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Lincoln County, North Carolina  
Danny R. Hester, Register of Deeds

STATE OF NORTH CAROLINA

COUNTY OF LINCOLN

**MARINER'S POINTE AT SMITHSTONE PHASE II  
DEVELOPMENT AGREEMENT**

**THIS MARINER'S POINTE AT SMITHSTONE PHASE II DEVELOPMENT AGREEMENT ("Agreement") is made and entered into effective as of the 27<sup>th</sup> day of February, 2017 (the "Effective Date") by and between MARINER'S POINTE AT SMITHSTONE TOWNHOMES OWNERS' ASSOCIATION, INC., a North Carolina nonprofit corporation ("Mariner's Pointe HOA"), SMITHSTONE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation ("Smithstone HOA"), and REO FUNDING SOLUTIONS III, LLC, a Georgia limited liability company ("RFSIII"). Mariner's Pointe HOA, Smithstone HOA and RFSIII are sometimes collectively referred to herein as the "Parties" and individually as a "Party".**

WITNESSETH:

WHEREAS, Mariner's Pointe HOA has certain rights and obligations in connection with a subdivision commonly known as Mariner's Pointe at Smithstone Townhomes ("Mariner's Pointe") as described in that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Mariner's Pointe Smithstone Townhomes dated January 18, 2002 and recorded on January 23, 2002 at Book 1312, Page 157 of the Lincoln County Register of Deeds Office (the "Mariner's Pointe Declaration"); and

WHEREAS, Mariner's Pointe is part of a larger neighborhood commonly known as Smithstone ("Smithstone"), which is subject to that certain Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Smithstone dated June 26, 2000 and recorded in Book 1180, Page 749 of the Lincoln County Register of Deeds Office (the "Smithstone Declaration"); and

WHEREAS, the Smithstone HOA has certain rights and obligations in connection with Smithstone as described in the Smithstone Declaration; and

WHEREAS, RFSIII owns property commonly known as Mariner's Pointe at Smithstone Townhomes Phase II ("Phase II"), which is part of Mariner's Pointe and subject to both the Mariner's Pointe Declaration and Smithstone Declaration; and

submitted electronically by "Alexander Ricks PLLC"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Lincoln County Register of Deeds.

WHEREAS, the Parties have reached an agreement regarding how Phase II will be developed and how RFSIII, its successors and assigns will participate in the Mariner's Pointe HOA and Smithstone HOA.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Parties hereby agree as follows:

1. Impact Fees. Upon the transfer of the first Lot in Phase II by RFSIII to a builder for construction of a dwelling unit thereon, RFSIII or its successors or assigns shall make a nonrefundable contribution of Sixty Thousand and No/100 Dollars (\$60,000.00) to the Mariner's Pointe HOA reserve fund, which amount represents building impact fees for the first forty (40) Lots sold by RFSIII. At the time of the transfer of the forty-first (41<sup>st</sup>) Lot in Phase II by RFSIII to a builder for construction of a dwelling unit thereon, RFSIII or its successors or assigns shall make a nonrefundable contribution of One Thousand Five Hundred and No/100 Dollars (\$1,500.00) to the Mariner's Pointe HOA reserve fund as a building impact fee and shall make corresponding contributions of the same amount upon the transfer of all subsequent Lots in Phase II to a builder for construction of a dwelling unit thereon.

2. Bylaws Amendments. Both the Mariner's Point HOA and the Smithstone HOA will pursue amendments to their Bylaws which will allow RFSIII and future owners of Lots with Phase II to participate as members of both association as follows:

- a. Mariner's Point HOA will amend its Bylaws to expand its Board of Directors to five (5) members. The terms of these five (5) members will be staggered;
- b. RFSIII will be allowed to appoint two (2) members of the new five-member board;
- c. Once the 40<sup>th</sup> Lot in Phase II is sold to a non-builder owner, one of the directors appointed by RFSIII will be replaced by a director elected by the membership of the Mariner's Pointe HOA;
- d. After all Lots have been sold to non-builder owners, the final appointed director shall resign and be replaced by a director elected by the membership of the Mariner's Pointe HOA consistent with the other changes described herein;
- e. The Smithstone HOA Bylaws and the Mariner's Pointe HOA Bylaws will be amended to provide that neither RFSIII, nor any builder shall have the right to cast any votes other than as described herein. Once a Lot is occupied by a non-builder owner, that owner shall be a full member of both associations and entitled to cast the votes in each association like any other owner/member.

