

WAKE COUNTY, NC 23
LAURA M RIDDICK
REGISTER OF DEEDS
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Return to: Preparer

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR
BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC.**

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, EASEMENTS, CHARGES, AND LIENS FOR BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION is made on the date hereinafter set forth by Crosswind Development, Inc., a North Carolina limited liability company (hereinafter "Declarant");

WITNESSETH:

WHEREAS, Declarant is now the owner of all that certain property further described on the attached "Exhibit A", and being the property more fully reflected on the plat recorded in Book of Maps 2017, Page 531 - 536, Wake County Registry (as hereinafter defined as "Property"); and

WHEREAS, Declarant desires to create on such property an exclusive residential community of detached single-family homes to be known as Berklee Estates Subdivision (hereinafter sometimes referred to as the "Subdivision"); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area within the Subdivision, to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant have deemed it advisable to create an organization to own, maintain and administer the Common Area, including, without limitation, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and to maintain and administer certain storm water control devices located within the Subdivision, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC. for the purpose of exercising said functions; and

WHEREAS, Declarant shall be initially responsible for the management of the BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC. and Declarant desires to submit the Property to the same covenants, conditions, restrictions, easements, charges, and liens as set forth in this Declaration and to further join and utilize BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC. to administer and enforce these covenants and restrictions applicable to the Subdivision.

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A to this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title, or

interest in said real property or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act.

2. "Association" shall mean and refer to BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors, and assigns.

3. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in the Bylaws.

4. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

5. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or casement, for the common benefit of the Owners of Lots within the Subdivision. Common Area also includes water and sewer lines which serve more than one Lot and are not located within a Wake County or Declarant utility easement or a public street right-of-way. Common Area shall also include any private right of way providing access to and from any Lots in the Property, and any storm water control devices located within the Property. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein.

6. "Declarant" shall mean and refer to Crosswind Development, Inc., a North Carolina corporation. It shall also mean and refer to any person, firm or corporation to whom or which Crosswind Development, Inc., shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

7. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2023;

- (b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; provided, however, that, Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, of a sufficient number of votes (at the 10-to-1 ratio) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of Declarant Control shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

8. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision maps of the Properties, except for any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded maps. If any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plats, any newly-platted lot shall thereafter constitute a Lot.

9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

11. "Properties" shall mean and refer to the Property described in Exhibit A to this Declaration and any additional property annexed pursuant to Article II.

12. "Special Declarant rights" means rights reserved for the benefit of the 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.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION
OF THE BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC.

1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on Exhibit A attached hereto.

2. Additions to Existing Property. At any time prior to December 31, 2023, additional lands may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of plats showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a public street or road) and must be approved by Wake County and, if appropriate, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Should Declarant elect to annex any Additional Property and accordingly subject such property to the terms and conditions of this Declaration, Declarant reserves the right to provide a new subdivision name for the Additional Property, to alter the restrictions contained in this Declaration as to the Additional Property and to provide for an alternative assessment structure with regard to any Additional Property.

The annexation of Additional Property authorized under this section of the Declaration shall be effective upon the recording of a Supplementary Declaration of Covenants and Restrictions for the Additional Property which shall extend the effect and operation of this Declaration to the Additional Property. The Supplementary Declaration may contain changes, deletions and/or modifications as may be necessary or convenient, in the sole discretion of the Declarant, to reflect the difference in character, if any, of the Additional Property and the change in plan of development for said Additional Property from the Existing Property.

3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

1. 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.

2. 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:

- (a) 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".
- (b) Class B Member. The Class B Members 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 each lot it is under contract to purchase (each a "Class B Lot").

Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

3. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least twelve (12) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for BERKLEE ESTATES HOMEOWNERS ASSOCIATION, INC., recorded in the Wake County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each Owner shall furnish the Association a copy of any lease or sublease of his dwelling.

