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MEMORANDUM

TO: Chinquapin Homeowners Association
FROM: Zachary M. Moretz
DATE: December 3, 2025
RE: Developer's Obligations with regard to Common Areas and Amenities

We have been requested to provide an opinion as to whether the developer of Chinquapin may be under some legal obligation to convey open spaces, amenities or structures related to the subdivision to the homeowners association absent an explicit contractual obligation or obligation set forth in the recorded governing documents. The short answer is no. In determining our answer, we reviewed the governing documents of Chinquapin including all recorded plats and restrictive covenants, title to the applicable properties, the applicable statutory and case law, and the list of questions posed by Jim Talley entitled "Questions For Chinqupain [sic] Homeowners Association, Inc December 2025 Town Hall Meetings", and had discussions with various board members.

As a preliminary matter, we note that the plat recorded at Map Book 27, Page 68, entitled "Green Space Tract", designates certain open space areas which are to be conveyed to the homeowners association as "designated green space". The developer has agreed to convey these areas, along with a number of other parcels, to the homeowners association. That transaction is currently being finalized, and such areas are not in dispute. This memo addresses certain other areas, such as the maintenance area and the stable and paddock area, which are within or adjacent to Chinquapin and whose status is less clear. It should also be noted that the developer included a disclaimer at Article XIII, Section 10 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Chinquapin recorded at Deed Book 1866, Page 332 on September 29, 2010 reserving the right to change the plans for the development from time to time and advising that any such plans should not be relied upon. The developer would plead this disclaimer as a defense to any effort to enforce any expectations asserted to have been created by any such plans.

There is no statutory obligation requiring a developer to provide amenities or to turn over common elements at a certain time in North Carolina; in fact the governing authority, the North Carolina Planned Community Act, N.C. Gen. Stat. Chapter 47F (the "Act"), is completely devoid of language addressing a developer's obligations with regard to common areas. The only relevant references are in Section 3-115(a) ("Except as otherwise provided in the declaration, until the association makes a common expense assessment, the declarant shall pay all common expenses"), and Section 3-107(e) ("The association shall not be liable for maintenance, repair, and all other expenses in connection with any real estate which has not been incorporated into the planned community.")

The Act provides very broad rights to developers with very few limitations. "The declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board." Section 3-103(d). "Special declarant rights means rights reserved for the benefit of a declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned

communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of declarant control." Section 1-103(28). "Development rights means any right or combination of rights reserved by a declarant in the declaration (i) to add real estate to a planned community; (ii) to create lots, common elements, or limited common elements within a planned community; (iii) to subdivide or combine lots or convert lots into common elements; or (iv) to withdraw real estate from a planned community." Section 1-103(11). These are the operative provisions; neither special declarant rights nor development rights are materially limited or proscribed anywhere in the Act.

Case law is also not in our favor. In Conleys Creek Ltd. v. Smoky Mountain Country Club Prop. Owners Ass'n, 805 S.E.2d 147 (2017), the North Carolina Court of Appeals held that a real estate developer is not automatically required to construct amenities or convey them to a homeowners association; instead, such obligations depend on the terms of the governing documents and the arrangements made between the developer and the association. In that case, the developer constructed the community clubhouse but mandated in the governing documents that it would retain ownership of the clubhouse and that the association was required to collect dues and remit rent to the developer for the use of it. The court found that arrangement permissible unless it was unconscionable or not bona fide. The court held, consistent with prior case law, that the development's specific contractual and declaratory framework, rather than concepts such as fairness or estoppel, determines a developer's duties regarding constructing amenities or conveying them to the association. The association had no inherent right to own or control the development's amenities. Our review found no contractual or recorded documents which arise to a promise by the developer at Chinquapin to build any particular amenities or to convey the same to the homeowners association other than the green space tract plat discussed above.

Our courts' reluctance to mandate the construction or conveyance of amenities, or even the continuance of existing amenities unless explicitly stated in governing documents, was further affirmed in Cape Homeowners Ass'n v Destiny, 284 N.C.App. 237, 876 S.E.2d 568 (2022) and its predecessors Friends of Crooked Creek LLC v. C.C. Partners Inc., 254 N.C. App. 384, 802 S.E.2d 908 (2017) and Home Realty Co. v. Red Fox Country Club Owners Ass'n, 274 N.C. App. 258, 852 S.E.2d 413 (2020). Each of these cases involved either existing golf courses or golf courses which were clearly planned as shown on recorded plats and other plans. In each case, plans changed and the developer either developed the golf course for other uses or never built it. In each case, the N.C. Court of Appeals repeatedly reviewed and rejected a variety of legal theories asserted by homeowners who wanted the golf course to remain or to be constructed.