3. Assessments. Each Lot in Phase II will be subject to the payment of the same assessments that are applied to the rest of Mariner's Pointe Lots beginning upon the earlier of: (i) the date that is 270 days after the conveyance of such Lot by RFSIII to a builder; or (ii) the date of conveyance of such Lot to a non-builder owner (the "Assessment Date"). Prior to the Assessment Date, such Lot will be exempt from assessments except as otherwise provided herein. There shall not be construction of a dwelling on a Lot until it is transferred by RFSIII to a builder.

4. Emergency Access. Mariner's Pointe HOA shall remove the existing gate located on the emergency access road connecting both phases of Mariner's Pointe. RFSIII shall install a replacement gate along said road, which can only be opened by emergency service providers (e.g., fire, EMS, police). RFSIII shall have the right to improve the emergency access road to the extent required by governmental authorities. Said road will not be used except by emergency vehicles; the gate will be closed and locked at all other times. The Mariner's Pointe HOA must approve the design of the replacement gate and fence, which approval will not be unreasonably withheld, conditioned or delayed.

5. Maintenance. RFSIII or its successors or assigns shall maintain the vegetation on Phase II in its natural (grassed) state except for those portions of Phase II on which improvements are being constructed. The grass/vegetation will be cut and the property will be kept free of debris in accordance with applicable governmental ordinances and as reasonably required by the Mariner's Pointe HOA. During construction of the improvements and until such time as the road rights-of-way are deeded to the Mariner's Pointe HOA, all road rights-of-way within Phase II will be kept clean and free of debris in accordance with applicable governmental ordinances and as reasonably required by the Mariner's Pointe HOA. RFSIII or its successors or assigns shall maintain the stormwater detention pond located in Phase II until such time as the pond is deeded to the HOA. The common areas other than the road rights-of-way located in Phase II shall not be conveyed to the Mariner's Pointe HOA until at least seventy-five percent (75%) of the Lots in Phase II are obligated to pay assessments under paragraph 3 above. The road rights-of-way located in Phase II shall not be conveyed to the Mariner's Pointe HOA until final Certificates of Occupancy have been issued on not less than ninety percent (90%) of the Lots in Phase II, and the final topcoat is applied to the roads. If the roads are damaged after conveyance by builder or developer activity, the builder or developer will still be responsible for repairing such damage. RFSIII will pay all taxes and governmental assessments levied against the common areas in Phase II until such time as they are conveyed to the Mariner's Pointe HOA. All areas conveyed, including the roads and storm water ponds/BMPs, must be in good condition at the time they are conveyed. In the event RFSIII is fined by the municipality for its failure to comply with its maintenance obligations described herein, and such failure continues for a period of no less than thirty (30) days after RFSIII receives notice of such failure, either Mariner's Pointe HOA or Smithstone HOA may cure RFSIII's failure and charge the cost to cure the failure back to RFSIII.

6. Utilities. The Parties shall cooperate in good faith to share the existing utility facilities in Smithstone and any additional utilities required by applicable governmental authorities. In furtherance thereof, the Parties shall cooperate in utilizing the master water meter, which serves all of Mariner's Pointe. The cost of utilities used shall be divided among the Parties in accordance with the provisions of the Mariner's Pointe Declaration and Smithstone Declaration. The Mariner's Pointe HOA shall not be responsible for payment of utilities used by RFSIII or its builders. To compensate the Mariner's Pointe HOA for utilities used by the builders in Phase II, the builders shall pay to the Mariner's Pointe HOA a builder assessment fee of \$25.00 per month for each Lot owned by a builder until such time as the Improvements upon said Lot are complete. The fee will begin on the first day of the month following the month in which said Lot is conveyed by RFSIII to a builder and will end when said Lot becomes subject to the payment of assessments under paragraph 3 above.