ARTICLE IV PROPERTY RIGHTS

1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

- (a) the provisions of the Wake County zoning ordinances and regulations, the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants, and guests, as provided in Section 2 of this Article IV.
- (b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.
- (c) the provisions of the Wake County zoning ordinances and regulations, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Wake County or to another nonprofit corporation for the aforementioned purposes. Notwithstanding any other provision of this Declaration, the Board of

Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, if Wake County approve such exchange.

- (d) the provisions of the Wake County zoning ordinances and regulations, the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.
- (e) the right of the Association, as provided by and consistent with the Wake County zoning ordinances and regulations, as same may be amended from time to time, to exchange all or part of the Common Area for other property and consideration of like value and utility.

2. Delegation of Use.

- (a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.
- (b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties. Any Owner who rents or leases his or her Lot to a tenant shall be not entitled to use and enjoy any common facilities in the Common Area during the period that the Lot is occupied by such tenant as their principal residence in Wake County, North Carolina.
- (c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants, or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

3. Conveyance of Title to The Association. Declarant covenants, for itself, its successors, and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner, it will convey to the Association title to those portions of the Common Area, if any, owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the

North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of ad valorem taxes not yet due and payable. Any planned improvements or amenities placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements or amenities.

4. Regulation and Maintenance of Common Area. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, Declarant will, prior to the conveyance of the first Lot in any phase or section of the Subdivision to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area easement lies for enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

- (a) **Rights and Responsibilities of the Lot Owners.** Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within any Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. If an Owner of a Lot on which a Common Area easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

- (b) **Rights and Responsibilities of the Association.** The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the undeveloped Common Area in its vegetated or natural state; or if in an improved state, keep it free of impediments to its free use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all

property taxes and other assessments levied against all Common Area owned in fee by the Association.

- (c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry set forth in this paragraph shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to Section 1 of Article VI of the Bylaws shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area or any stormwater control device(s)

and/or areas that are created for the purpose of detaining and/or treating stormwater including any and all ditches, pipes, and other conveyance structures, access easement areas, and other area, land, or structures located within any easement area shown on the plat or described herein. Such facilities may include but are not limited to dry detention areas, wet detention ponds, wetlands, level spreaders, conveyance structures, access easement areas and all associated constructed and natural features that allow such devices or areas to function as intended (hereinafter collectively referred to as "Stormwater Facilities"); (ii) maintenance, repair and reconstruction of the Common Area, including any public street right of ways until such time as the right of ways are dedicated to public use and accepted by a public agency, authority or NCDOT; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other obligations as established in this Declaration or as needs as may arise.

3. Maximum Annual Assessment. Until December 31, 2017, the Maximum Annual Assessment shall be \$575.00 for each Class A Lot.

- (a) From and after January 1, 2018, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed ten percent (10%) of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.
- (b) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in § 47F-2-121 of the Act.

4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month following the issuance of a certificate of occupancy for a completed dwelling built upon a Lot. There shall be no annual assessment for Class B Lots.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not more than the Maximum Annual Assessment in effect for the appropriate assessment year. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar

year. Annual assessments shall be fixed at a uniform rate for all Class A Lots and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment. Such authority may be assigned by the Board to the property management company.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget 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. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order 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. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until the Members ratify a subsequent budget proposed by the Board.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Area or located in a Stormwater Facility, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall

be used to defray the cost of any construction, reconstruction, restoration, repair, or replacement of a capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

7. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within ten (10) days after the due date shall incur a monthly late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is greater. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

8. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

10. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to four hundred fifty dollars (\$450.00) shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital.

The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI RIGHTS OF LENDERS

1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes nor the exchange of real property as provided in Section 1(c) of Article IV hereof shall be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Wake County or to another nonprofit corporation for the aforementioned purposes.
- (b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against a Lot;

- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefore by the Association.

