

**Town of Clayton
Regular Town Council Meeting Minutes
Monday, December 19, 2022 at 6:00 PM
Council Chambers, Town Hall
111 E. Second Street**

Council Present:

Mayor Jody McLeod
Mayor Pro Tem Jason Thompson
Council Member Porter Casey
Council Member Michael Sims

Council Absent:

Council Member Avery Everett
Council Member Andria Archer

Staff Present:

Rich Cappola, Town Manager
Jim Cauley, Town Attorney
Dolores Gill, Deputy Town Manager
Lee Barbee, Interim Deputy Town Manager/Fire Chief
Heidi Holland, Town Clerk
Robert McKie, Finance Director
Jonathan Jacobs, Assistant Engineering Director
Joshua Baird, Engineering Director
Nathanael Shelton, Communications Officer
Ben Howell, Planning Director
Greg Nelson, Property Maintenance Superintendent
John Zamarripa, Facility Technician

1. CALL TO ORDER

a. Call to Order

Mayor McLeod called the meeting to order at 6:00 p.m.

b. Pledge of Allegiance

Mayor McLeod led the Pledge of Allegiance.

c. Invocation

Mayor McLeod provided the Invocation.

2. ADJUSTMENT OF THE AGENDA

a. Approval of the Agenda

Approval or Adjustment of the Agenda

RESULT:	CARRIED 3-0
MOVER:	Jason Thompson
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

3. CONSENT AGENDA

a. Minutes

- November 21, 2022 - Regular Session
- December 5, 2022 - Work Session
- December 5, 2022 - Regular Session
- December 5, 2022 - Closed Session

Presenter: Heidi Holland, Town Clerk

b. Mass Communications/Data Voice Sole Source

Presenter: Shaun Mizell, Procurement Manager

c. Resolution 2022-96 to Accept Streets into the Town of Clayton Street System for Maintenance - Riverwood Athletic Club (Phase 3F, 3G, & 4G)

Presenter: Jonathan K. Jacobs, PE, CFM - Assistant Engineering Director

d. Resolution 2022-97 to Accept Streets into the Town of Clayton Street System for Maintenance - Riverwood Athletic Club (Phase 2F-2, 2H, 2H2, & 7A2)

Presenter: Jonathan K. Jacobs, PE, CFM - Assistant Engineering Director

e. Resolution 2022-98 to Accept Streets into the Town of Clayton Street System for Maintenance - Riverwood Athletic Club (Phase 8B-1, 8B-2, 8C-1, 8C-2, 8D, & 8E)

Presenter: Jonathan K. Jacobs, PE, CFM - Assistant Engineering Director

Approve Consent Agenda as Presented

RESULT:	CARRIED 3-0
MOVER:	Porter Casey
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

4. ADMINISTRATIVE ITEMS

a. Advisory Board Appointments

- Board of Adjustment
- Planning Board
- Library Advisory Board
- Recreation Advisory Board
- Public Art Advisory Board

Presenter: Heidi Holland, Town Clerk

Ms. Holland stated there are five boards with upcoming vacancies. All vacancies were advertised and interviews were held. She shared the applicants recommended for appointment.

Approval of Board Recommendations

RESULT:	CARRIED 3-0
MOVER:	Michael Sims
SECONDER:	Porter Casey

YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

5. INTRODUCTIONS AND SPECIAL PRESENTATIONS

- a. Employee Introduction
- John Zamarripa, Facility Technician
- Presenter:* Greg Nelson, Property Maintenance Superintendent

Mr. Nelson introduced Facility Technician John Zamarripa. He stated he comes with nine years of experience as an installer for Lowe's Home Improvements. He also has five certifications in computer skills and a Biological Science Degree from NC State. He stated he is happy to be here. Mayor McLeod and Council welcomed him.

6. PUBLIC HEARINGS

- a. 2022-166-RZ Clayton Dental
- Presenter:* Bruce Venable

Mr. Venable stated this request is to rezone 2.145 acres off Prichard and Ranch Road. The property is currently vacant. The applicant is asking to rezone this to Highway Business. Staff feels this is in line with the future land use map because it shows a neighborhood mixed use district and the B3 zoning district would be accommodating to the Future Land Use Map plan.

Staff finds it is consistent with the 2045 Comprehensive Plan. Staff recommends this approval as well as the Planning Board.