7. Buildings in Phase II. Mariner's Pointe HOA will have no responsibility for repair or replacement of any portion of the buildings beings constructed in Phase II until a final certificate of occupancy is issued for all units within such building and all units in such building are owned by non-builder owners.

8. Architectural Approval. The Mariner's Pointe HOA, the Smithstone HOA and both HOA's respective architectural review committees hereby approve the building drawings, plans and specifications submitted by NVR, Inc. and Ryan Homes for the Phase II buildings and building drawings, plans and specifications substantially similar to those previously submitted by NVR, Inc. and Ryan Homes.

9. Builder Consent. NVR, Inc. ("NVR") is currently under contract to purchase Lots in Phase II; as such, NVR shall execute a consent to this Agreement in the form shown on Exhibit A attached hereto (the "Builder Consent"), whereby NVR agrees to comply with all builder obligations described herein. NVR's duties pursuant to the Builder Consent and this Agreement shall terminate in the

event that its Lot purchase agreement is terminated with RFSIII. Any builder who enters into a contract to purchase Lots from RFSIII in Phase II in the future shall execute a Builder Consent prior to purchasing of Lots in RFSIII.

10. Subject to Declarations. Except as modified herein, Phase II is fully subject to all the terms, provisions and conditions set forth in the Smithstone Declaration, the Mariner's Pointe Declaration, the bylaws of each association and any reasonable rules and regulations adopted by either association that do not conflict with this Agreement.

11. Conflict. The provisions of this Agreement shall supersede any conflicting provisions contained in the Mariner's Pointe Declaration and/or the Smithstone Declaration.

12. Cooperation; No Conflicting Amendments. The Parties agree to use their best efforts to effectuate the provisions of this Agreement in good faith. The Parties agree to execute any additional documents as may be reasonably required by another Party to effectuate the concepts described herein. Mariner's Pointe HOA agrees not to amend the Mariner's Pointe Declaration to conflict with or negate any of the provisions of this Agreement. Smithstone HOA agrees not to amend the Smithstone Declaration to conflict with or negate any of the provisions of this Agreement

13. Release. The Parties hereby release and discharge each other from any and all manner of actions, causes of action, debts, sums of money, covenants, controversies, agreements, promises, damages, claims, costs, expenses and demands whatsoever, in law or in equity, that either party, or its predecessor in interest, ever had, now has or which it hereinafter can, shall or may have upon, by reason of or in any manner arising or resulting from or connected with Smithstone against any of the other parties and any predecessors in interest thereof or parties in interest pertaining thereto. Notwithstanding the foregoing, the Parties are not released of the obligations set forth in this Agreement, or any claims, demands, actions and causes of action which accrue after the date of this Agreement.

14. Authority. Each party represents and warrants that it has the full authority to enter into this Agreement, and that no third party consents of any kind are required in connection with this Agreement.

15. Capitalized Terms. Capitalized terms in this Agreement shall have the same meaning ascribed to them in the Mariner's Pointe Declaration, unless otherwise noted in this Agreement.

16. Binding Effect. The provisions of this Agreement shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties.

17. Counterparts. This Agreement may be executed in counterparts and/or with counterpart signature pages, all of which together shall constitute a single agreement. Electronic facsimiles of signatures shall be acceptable and binding upon the parties hereto.