ARTICLE VII EASEMENTS

1. Stormwater Facility, Access, Drainage, and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer, and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress, and regress on, over and under the Properties to maintain and correct drainage or surface water runoff to maintain reasonable standards of health, safety, and appearance. Such right expressly includes the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

To the extent that any improvement constructed by the Declarant infringes or encroaches into a drainage easement or utility easement established by the Declarant or reflected on a recorded map of the Property, the Declarant, in its sole discretion, shall have the right to waive minor violations that do not impact the reasonable use of the easement area.

2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, the delivery of mail and verification of the Declarant's or Association's fulfillment of its obligations of inspection, maintenance and repair of the Stormwater Facilities in accordance with the provisions of any Stormwater Facility and Covenants between Declarant and Wake County.

3. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. If any part of a dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance, or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

4. Easement Over Common Area. A perpetual, nonexclusive easement over the Common Area or Common Open Space is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants, or occupants, for the purpose of providing access, ingress, and egress to and from the Common Area or Common Open Space and for the use thereof.

5. Easement for Encroachments. If any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. If any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner to continue such encroachment.

6. Association's Easement Upon Lots. The Association shall have a right, license, and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules, and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon or is a clear violation of this Declaration or the Restrictive Covenants applicable to the Lot, including, but not limited to an obligation of maintaining the subject Lot.

7. Sign Easement. Easements are also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of the Lots, Easements, and Common Open Space where entry signs are located, for the purpose of installing, operating, repairing and maintaining landscaping and subdivision entrance signage, landscaping, and fencing in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII the Declaration and, if required, by the County.

The Declarant, the Association and their successors and assigns shall always have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing, or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Article.

ARTICLE VIII ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs) wall or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define, and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography, or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association, which, in turn, may delegate such authority to an Architectural Committee composed of three (3) or more persons appointed by the Board. Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment of Declarant's Rights. Declarant shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, and no termination of Special Declarant Rights shall be deemed a termination or assignment of the rights reserved to Declarant

in this Article VIII. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

Neither Declarant nor the Association, nor any officer, director, manager, member, or employee of either, shall be liable for damages to any person by reason of mistaken judgment, negligence, or nonfeasance in connection with the approval or disapproval or failure to approve or disapprove any plans, specifications and/or Improvements.

ARTICLE IX GENERAL PROVISIONS

1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to act to enforce any covenant, restriction, or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law. or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction, or rule.

2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

3. Amendment. Otherwise, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. During the Declarant Control Period, the Declarant may amend this Declaration, without the consent or joinder of the Members or the Association, for the purpose of conforming this Declaration to the requirements of any governmental law or regulation. This Declaration may also be amended during the first twenty-five-year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article IX, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds of Wake County.

4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then as long as any Class B Lot exists, as provided in Article m hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mortgaging of real property owned by the Association, deeding of Common Area to persons other than the Association (not including the granting of an easement or exchanges permitted by Article IV, Section l(c) hereof), and amendment of this Declaration.

5. Non-Liability of the County. Neither Wake County nor any other municipality, shall be responsible for failing to provide any emergency or regular tire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

6. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on recorded plats of the Subdivision, except with the consent of the Declarant and, if required, by Wake County.

7. Declarant's Right to Change Development. With the approval of Wake County, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types, and reallocate units within, and withdraw real property from the development. Declarant shall have all Special Declarant Rights as set out herein and granted pursuant to N.C.G.S. 47F-1-103(28).

8. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors', and employees' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

9. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to reasonable monetary fines, which fines shall

constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association shall not have the right to suspend the right to use private streets providing access to an Owner's Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

The Association shall always have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees, and court costs, reasonably incurred in such action.

10. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements unless at least sixty-seven percent (67%) of the Members vote at such meeting against reconstruction, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house).

ARTICLE X USE RESTRICTIONS

1. Land Use and Building Type. All Lots shall be used for residential purposes; provided, however, Declarant or Declarant's assign, may use any Lot within the Property as a temporary sales office and/or model home for the purposes of carrying on business related to the development, improvement, and sale of lots and/or homes within the Property. The temporary sales office may be a trailer and shall not be required to have a foundation. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed three (3) stories in height, a private garage for not more than three (3) cars, and other out-buildings incidental to residential use of the Lot. Any out-building or detached garage shall be

constructed of similar materials to that of the main dwelling. No metal out-buildings shall be allowed.