Mayor McLeod stated this has been noted as a public hearing, and asked if anyone wishing to speak. With no one wishing to speak, this was turned over to Council for deliberation.

Town Clerk Ms. Holland stated Brian Smith submitted an email this morning with a request to read a letter into the record regarding this rezoning. She stated this would be included in tonight's minutes.

Approval of Ordinance #2022-12-01

RESULT:	CARRIED 3-0
MOVER:	Michael Sims
SECONDER:	Jason Thompson
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

Quasi-Judicial Hearing

A quasi-judicial hearing resembles a court trial where testimony is presented. Citizens may give testimony in a quasi-judicial hearing after they have taken an oath. Town Council acts like a court of law and receives only sworn testimony and other credible evidence. In addition, the Town Council must make findings of fact based upon the evidence presented.

The Town Council refrains from "ex parte communication" about these cases, as the Town Council must make a decision based solely on the evidence presented at the hearing itself. Staff is available to assist with inquiries from citizens.

- a. **The Walk at East Village Phase II Landscaping Modification** *(Quasi-Judicial)*
Presenter: Ben Howell, Planning Director

Attorney Cauley discussed the process of a Quasi-Judicial hearing. Town Clerk swore in those wishing to offer testimony.

Mr. Howell presented on this item. He stated this is a landscape modification for the Walk at East Village Phase 2. This would allow to omit 26 street trees from the plan, 16 have been proposed to be planted elsewhere. The original subdivision was approved as a quasi-judicial hearing which is why this item is being heard as a quasi-judicial tonight.

Michael Grannis, 215 Beaufort Loop, is the homeowner liaison for the HOA and has worked with the developer to reach this agreement with respect to the modification of this landscape plan. He thanked staff who came out to look at this situation. He stated there could be infrastructure damage if the original plan went through. This would cause damage and the homeowners association would be responsible for repairs.

Paul Gainer, 212 Cabarrus Way, stated he doesn't want trees in front of his house because he would have to pay for the damages later down the road.

Council Member Casey met with the homeowners in the neighborhood. Typically, he would be in favor of trees but in this situation, it makes sense. He stated there is not enough room for these trees to grow. Council Member Sims stated he walked the streets, and it makes zero sense to plant these trees in this area. Mayor McLeod stated he met with Mr. Grannis, walked several streets, and it does not make sense to have these trees planted in the areas they were originally approved for. He stated it is unusual the Town goes through a process like this and things are modified to this degree, but this is well justified.

Approval of The Walk at East Village Phase II Landscaping Modification

RESULT:	CARRIED 3-0
MOVER:	Porter Casey
SECONDER:	Jason Thompson
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

- b. **2022-113-SUP Creekside Townes Special Use Permit (Quasi-Judicial)**
Presenter: Ben Howell, Planning Director

Mr. Howell presented on this item. He stated this is a request to construct 25 townhome units. This is located on Barber Mill Road near Grovewood Drive intersection with a property size of 4.03 acres. The proposed site plan has been reviewed and approved through the TRC process. Shared were the proposed architectural elevations. Future Land Use map shows this area as medium density residential which recommends a density of three to five units. The proposed project has a gross density of 6.21 units per acre, however, it is mentioned in the staff report, due to the location directly adjacent to high density residential, staff does see this could be seen to follow the future land use map and does provide a transition area.

The applicant has responded to the Findings of Fact, these are listed in the staff report. If Council approves this application, staff is recommending the eight conditions of approval and the applicant has agreed to all conditions. Mr. Howell read through all eight conditions which are listed in the staff report. He stated they are requesting the wastewater, which is under 10,000, and would be approved administratively.

James Todd, with Smith Anderson and attorney for the applicant, was present this evening. He stated this property is zoned R10 which requires an SUP. He stated he is joined by Rob Bailey and Brandi Melcher with R&R Development. Josh Reinke, traffic engineer with Ramey Kemp is here, Jeremy Keaney, civil engineer and David Lewis with Dickinson Lewis & Associates is here as well.

Rob Bailey with R&R Development was present. He stated he has spent 10 years working with Waltham Group. He stated the townhome project being proposed is a three-story product. He thanked Council for their consideration. Mr. Todd shared the site plan for this project. He stated there are wetlands to the northwest, those wetlands must remain undisturbed. This location is where the developer has located a dog park. The majority of the actual townhomes and the road are located away from that corner which creates a good natural buffer. There is also a Type A 15' buffer that would run the entire southwestern boundary. To the east of the property is a stormwater pond that would handle stormwater produced on site and serves to set the townhomes back from the road.