In Friends of Crooked Creek the Court of Appeals ruled that homeowners were not entitled to the continued existence and use of the golf course: "Absent a specific restriction within the Declaration, the law presumes the free and unrestricted use of land. The trial court properly observed and stated: 'An intent to build a golf course is not necessarily the same [as] the intent to burden [the] land in perpetuity for golf use only.' When interpreted as a whole, the Declaration clearly shows the intent of C.C. Partners was to reserve the right to develop a golf course, which was, in fact, developed and operated for over twenty years, rather than to perpetually restrict the use of the property."

With regard to the argument that the homeowners were entitled to the continued use of the golf course since it was shown on the recorded plats of the development, the Friends of Crooked Creek Court went on to state: "For an easement implied-by-plat to be recognized, the plat must show the developer clearly intended to restrict the use of the land at the time of recording for the benefit of all lot owners. … [B]ecause the free use of property is favored in this State, the depiction of remnant parcels on the plat was insufficient to show a clear intent by the developer to grant an easement setting them aside as open space."

In Home Realty Co. v. Red Fox Country Club, the homeowners claimed that the developer was estopped from denying them the use of the golf course based on the marketing of the development as a "golf course community" and the operation of the course itself for many years. The Court of Appeals put it pointedly: "[T]aking as true defendants' allegations that plaintiff represented to prospective purchasers that the property would always be used as a golf course, defendants fail to state a claim upon which relief may be granted, because there is no cognizable legal claim in North Carolina that an easement by estoppel restricting land has been created based on marketing materials, unrecorded plats,

or plats not referenced by deed. The trial court did not err by dismissing defendants' counterclaim seeking declaratory judgment on this basis."

Thus, the case law is clear that non-binding representations in marketing materials nor even the existence and operation of community amenities do not create enforceable obligations. There may be circumstances where a developer's conduct gives rise to liability under theories such as conversion, fraud or misrepresentation, if purchasers can show that they were intentionally misled and suffered damages as a result, or if it could be shown that homeowners' dues were intentionally and consistently used by the developer to purchase property or to build structures which were then misappropriated for the developer's benefit and not ultimately conveyed to the homeowners association for use by the homeowners. However, such claims would require proof of conversion, fraud or misrepresentation and would not be based simply on the existence or use of the amenities, nor the depiction of them on sales maps and marketing materials.

An inquiry into whether homeowners' assessments were properly used for "maintenance" versus improperly used for construction of amenities which were the developer's obligation to construct in the first place would not only likely be a forensic nightmare – especially in the case of Chinquapin – but would also be thwarted by the fact that no obligation to construct amenities will be enforced unless in clear and binding legal agreements. It could be valuable to review budgets which should have been shared with the members yearly and compare the actual expenditure to the budget figures, which if significantly different could substantiate a claim that members were misled and their assessments misused. However, it is our understanding that the homeowners association has around $1 million in reserve funds which have been collected over the years. Typically in cases where developer defalcation is suspected, the first telltale sign is that the developer fails to set aside any reserve funds despite having substantial assets such as private roads which will require future maintenance, or despite budgets allocating portions of assessments to reserves. This is the simplest way for a developer to under-collect assessments or to use the assessments collected improperly, but does not appear to be the case at Chinquapin to our understanding. Possibly employees could have been paid by the homeowners association who were in fact maintaining developer-owned property, but this would not necessarily be improper if the members did in fact use those properties as amenities. This would not in and of itself create an obligation for the developer to convey those properties to the association.

Bottom line: North Carolina law does not impose a legal obligation on developers to construct amenities nor to convey them to a homeowners association. Such an obligation arises only if there is a formal contractual or recorded instrument expressly and clearly imposing it. There are no such documents at Chinquapin. Attempts to force developers to do so under various estoppel or fairness legal theories have consistently failed. We are not aware of any cases addressing situations where a developer intentionally and fraudulently used homeowners association funds purely for its own benefit. Such a case would likely be difficult to prove given a developer's obligation to maintain the common elements, and thus legal right to use assessments to do so, until they are conveyed to the association. The developer has agreed to convey all common areas, amenities and facilities which it would appear to us are clearly common amenities or which are directly related to the operation of the subdivision. We do not see anything which would require or obligate the developer to convey to the homeowners association the properties which the association is proposing to purchase from the developer. We are happy to discuss further at your convenience.