2. Dwelling Size. The minimum heated square footage of a dwelling, exclusive of open or screened porches, carports, garages, and decks, may not be less than 2000 square feet.

3. Building Setbacks, House Location. No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plats of the Subdivision or as otherwise required or permitted by Wake County zoning ordinances and regulations (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports, and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

4. Fences. No fence or wall shall be erected on any Lot closer to any side street than the side building setback line. No fence or wall shall be erected any closer than the rear corners of the dwelling. Chain-link fencing and vinyl fencing are not permitted. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

5. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

6. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport, or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface.

No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. This restriction is not intended to restrict pickups or work vans owned by residents or their guests from being parked in a driveway. No boat or boat trailer shall be parked anywhere

within the Subdivision, but boats, boat trailers and other work or recreational trailers may be stored out of sight within a garage or screened from view provided the screening shall be approved by the Architectural Committee or Board of Directors.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

7. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes. In no event shall any dwelling have more than three dogs, cats, or a combination thereof. All pets must be on a leash whenever outside the home or a fenced yard. Owners are required to comply with the applicable municipality's animal control ordinances.

8. Nuisances; Business Activity. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which maybe or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by Wake County zoning ordinances and regulations.

9. Signs. Except as otherwise required by Wake County, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the property for sale, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

10. Antennas; Satellite Dishes or Discs. No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or disc is not larger than one meter in diameter; (ii) the receiver or disc is located on the rear roof of the house away from the street and within the building set back lines applicable to that Lot; and (iii) the receiver or disc is located or screened in such a way that it cannot be seen from any street within the Subdivision. Any such screening must be approved as provided in Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

11. Swimming Pools. No above-ground pools, except for wading pools no deeper than 2 feet tall and no wider than 10 feet in diameter, shall be allowed on any Lot. Wading pools shall only be used during appropriate weather and must be emptied and stored when not in use.

12. Mailboxes. No mailbox shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article VIII.

13. Maintenance of Lot; Construction. Each owner shall keep their Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the owner of such Lot shall repair the damage and reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be in accordance with Article VIII and shall be continued with reasonable diligence to completion. No partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The owner of each Lot shall always keep contiguous public streets free from any dirt, mud, garbage, trash, or other debris resulting from any such construction on his Lot.

14. Clotheslines. No exterior clothesline may be erected or maintained on any Lot.

15. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

16. Septic Tanks; Wells. No septic tank shall be installed, used, or maintained on any Lot unless approved by the Wake County Health Department. No well shall be installed, used, or maintained on any Lot except as may be approved by the architectural committee.

17. Removal of Trees. Except in the case of an emergency that does not permit any delay, no living tree larger than 2" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval required by Article VIII. The foregoing provision shall apply only to Lots which have been occupied pursuant to a certificate of occupancy issued by Wake County.

18. Exterior Maintenance. The owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping, and lawns, always in a neat and attractive manner.

19. Easements. Easements for the installation, maintenance and repair of sanitary sewer and storm water drainage facilities are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision, or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

The Declarant, the Association and their successors and assigns shall always have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing, or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 19.

20. Subdivision of Lots. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded maps or plats, except by and with the written consent of the Declarant.

21. Unintentional Violations. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article VIII, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that no waiver may be granted for a violation in excess of twenty-five percent 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Wake County Registry.

22. Street Lighting. Declarant reserves the right to subject the Subdivision to a contract with a public or private utility company for installation of street lighting. Upon acceptance of the

streets within Subdivision for maintenance by Wake County, the town or county shall also assume the continuing monthly payment to the utility company for the street lights.

23. Enforcement. Enforcement of these Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. These covenants may also be enforced by the Association, pursuant to the Declaration and the Bylaws of the Association.