Mr. Todd addressed the four Findings of Fact, which are included in the staff report.

David Lewis with Dickenson Lewis & Associates, commercial appraisal firm, was present. He stated he has been practicing since early 1990's and is licensed and certified in North Carolina and Virginia. He stated he has found residential developments as well as high density commercial developments near the proposed location to use in his analysis. His report includes impact studies of four different developments: Scott Crawford restaurant and retail redevelopment, Champion West, Meadowview and Academy Pointe. The MLS data was collected and research on the sales was performed around the

property a year prior to the onset of the development and then show a year after. He stated the evidence shows everything is appreciating in value and the range is showing anywhere from 23 to 33% average to median increases in values.

Mr. Todd discussed the density. He stated as staff has mentioned, this site is a good transition area and the slightly higher than recommended density is appropriate here. This is a good and much needed housing product for the Town. He stated this project does satisfy the special use permit criteria. He stated there would be an HOA for this development they would be tasked with maintaining landscaping elements.

Mayor McLeod asked what the façade is for these townhomes, Mr. Todd stated one of the zoning conditions is 25% of the front façade must be masonry and there is a list of materials developers are allowed to use for the remainder. He stated he believes the majority is recommended to be hardy plank. Mayor McLeod stated he would like more conversation on the traffic analysis.

Josh Reinke, traffic engineer with Ramey Kemp was present. He stated he is a registered professional engineer in the state of North Carolina. He stated this project produces about 1/20th of the traffic volume expected that would trigger a traffic impact analysis by NCDOT guidelines. He stated a TIA was not required. He stated knowing a left turn lane would be provided and the developer is exceeding the NCDOT guidelines with this project's design, he is comfortable. He stated the daily traffic would be approximately 140 vehicles per day. This is about 1.5% of the Barber Mill traffic. This is a low impact which is why a TIA was not performed.

Council Member Sims asked under Findings of Fact #1, what would Mr. Reinke consider too much traffic? Mr. Reinke stated 3000 trips per day would enforce a TIA. He stated this project is a very low traffic generator.

Council Member Casey stated it looks like a good product, but regarding the dog park, what type of grading would be used in this location? He stated it looks like there are mature trees in that area, maybe there is opportunity to save those trees and incorporate them into the dog park. Mr. Todd stated one of the goals for this development is to limit the site work and development activity and to leave as many natural site conditions as possible.

Council Member Sims asked about parking, he stated he saw the garage and he is assuming two cars, one in the garage and one in the driveway, would there be parking on the street? Mr. Todd stated he does not think the intent is to have any parking numbers allocated to the street. He stated there are 50 off-street parking lots provided through the garages and the off-street driveways, that would be 2 per unit. Mayor McLeod stated if parking is not looked at, there could be potential for parking on both sides of the street and firetrucks, or rescue vehicles would not be able to get down the street. He asked if there was a plan for a situation like that? Mr. Todd stated he feels the 50 number of parking was part of the discussion with staff. He stated there would be opportunity for the HOA to have rules on who can and can't park on the street.

Mayor Pro Tem Thompson asked if the applicant would be amenable to a condition that would limit parking to one side of the street? Mr. Bailey stated that could be enforced through the HOA and non-parking street signs. He stated on the left-hand side there is a stream buffer along there but he thinks there is room to get off-street parking there and they would be agreeable to that. He stated there is not enough space for a parking lot but there could be spaces to turn off on. He stated there is an area to the left when you drive in that could be used for some parallel parking locations or have a 90 degree turn for personal spaces.

Mayor McLeod asked if anyone wished to speak in opposition. With no one wishing to speak, this was turned over to Council for their deliberation.

Mayor Pro Tem Thompson stated he is comfortable the applicant has met the Findings of Fact and presented expert testimony. Council Member Sims stated he would be comfortable with adding in the conditions whether it be parking on one-side or parallel parking that Mr. Bailey was referring to.

Approval of 2022-113-SUP Creekside Townes

Mayor Pro Tem Thompson moved to approve this with adding conditions of allowing on-street parking only on one side.

