

Prepared by and hold for: Warren Shackleford & Thomas, P.L.L.C.  
Kimberly P. Thomas, Esq.  
343 South White Street  
Wake Forest, North Carolina 27587

STATE OF NORTH CAROLINA  
WAKE COUNTY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR BARHAM RESERVE SUBDIVISION**

THIS DECLARATION is made this 30<sup>th</sup> day of April, 2020 by BARHAM ESTATES, LLC, hereinafter referred to as Declarant.

**WITNESSETH**

WHEREAS, Declarant is the owner of certain property located in Wake County, State of North Carolina, which is more particularly described herein but is known generally as "Barham Reserve Subdivision"; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in said community and for the maintenance of the properties and the improvements thereon, and to that end desires to subject the real property as described above, together with any and all such additions as may hereafter be made thereto, 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, it is in the best interest of the Declarant and will benefit all future Owner's that these covenants, easements and restrictions be established regulating the use and occupancy of this neighborhood; and

NOW, THEREFORE, Declarant hereby declares that the Property hereinafter described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and

which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I** **DEFINITIONS**

Section 1.      “Architectural Control Committee (referred to below as “ACC”)” shall be a committee composed of at least three members, all initially appointed by the Declarant, that shall approve or disapprove submitted plans and specifications for any improvements located on any part of the Property.

Section 2.      “Articles” shall mean the Articles of Incorporation of the Association as so filed with the North Carolina Secretary of State’s Office, as the same may be from time to time amended.

Section 3.      “Association” shall mean and refer to Barham Reserve Homeowner’s Association, Inc., incorporated or to be incorporated.

Section 4.      “Board of Directors” shall mean the elected body governing the Association as provided by North Carolina corporate law.

Section 5.      “Builder” shall mean those persons or entities that purchase Lots solely for the construction of dwellings to be occupied by others and that are properly licensed to act in such capacity which shall be approved by Declarant.

Section 6.      “Bylaws” shall mean the document for governance of the Association as adopted initially by the Board and as may be amended by the members.

Section 7.      “Common Property” or “Common Area” shall mean those certain portions of the Property (including any improvements thereto) owned by the Declarant or the Association for the common use and enjoyment of the owners, hereinafter defined, including the pond, and any landscaping, the gates at the entrance as well as all Private Streets which shall also be shown on the recorded plat. The Common Property shall include any easement rights, Landscaped Right-of-Way and lighting, mailbox kiosk, subdivision signs, decorative entry walls, any other lighting at the entrance of the subdivision from Barham Siding Road, common areas themselves and any improvements constructed thereon.

Section 8.      “Common Expenses” shall mean and include, as applicable:

- (a) All sums assessed by the Association against its members; Expenses for maintenance of the roads, streets, any private roads, rights of way, Department of Transportation right-of-way easements as shown on any recorded plat of the subdivision, as determined by the Owners Association or the Board, and any amenities as provided in this Declaration;

- (b) Expenses of administration, maintenance, repair, or replacement of the Common Properties including expenses of maintenance of any fencing, signage, lighting, irrigation, and landscaping located at the entrance to Barham Reserve Subdivision as shown on the recorded plat as well as any expenses of BMP maintenance and maintenance expenses for irrigation and landscaping of any other Common Areas as shown on the recorded plat;
- (c) Any ad valorem taxes and any public assessment charged against the Common Properties owned by the Owner's Association;
- (d) Any hazard, liability or such other insurance premiums as the declaration or the Bylaws may require the Association to purchase or as the Association may deem appropriate to thereby purchase, especially as it relates to the pond;
- (e) The expenses of the maintenance of private drainage and utility easements and any facilities which are within the subdivision and which serve the subdivision and adjacent lands thereto;
- (f) The expenses of the maintenance of all easements and landscaping and any improvements conveyed to the Association;
- (g) The expenses of the maintenance of all streets and embankments adjacent to the streets and any improvements conveyed to the Association;
- (h) Any other expenses as so determined by the Board or approved by the members of the Association to be common expenses of the Association.

Section 9. "Declarant" shall mean and refer to Barham Estates, LLC, a North Carolina limited liability company, its successors and assigns.

Section 10. "Declarant Development Period" shall mean and refer to that period of time during which: (i) the Declarant is the owner of any portion of the Property, including any Lot or Common Area; (ii) Declarant is in any way involved in the maintenance of streets, landscaping, or Common Area; (iii) Declarant is in any way involved in the marketing of the Property through advertisements, signs, listings or providing an on-site real estate agent; or (iv) Declarant is providing funds to the Association.

Section 11. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Barham Reserve Subdivision, as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

Section 12. "Entry Features" shall mean those portions of the Property upon which permanent identification signs or monuments shall be initially installed and erected by Declarant at various entrances of Barham Reserve Subdivision.

Section 13. "Landscaped Right-of-Way" shall mean the entryways and other areas within the public or private street rights-of-way within or adjoining the Property which are designated as Landscaped Rights-of-Way by the Declarant.

Section 14. "Lot" shall mean and refer to any numbered or lettered plot of land shown upon any recorded community map of the Property, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site which is intended for residential purposes. The ownership of each Lot shall

include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in any Common Property.

Section 15. “Lot in Use” shall mean and refer to any Lot on which a residential structure has been fully constructed and is being or to be occupied as a residence.

Section 16. “Mortgage” shall mean any mortgage, deed of trust, and any and all other similar instruments used for the purpose of encumbering property as security for the payment or satisfaction of an obligation.

Section 17. “Mortgagee” shall mean the holder of a Mortgage.