18. Recordation. This Development Agreement shall be recorded in the Lincoln County Public Registry after execution.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

SMITHSTONE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation

By: [Signature]  
Name: Robert E. Johnson  
Title: President

STATE OF NORTH CAROLINA

COUNTY OF LINCOLN

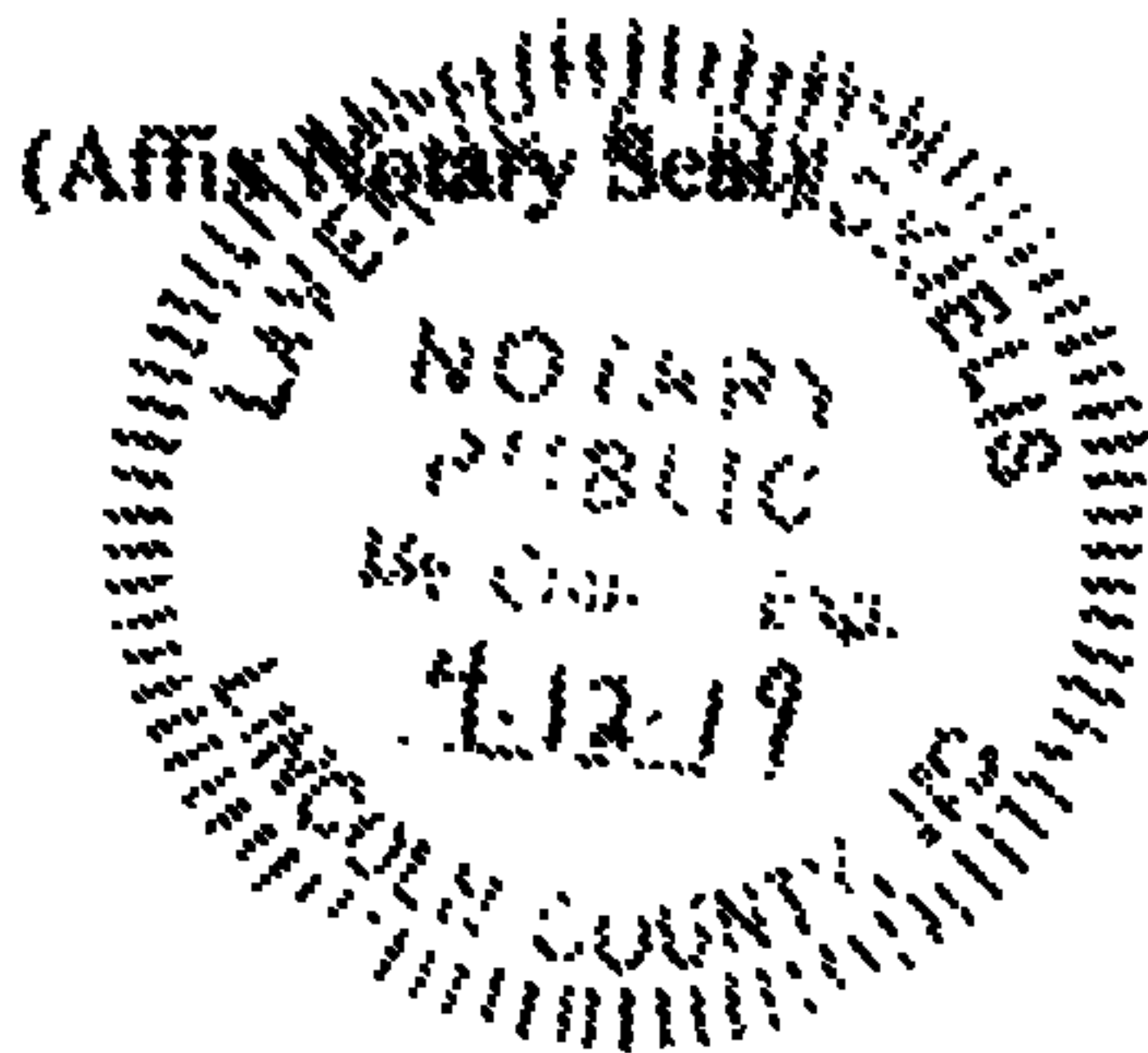
I LAVEENE A WASKIELIS, a Notary Public for the County and State aforesaid, do hereby certify that ROBERT E. JOHNSON personally came before me this day and acknowledged that (s)he is the PRESIDENT of **Smithstone Homeowners Association, Inc.**, a North Carolina nonprofit corporation, and, as such, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the 15 day of FEBRUARY 2017.

