided, the Declarant may have the required work done, and the costs thus incurred shall be paid by the owner, with enforcement pursuant to Article XXIII. Each owner shall also be responsible for maintaining and mowing all unpaved areas in front of that owner's lot that might be within the right-of-way of the streets within said subdivision.

- No inoperable, unlicensed or junk motor vehicles or equipment of any kind may be located on any Lot.
- The drying of clothes in public view is prohibited.
- No shelter of a temporary or permanent character, such as a trailer, basement, tent, shack, garage, or barn shall be used on any Lot at any time as a residence, either temporary or permanently.

ARTICLE XXI

Advance Payment of Assessments. At the time the closing of the sale of a lot and residence by a Builder to a homeowner, a sum equal to the pro-rata balance of the homeowners dues for the calendar year in which the closing took place will be collected from the homeowner and transferred to the Association, said sum being equal to the fraction of the annual homeowners dues which would have been due from the date of closing to the end of the calendar year in which the closing took place.

ARTICLE XXII

Enforcement. Enforcement shall be the responsibility of the homeowners of the subdivision, but the Declarant and the Elmwood Homeowners Association shall also have the right to bring enforcement proceedings. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages or both. The prevailing party in any enforcement proceeding shall be entitled to recover from the adverse party reasonable sum for reimbursement for attorney's fees and court costs incurred in enforcing or defending matters related to these covenants.

ARTICLE XXIII

Fines. By complying with N.C.G.S. 47F-3-107.1, the Board may impose fines against any lot for a violation of these covenants. Such fines shall be a lien against the owner's lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fine. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the association may otherwise be legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the association might otherwise be entitled to recover by law from such owner. Fines shall be as follows:

1. First noncompliance or violation: a fine of not less than 50.00.
2. Second noncompliance or violation: a fine not in excess of \$100.00.
3. Third and subsequent noncompliance or violation or violations that are of a continuing nature: a fine of not less than \$100.00 per week for continued violation or noncompliance.

ARTICLE XXIV

Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of membership with respect to voting rights:

Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined). When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to ten (10) votes for each Lot that it owns or controls by virtue of a valid purchase option contract, memorandum of which contract shall be recorded in the office of the Wake County Register of Deeds (each a "Class B Lot").

ARTICLE XXV

Severability. Invalidation of any one (1) of these covenants or any part thereof by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect, and the failure of any person or persons to take action to enforce the violation of any of these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

IN WITNESS WHEREOF, the Declarant, ***Slippery Elm Properties LLC,*** has caused this instrument to be executed the day and year first above written by affixing its name and seal thereto.

Slippery Elm Properties. LLC

A handwritten signature in cursive script that reads "Carla Sevilla". The signature is written in black ink and is positioned above a horizontal line.

Carla Sevilla
Manager

STATE OF NORTH CAROLINA
COUNTY OF Johnston

I, Damein Keith House a Notary Public of Johnston County and State aforesaid, certify that Carly Sevilla, personally came before me this day and certified that she is Manager of Slippery Elm Properties LLC, a North Carolina corporation, and that she as President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS by hand and official stamp or seal this 28 day of January, 2022.

My commission expires: 10-5-25

Damein Keith House
Notary Public