RESULT:	CARRIED 3-0
MOVER:	Jason Thompson
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

7. OLD BUSINESS

- a. **Mass Communications/Data Voice Budget Amendment**
Presenter: Robert McKie, Finance Director

Mr. McKie stated at the last council meeting, Council was provided a presentation about a proposed Mass Communication system. Tonight is the request for Council to approve the budget to put the funding in place to install this system with an estimated first year cost of \$320,000.

Approval of Ordinance #2022-12-03

RESULT:	CARRIED 3-0
MOVER:	Jason Thompson
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

- b. **Formal Construction Contract Award - Sam's Branch WRF**
Presenter: Joshua Baird, PE - Engineering Director

Mr. Baird spoke on this item. He stated there are two items before Council tonight, a budget amendment and a formal award of the construction contract. He stated today there have been several milestones related to this project. He stated this is the largest contract the Town has ever entered into.

He stated he would like to thank consultants and staff that were involved in this project. He thanked consultants from Jacobs Engineering, WithersRavenel, JD Solomon, Inc., Grimes Land Services, Providence Construction, Gannett-Fleming, Utility Electrical Consultants, HDR Consultants, numerous financial consultants, State legislators, members of Local Government Commission, the team from CauleyPridgen, members from Parker Poe and town staff which has touched about every department. He thanked the leadership and direction of Town Manager Rich Cappola and support from the Council.

On November 7, 2022, Town Council approved a Resolution of Intent to award the construction contract to Thalle Construction. On December 6, 2022, the LGC approved the debt in a total program and on December 12, 2022, DWI issued the authority to award the contract. Staff and the engineer of record recommend formerly awarding the construction contract to Thalle Construction in the amount of \$171,402,550.00. This total program, including all linear projects, is just shy of a \$300 million dollar project. Town staff and the Attorney have all reviewed the contract. Thalle Construction should begin work in early January with completion of this 6 million gallon per day facility in mid to late 2025. Completion of this project will replace the existing Little Creek Water Reclamation Facility.

Council Member Casey thanked staff for all their hard work with this project. He stated in the future, let's plan ahead and put the money aside so we are prepared.

Approval of Ordinance #2022-12-02 (Budget Amendment)

RESULT:	CARRIED 3-0
MOVER:	Jason Thompson
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

Approval of Resolution #2022-98 (Formal Construction Contract Award)

RESULT:	CARRIED 3-0
MOVER:	Porter Casey
SECONDER:	Michael Sims
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

8. NEW BUSINESS

9. STAFF REPORTS

a. Town Manager

Mr. Cappola stated we hit a milestone today. The day after the last council meeting, he attended the LGC meeting and they unanimously approved to move forward and issue the debt required to be able to enter into the contract. He stated tomorrow we would be closing on \$100 million dollars approximately of bonds that were approved and sold a couple week ago and will be closing on the sale of the pre-treatment facility before the end of the year with Novo Nordisk.

He recognized Patrick Pierce, Economic Development Director, who graduated from Leadership Johnston County. He stated this has been a great program for the Town and hope more staff would go through this.

Tomorrow, December 20, 2022, would be Christmas with a Cop, 9 families (30 kids) would be involved in this program. All Town facilities will be closed for Christmas on Friday, December 23 and Monday and Tuesday, December 26th and 27th. We would also be closed on Monday, January 2, 2023 for New Year's Day. The next Council meeting would be Tuesday, January 3, 2023.

b. Town Attorney

c. Town Clerk

d. Other Staff

Greenway Update

Presenter: Jonathan Jacobs, Asst. Engineering Director

Development Services Software

Presenter: Jonathan Jacobs, Asst. Engineering Director

Greenway Update

Presenter: Jonathan Jacobs, Asst. Engineering Director

Mr. Jacobs stated back in September there was a contract amendment to enter Phase 2 of the design build contract with Crowder Construction Company for the replacement of three Greenway bridges on the Riverwalk on the Neuse near the Riverwood Athletic Club subdivision. The contractor has been issued a notice to proceed as of December 5, 2022. There has been preliminary work to minimize the amount of time the Greenway would be closed. The contractor has a planned scheduled closure for January 3, 2023, to close the Greenway for approximately 90 days. The contract does have a limitation for 180 day maximum but staff is anticipating that to be about half that. The contractor has chosen to do some of the preliminary work that has taken place over last couple weeks to try to keep the Greenway open during the holidays. He stated staff has worked with the Riverwood HOA to explore a

semi detour of the facility through the subdivision to try to allow a connection for users to continue to maintain. There has been signage installed that would provide a detour route for Greenway users.