My Commission Expires: 4-12-2019

[Signature]  
Notary Public

LAVEENE A WASKIELIS  
Print Name



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all pursuant to authority duly given and intending to be legally bound hereby.

**MARINER'S POINTE AT SMITHSTONE TOWNHOMES OWNERS' ASSOCIATION, INC.,**  
a North Carolina nonprofit corporation

By: *Terry Estes*  
Name: TERRY ESTES  
Title: President

STATE OF NORTH CAROLINA

COUNTY OF LINCOLN

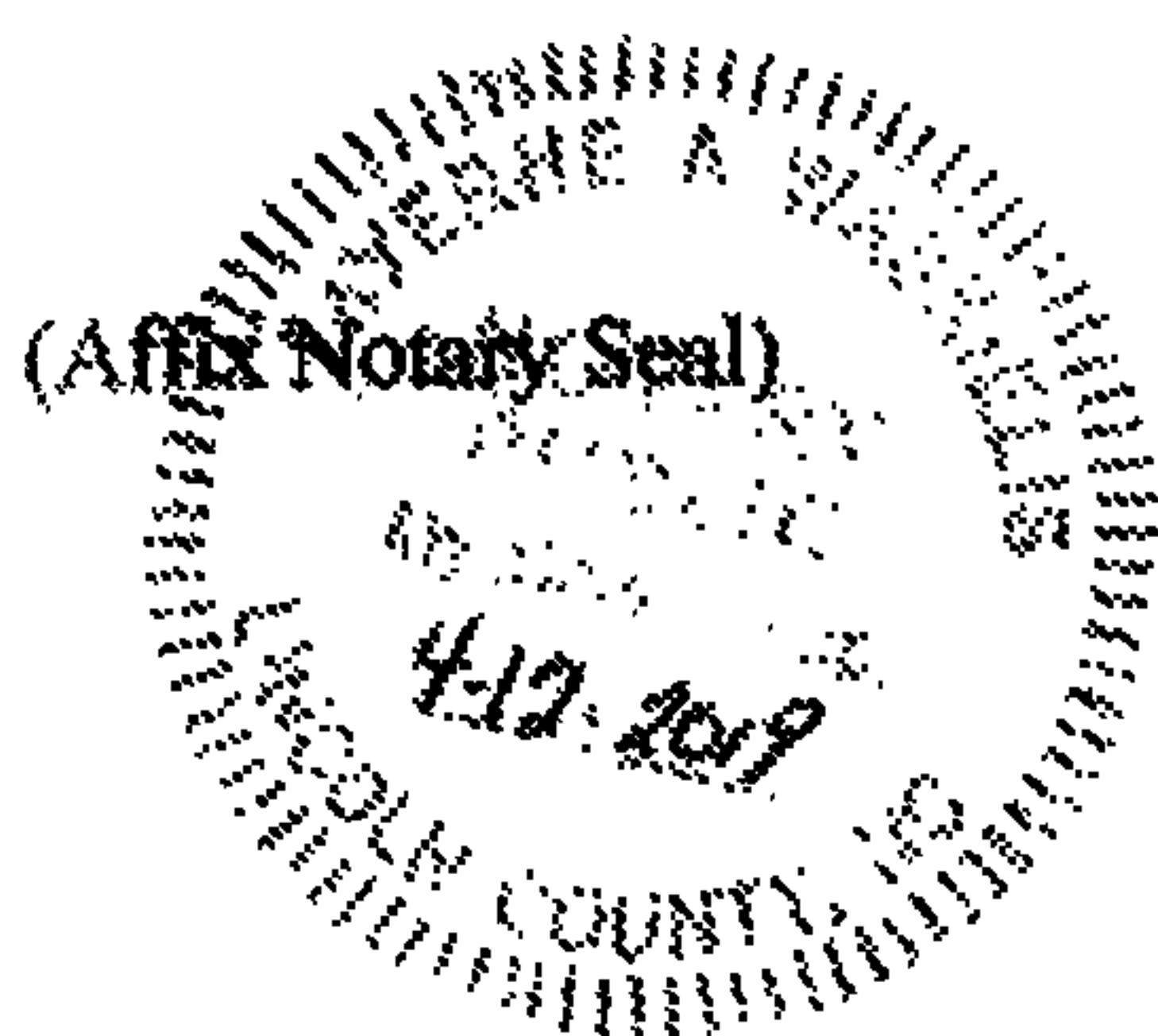
I LAVERNE A WASKIELIS, a Notary Public for the County and State aforesaid, do hereby certify that TERRY ESTES personally came before me this day and acknowledged that (s)he is the President of **Mariner's Pointe at Smithstone Townhomes Owners' Association, Inc.**, a North Carolina nonprofit corporation, and, as such, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the 15 day of FEBRUARY 2017.