24. Severability. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

25. Term. These use restrictions shall run and bind the land and all owners thereof for a period of twenty-five (25) years from the date they are recorded, after which time, they shall be automatically extended for successive periods often (10) years unless altered or amended as set forth below. These use restrictions may be amended during the first five year period by the Declarant, without the approval or joinder of any other person. These covenants may also be amended during the first twenty-five (25) year period by an instrument signed by the then-owners of not less than eighty percent (80%) of the Lots, and thereafter an instrument signed by then-owners of not less than seventy-five percent (75%) of the Lots.

26. Declarant. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by Wake County.

27. Open Space. The Association shall be responsible for the maintenance of Common Open Space. Common Open Space shall mean Common Area which shall be maintained for forestry or agricultural or active recreational uses or passive recreational uses. Common Open Space shall not include public right of ways within the property. If for any reason the North Carolina Department of Transportation shall refuse to accept maintenance of the right of ways or any portion thereof, then such right of ways shall be considered private and shall thereafter be considered Common Open Space which shall be maintained by the Association. All Common Open Space may be subjected to easements for utilities, including sewer and waterlines, easements for ingress and egress as necessary for installation, maintenance and repair of utilities, and may be subjected to easements for any encroachments arising from initial improvements.

28. Outside Recreational Equipment. No portable basketball goals will be allowed. Permanent basketball goals will be allowed subject to architectural approval, however permanent basketball goals must be installed adjacent to the rear third of the driveway of the dwelling and must have a clear backboard. Trampolines shall be allowed as long as the trampoline is screened and not visible from roadways within the community. Playsets must be located directly behind the home.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized officer, as of the ____ day of December, 2016.

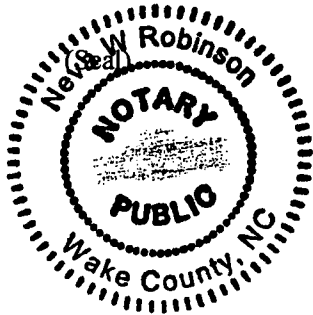
Crosswind Development, Inc.
A North Carolina Corporation

By. *William Kelly*
Its President

STATE OF North Carolina COUNTY OF Wake

I, Neva W. Robinson, a notary public in and for said county and state, certify that William H. Wynn personally appeared before me this 13th day of February, 20 17 and acknowledged that he (or she) is President (title) of Crosswind Development, Inc (corporation), a North Carolina corporation, and that he (or she) as President (title), being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 13th day of February, 20 17.



Neva W. Robinson
Notary Public

My Commission Expires: 8/24/2019

Capital Bank Corporation (referred to hereinafter as "Lender") have an interest in the Property by virtue of deed of trust recorded in Book 16230, Page 2376, Wake County Registry and joins this Agreement for the sole purpose of subordinating the above referenced deed of trust to the terms, obligations, requirements, easements and all other matters set forth in this Agreement; and to enable the benefits contained therein and/or herein to inure to the Lender, or its designated successor in title and/or in interest, in the event that Lender ever becomes a "successor in interest" to one or more of the parties to this Agreement. Lender is specifically not joining in this Agreement to assume, fulfill or in any manner be subject to any duties, obligations, or liabilities of the Permittee contained therein and/or in this Agreement.

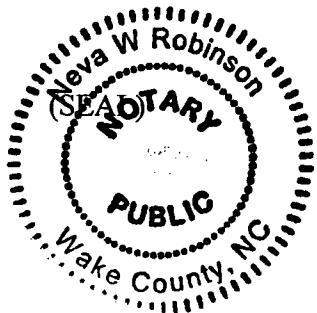
(Sign) William H. Wynn
Name: William H. Wynn
Title: William H. Wynn
(Authorized to Sign on Behalf of Lender)

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Neva W. Robinson, a Notary Public for said County and State, certify that William H. Wynn (name of corporate officer) personally appeared before me this day and acknowledged that he/she is President (title of officer) of Crosswind Development, Inc (entity name), a North Carolina Corporation (entity type), and that he/she as Resident (title of officer), being authorized to do so, executed the foregoing on behalf of the Crosswind Development, Inc (entity type).