Development Services Software

Presenter: Jonathan Jacobs, Asst. Engineering Director

Mr. Jacobs stated over the last 9 months, Planning and Engineering had worked through a Community Development review plan development software for private development submittals through the Town. They have been working on a hybrid version of this right now. Staff is currently in contract and scope negotiations with the company of this software. He stated Johnston County has selected the same software company. He would share more information when a contract is finalized.

This software would allow a better user experience. It would reduce the amount of manual staff time that is required for the current process, specifically with fees and other steps. Citizens would be able to log in, answer questions and the software will guide them where they need to go and how to further proceed. The implementation would take approximately 9-12 months. One of the things staff is really pushing is they are not developing or implementing this to utilize existing structure application processes, this it to shape and grow with the direction Clayton is moving.

10. OTHER BUSINESS

a. Informal Discussion & Public Comment

- Individuals have three (3) minutes to address the Town Council.
- Groups will designate a spokesperson. Spokesperson will have five (5) minutes to address the Town Council.

b. Council Comments

Council Member Sims thanked Town Manager, Deputy Town Managers and all of Council that helped him get through this first year. It has been a good year. Mayor Pro Tem Thompson wished all citizens a Merry Christmas, and thanked staff. He stated he has served over a decade on this Council and would like to continue to take this to the next level. He stated he is extremely proud to continue to serve. Council Member Casey echoed the sentiments. He wished everyone a Merry Christmas and a Happy New Year.

Mayor McLeod expressed his appreciation to Town Staff. He stated the whole Wastewater Treatment project has been the biggest hurdle in his political career, but we did it and we did it for Clayton. He offered kudos to Mr. Cappola, he said months ago he would be best number 2 man you ever had, and now you are the best number one man we've ever had. He stated he is receiving phenomenal results. He thanked Clayton Rotary Club for a great Christmas parade.

11. **CLOSED SESSION**

12. **ADJOURNMENT**

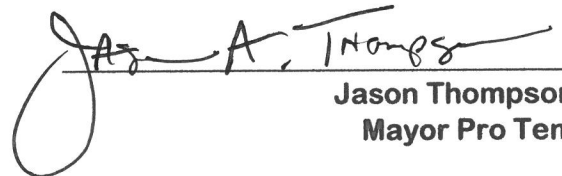
a. **Adjournment**

With nothing further, the meeting was adjourned at 7:22 p.m.

Motion to Adjourn

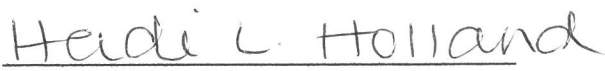
RESULT:	CARRIED 3-0
MOVER:	Michael Sims
SECONDER:	Jason Thompson
YES:	Jason Thompson, Porter Casey, and Michael Sims
NO:	None
ABSENT:	Avery Everett and Andria Archer

Duly adopted this 17th day of January 2023, while in regular session.



Jason Thompson
Mayor Pro Tem

ATTEST:



Heidi L. Holland, CMC, NCCMC
Town Clerk



Item 6a



December 16, 2022

VIA EMAIL

Town of Clayton
Town Council
111 East Second Street
Clayton, NC 27520

Re: Clayton Dental-Rezoning (Application Number: 2022-166-RZ)

Dear Town Council Members:

Please be advised that the 2.145-acre tract (the "Property") associated with the above-mentioned application is subject to Restrictive Covenants that require Architectural Approval by the Declarant. The Restrictive Covenants are recorded in the Johnston County Registry in Book 3988, Pages 128-132 (copy attached for ease of reference).

While the Declarant is not opposed to the proposed rezoning sought by the applicant for the Property, the Property remains subject to the Restrictive Covenants mentioned herein.