My Commission Expires: 4-12-2019

*Laverne A Waskielis*  
Notary Public

LAVERNE A WASKIELIS  
Print Name



REO FUNDING SOLUTIONS III, LLC,  
a Georgia limited liability company

By: [Signature]  
Name: Judd Gilats  
Title: Vice President

STATE OF MINNESOTA

COUNTY OF HENNEPIN

I Cristina Aurora Zhang, a Notary Public for the County and State aforesaid, do hereby certify that Judd Gilats personally came before me this day and acknowledged that (s)he is the Vice President of REO Funding Solutions III, LLC, a Georgia limited liability company, and, as such, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the 3 day of February 2017.

My Commission Expires: January 31, 2021

Cristina Aurora Zhang  
Notary Public

(Affix Notary Seal)

Cristina Aurora Zhang  
Print Name

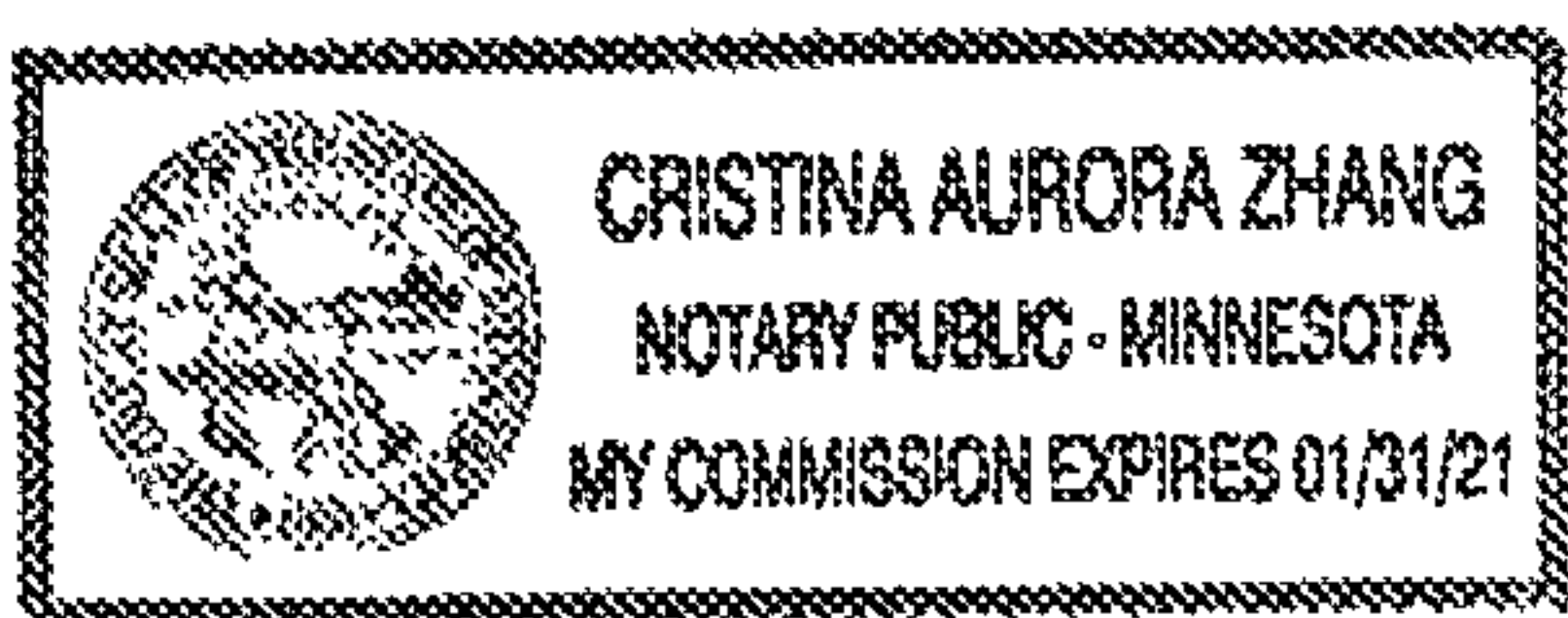


EXHIBIT A

**BUILDER CONSENT**

The undersigned ("Builder") has entered into a contract to purchase Lots from REO Funding Solutions III, LLC ("RFSIII") in that neighborhood commonly known as Mariner's Pointe at Smithstone Townhomes Phase II for the purpose of constructing townhomes thereon. Builder hereby consents to the terms and provisions of that certain agreement titled Mariner's Pointe at Smithstone Phase II Development Agreement (the "Agreement") by and between RFSIII, Mariner's Pointe at Smithstone Townhomes Owners' Association, Inc. and Smithstone Homeowners Association, Inc. dated \_\_\_\_\_, 2017.

Builder agrees to comply with all builder obligations described in the Agreement. Builder's duties pursuant to this Builder Consent and the Agreement shall terminate in the event that its Lot purchase agreement is terminated with RFSIII. Capitalized terms used in this Builder Consent but not otherwise defined shall have the meaning given to them in the Agreement.