Witness my hand and official stamp or seal, this the 13th day of February, 2017.



Neva W Robinson
Printed Name: Neva W. Robinson
Notary Public
My Commission Expires: 8/24/2019

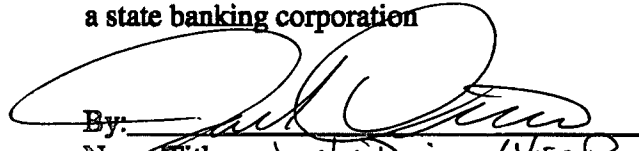
MORTGAGEE SUBORDINATION

Capital Bank Corporation ("**Lender**"), the holder of that Deed Of Trust, Security Agreement, Assignment of Leases, & Fixture Filing recorded in Book 16230, Page 2376, Wake County Registry (as may be subsequently amended, renewed, or restated, the "**Deed of Trust**"), joins in this Declaration for the sole purpose of subordinating the Deed of Trust to the provisions of the Declaration. Notwithstanding the preceding or anything else in the Declaration to the contrary: (i) the lien of the Deed of Trust shall nevertheless remain superior to any and all liens for assessments now or subsequently created under the Declaration; and (ii) the trustee's deed given in connection with the foreclosure of the Deed of Trust or a deed in lieu of foreclosure from the mortgagor under the Deed of Trust accepted by Lender shall extinguish all liens for those assessments accruing prior to the date of the deed.

IN WITNESS WHEREOF, Lender, by its authorized officer, has executed this instrument this March 8th, 2017.

LENDER:

CAPITAL BANK CORPORATION
a state banking corporation

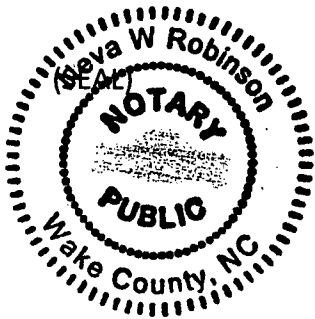
By: 
Name/Title: Jack Duino / Vice President

STATE OF NORTH CAROLINA

COUNTY OF North Carolina

I, Neva W Robinson, a Notary Public for said County and State, certify that Jack Dimio (name of corporate officer) personally appeared before me this day and acknowledged that he/she is Vice President (title of officer) of Capital Bank Corporation (entity name), a financial institution (entity type), and that he/she as Vice President (title of officer), being authorized to do so, executed the foregoing on behalf of the Capital Bank Corporation (entity type).

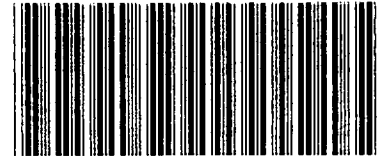
Witness my hand and official stamp or seal, this the 8th day of March, 2017.



Printed Name: Neva W. Robinson
Notary Public Neva W Robinson
My Commission Expires: 8/24/2019

Exhibit A

BEING all of certain Lots 1-14, inclusive, and Lots 32-66, inclusive, Berklee Estates Subdivision, Phase 1, and all easements and all rights of ways not yet publicly dedicated, and all other property of any type, including but not limited to Open Space lots, as shown on a map thereof recorded in Plat Book 2017, Page ~~632~~⁶³¹, Wake County Registry, to which plat reference is hereby made for a more particular description.



BOOK:016719 PAGE:01206 - 01236



Please retain yellow trailer page

It is part of the recorded document and must be submitted with the original for re-recording

Laura M. Riddick
Register of Deeds
Wake County Justice Center
300 South Salisbury Street, Suite 1700
Raleigh, NC 27601

New Time Stamp

\$25 Non-Standard Fee

Additional Document Fee

Additional Reference Fee

This Customer Group

_____ # of Excessive Entities

_____ # of Time Stamps Needed

This Document

 31 # of Pages

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