Sincerely,

Fred J. Smith, Jr.
Declarant

Mail after recording to:

**Brent E. Wood
Fred Smith Company
400 Riverwood Drive
Clayton, NC 27527**

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration") is made as of May 23, 2011, by Riverwood on the Neuse, LLC, a North Carolina limited liability company, its successors or assigns ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain tract of land located in Johnston County, North Carolina known and designated as Tract 2, containing 2.146 acres (93,464 square feet), as described on plat of survey entitled "Subdivision Plat for Riverwood on the Neuse, LLC, Wilders Township, Johnston County, North Carolina," dated May 12, 2009, prepared by Curk T. Lane, Registered Land Surveyor, for True Line Surveying, P.C., and recorded in Plat Book 74, Page 19, in the office of the Johnston County, North Carolina Register of Deeds (the "Property");

WHEREAS, the Property constitutes a portion of that certain development known as Riverwood Ranch (the "Development"); and

WHEREAS, in anticipation of its conveyance of the Property to Zogreo, LLC and Wilder Investors, LLC, as tenants in common, their transferees, successors or assigns or any subsequent owner of the Property ("New Owner"), Declarant desires to ensure that New Owner will use the Property in a manner consistent with the plans and designs of Declarant for the Development and not in a manner that would injure or adversely affect the other properties or operations in the Development.

NOW THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant

hereby declares the Property is and shall be held, transferred, sold, and conveyed subject to the restrictive covenants hereinafter set forth.

1. Use Restrictions. The Property shall be used only for the development and operation of a commercial, retail, office and/or mixed use development and such other uses incidental thereto and for no other purpose whatsoever (the "Permitted Use").

2. Architectural Approval.

(a) So as to maintain the architectural and aesthetic harmony of the Development as a whole (the "Theme"), New Owner shall submit to Declarant, for Declarant's prior, written approval, detailed plans and specifications ("Plans") for the commercial development and the other improvements to be constructed on the Property ("Facilities") covering the initial construction of the Facilities at least thirty (30) days prior to the commencement of such construction. Declarant shall provide New Owner with any comments to the Plans within fifteen (15) days of its receipt thereof. If the Declarant should reject the Plans for not complying with the Theme, New Owner and Declarant shall mutually consult to establish approved Plans for the proposed work. Any addition, remodel, reconstruction or alteration undertaken by New Owner shall be constructed in substantial compliance and in harmony with the initial approved construction of the Facilities. Any addition, remodel, reconstruction or alteration undertaken by New Owner and not objected to by Declarant within sixty (60) days of completion of the same shall be deemed accepted by Declarant. Declarant shall object by written notice to New Owner and to any bona fide lender holding a valid security interest in the Property.

(b) The terms and conditions of this Paragraph shall be enforceable by the Declarant or any subsequent owner of any portion of the Property, by actions for specific performance or injunction, in addition to any other remedies available at law. Additionally, the Declarant shall have the right to assign its rights to enforce this restriction herein contained. Furthermore, each owner of any portion of the Property shall have the right to assign its rights to enforce this restriction herein contained to a tenant in good standing of its entire parcel within the Property, provided such assignee complies with all of the restrictions set forth herein as if it was an original party hereto.

3. Environmental Compliance.

(a) New Owner covenants and agrees that the Property will be kept and maintained so as to comply with all now existing or hereafter enacted or issued statutes, laws, rules, or ordinances (all hereafter collectively called "Laws").

(b) New Owner shall hold Declarant free, harmless and indemnified from any penalty, fine, claim, demand, liability, cost or charge whatsoever which Declarant shall incur, or which Declarant would otherwise incur, by reason of New Owner's failure to comply herewith, including but not limited to (a) the cost of bringing the Property and/or the Development into compliance with all Laws; (b) the reasonable cost of all appropriate tests and examinations of the Property and/or the Development to confirm that the Property and/or the Development have been brought into compliance with all Laws; and (C) the reasonable fees and expenses of Declarant's attorneys, engineers, and consultants incurred by Declarant in enforcing and confirming compliance hereunder. The foregoing shall not, however, release Declarant or any predecessor in title to Declarant from any obligations of such party to remediate, monitor or otherwise be responsible for any environmental condition existing upon the Property as of the date of this Agreement, all of such obligations remaining in full force notwithstanding New Owner's indemnity contained herein.

(c) This Section 3 shall not apply to bona fide lenders taking possession or control of the Property pursuant to a foreclosure of a valid security interest in the Property or by similar means (i.e. deed in lieu of foreclosure), provided such lender did not introduce any materials to the Property in violation of the Laws during such time of possession.