This Builder Consent is given for the benefit of the Mariner's Pointe HOA and the Smithstone HOA (as defined in the Agreement), and either or both associations shall have the right to enforce the obligations assumed by the Builder herein.

Executed this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I \_\_\_\_\_, a Notary Public for the County and State aforesaid, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, and, as such, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the \_\_\_\_ day of \_\_\_\_\_ 2017.

My Commission Expires: \_\_\_\_\_

(Affix Notary Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name



**BUILDER CONSENT**

The undersigned ("Builder") has entered into a contract to purchase Lots from REO Funding Solutions III, LLC ("RFSIII") in that neighborhood commonly known as Mariner's Pointe at Smithstone Townhomes Phase II for the purpose of constructing townhomes thereon. Builder hereby consents to the terms and provisions of that certain agreement titled Mariner's Pointe at Smithstone Phase II Development Agreement (the "Agreement") by and between RFSIII, Mariner's Pointe at Smithstone Townhomes Owners' Association, Inc. and Smithstone Homeowners Association, Inc. dated February 27, 2017.

Builder agrees to comply with all builder obligations described in the Agreement. Builder's duties pursuant to this Builder Consent and the Agreement shall terminate in the event that its Lot purchase agreement is terminated with RFSIII. Capitalized terms used in this Builder Consent but not otherwise defined shall have the meaning given to them in the Agreement.

This Builder Consent is given for the benefit of the Mariner's Pointe HOA and the Smithstone HOA (as defined in the Agreement), and either or both associations shall have the right to enforce the obligations assumed by the Builder herein.

Executed this 6 day of February, 2017.

**NVR, INC.**  
a Virginia corporation

By: [Signature]  
Name: Kevin Walsh  
Title: Regional Manager & VP

STATE OF North Carolina  
  
COUNTY OF Lincoln

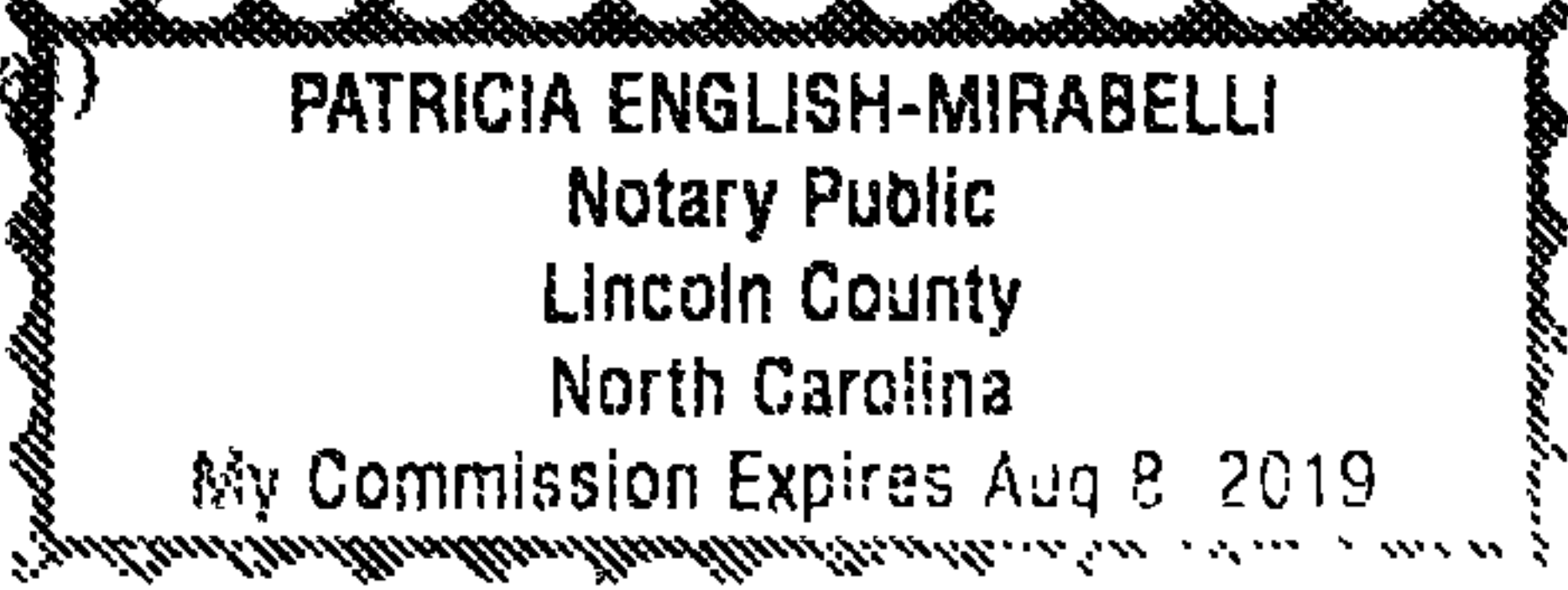
I Patricia English-Mirabelli, a Notary Public for the County and State aforesaid, do hereby certify that Kevin Walsh personally came before me this day and acknowledged that (s)he is the Vice President of NVR, Inc., and, as such, being authorized to do so, executed the foregoing on behalf of said company.

Witness my hand and official seal, this the 6<sup>th</sup> day of February, 2017.

My Commission Expires: 08/08/19

Patricia English-Mirabelli  
Notary Public

(Affix Notary Seal)



Patricia English-Mirabelli  
Print Name