4. Notices. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed properly given and received (i) if delivered in person, then when actually delivered and received, or (ii) if sent by registered or certified mail, postage prepaid, then three (3) business days after being mailed, or (iii) if sent by overnight courier service, receipt requested, then the next business day after being sent. The addresses of the parties for the purpose of sending such notices and communications shall be as follows:

To Declarant:

Riverwood on the Neuse, LLC
400 Riverwood Drive
Clayton, NC 27527
Attn: Fred J. Smith, Jr.

To New Owner:

Zogreo, LLC
702 Oberlin Road, Suite 100
Raleigh, North Carolina 27605
Attn: James I. Anthony, Jr.

Wilder Investors, LLC
702 Oberlin Road, Suite 100
Raleigh, North Carolina 27605
Attn: James I. Anthony, Jr.

Or, current legal owner
Legal Address of Property

Each party shall have the right to designate other or additional addresses for the delivery of notices by giving notice thereof in the manner set forth above.

5. Remedies; Enforcement. In the event any provision of these Restrictions is violated by New Owner, Declarant shall have the right to every remedy, either public or private, available in law or equity against New Owner and its successors and assigns. In any legal or equitable proceedings for the enforcement of these Restrictions or to restrain a breach thereof, the party or parties against whom the judgment is entered shall pay the attorneys' fees and costs of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceedings. The terms and provisions of these Restrictions shall be specifically enforceable against New Owner and New Owner's successors and assigns as the owner of the Property from time to time. All remedies provided under these Restrictions including, without limitation, those at law or in equity, shall be cumulative and not exclusive. The failure of a party having a right to enforce these Restrictions to so do shall not be deemed a waiver of the right of any other party having such right nor a waiver to do so for a subsequent breach or the right to enforce all other provision of these Restrictions. No party having the right to enforce these Restrictions shall be liable for failure to enforce these Restrictions.

6. Covenants to Run with Legal Title. All of the reservations, together with the covenants and agreements of New Owner, as set forth in these Restrictions shall be covenants running with the land and binding upon the Properly and New Owner, and their respective heirs, representatives, successors and assigns. The rights and benefits of these Restrictions shall run with the land, inuring to the benefit of Declarant, its heirs, successors and assigns.

7. Miscellaneous Provisions.

7.1 Consents. Whenever New Owner's or Declarant's consent or approval is required under or pursuant to this Declaration, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval shall be made based on a standard of reasonableness.

7.2 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

7.3 Severability. Invalidation of any of the provisions contained in this Declaration or of the application thereof to any party hereto by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other party hereto, and the same shall remain in full force and effect.

7.4 Declaration Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this Declaration shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach.

7.5. Time. Time is of the essence respecting this Declaration.

7.6 Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

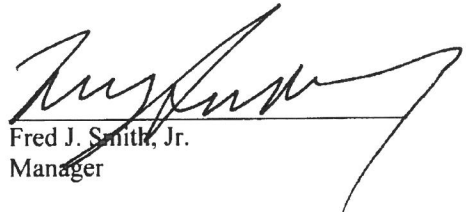
7.7. Governing Law. This Declaration shall be construed in accordance with the laws of the State of North Carolina.

7.8 Mortgage Lender. Declarant shall provide notice of any breach of the foregoing covenants to any first mortgage lender having an interest in the Property simultaneously with all notices provided New Owner if such lender requests copies of all notices in a writing provided to Declarant. Nothing herein shall obligate any such lender, however, to cure any such default.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its limited liability company name by its duly authorized manager, under authority duly given, effective the day and year first above written.

RIVERWOOD ON THE NEUSE, LLC (SEAL)

By:


Fred J. Smith, Jr.
Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

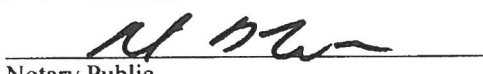
I, the undersigned, a Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me this day, and

- ☒ I have personal knowledge of the identity of the principal(s);
☐ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____; or
☐ A credible witness personally known to the undersigned or personally known to the principal(s), who is unaffected by the record or transaction, has sworn by oath or affirmation to the identity of the principal(s);

each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Fred J. Smith, Jr., Manager of Riverwood on the Neuse, LLC, a North Carolina limited liability company.

Witness my hand and official seal, this the 31st day of May, 2011.

My commission expires:
1-18-2014


Notary Public

Robert B Womble
Print Name of Notary

[NOTARY SEAL]