Section 18. “Owner” or “Lot Owner” shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. A “Lot Owner” is an owner of a lot who occupies the residence which sits upon the lot.

Section 19. “Planned Community Act” shall mean chapter 47F of the North Carolina General Statutes as may be amended.

Section 20. “Person” means any natural person, corporation, joint venture, partnership, association, trust, limited liability company or any other legal entity.

Section 21. “Property” shall mean and refer to that certain real property made subject to this Declaration, as defined below, and any and all other additional property hereinafter made subject to this Declaration by Supplemental Declaration.

Section 22. “Roadway Medians” shall mean all areas within public or private street rights-of-way within or adjoining the Property that are not Landscaped Rights-of-Way and which have been designated as Roadway Medians by the Declarant if such exist.

Section 23. “Barham Reserve” or “Subdivision” shall mean and refer to the following property:

**BEING ALL OF LOTS 1 TO 9 BARHAM RESERVE SUBDIVISION AND ALL COMMON AREAS AS SHOWN ON THAT PLAT RECORDED IN BOOK OF MAPS 2019, PAGE 1831, WAKE COUNTY REGISTRY.**

Section 24. “Supplemental Declaration” shall mean an addition to this Declaration which imposes additional restrictions and obligations on the Property.



**ARTICLE II**  
**PLANNED COMMUNITY ACT**

Declarant intends to create a planned community subject to the provisions of Chapter 47F of the North Carolina General Statutes. Nothing contained herein shall serve to limit any rights, procedures, enforcement mechanisms, or otherwise as provided in the North Carolina Planned Community Act (the "Planned Community Act"). However, if there is any conflict between the Planned Community Act and this Declaration, this Declaration shall control unless prohibited under the Planned Community Act.

**ARTICLE III**  
**PROPERTY; ADDITIONAL DECLARATIONS**  
**SUPPLEMENTAL DECLARATIONS**

Section 1. Property made subject to Declaration. The Property made subject to this Declaration is described as follows:

**BEING ALL OF LOTS 1 TO 9 BARHAM RESERVE SUBDIVISION AND ALL  
COMMON AREAS AS SHOWN ON THAT PLAT RECORDED IN BOOK OF  
MAPS 2019, PAGE 1831, WAKE COUNTY REGISTRY.**

The Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Supplemental Declaration. The Declarant reserves the right to subject the Property to additional covenants, restrictions, easements, uses, privileges, changes, assessments, liens, options, rights, terms and provisions as Declarant in its sole discretion may determine and/or to amend this Declaration as necessary in its sole discretion. Such an addition, etc. shall not require any other Owner approval during the Declarant Development Period or while Declarant owns any property within the subdivision as shown on the plat. Any Supplemental Declaration must be in writing and filed with the Wake County Register of Deeds Office.

**ARTICLE IV**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot shall be a Member of the Association and shall be subject to an assessment. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment.

Section 2. The Association shall have the following two classes of voting membership:

Class A. Class A Members shall be all Owners, except for the Declarant and Builder (who shall be one and the same entity) and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any such Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote or a fractional vote be cast with respect to any Lot, and in no event shall fractional votes be allowed.

Class B. The Class B Member shall be the Declarant and Builder (who shall be one and the same entity) but who shall each be entitled to ten (10) votes for each lot owned. The Class B memberships shall cease and be converted to a Class A membership on the happening of either the following events, which ever occurs earlier: eighty-five percent (85%) of the Lots have been sold by Declarant; or on December 31, 2025.

## **ARTICLE V**

### **USE AND BUILDING RESTRICTIONS AND RULES**

Declarant reserves the right from time to time to waive each section of this Article provided that any waiver is to be in writing, signed by Declarant and recorded in the Wake County Registry.

Section 1. General. This Article sets out certain use and building restrictions which must be complied with by all Owners. The Declarant may, from time to time, promulgate, rules and regulations applicable to the use of the Property. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners.

The Board of Directors (the "Board"), and any Owner shall have the power to file an injunction with the appropriate judicial authority to enforce all of the covenants and conditions contained in this Article.

The Board and the ACC has discretion to grant variances, except as prohibited by Wake County regulations, to all use and building restrictions found in this Article so long as such discretion maintains and does not violate the overall aesthetic nature of the Subdivision and such a variance is obtained in writing signed by the Board and recorded in the Wake County Registry.

Section 2. Owner's Responsibility. All maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with this Declaration. Such maintenance shall include, without limitation, (i) the repairing and painting (or other appropriate external care) and otherwise caring for the dwelling and all other structures located on the Lot; (ii) the seeding, fertilizing and watering of all lawns and mowing, edging, clipping, sweeping, pruning, raking and otherwise caring for all lawns with lawn grass not to exceed 8" in height; (iii) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic, do not cause unsightly or unkempt conditions and do not trespass onto the property of others; and (iv) the maintenance, repair and painting of all fences, which must be metal, on the Lot. If the Declarant determines that any Owner has failed or refused to discharge properly any of such Owner's obligations regarding the maintenance, repair, or

replacement of items for which such Owner is responsible hereunder, the Declarant shall, except in an emergency situation, give the Owner written notice of the Declarant's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) calendar days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, if such maintenance, repair, or replacement is not capable of completion within a ten (10) calendar day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Declarant may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense. The remedies provided in this Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

It shall be the responsibility of each Owner to prevent and correct unclean, unsightly or unkempt conditions of building or Lots. All Lots shall be kept clean and free of garbage, junk, trash, debris, non-operable vehicles or apparatus and vehicles without valid and proper license plates and registration, and any substance and conditions that might contribute to an unsightly condition, health hazard or the breeding and habitation of snakes, rats or insects. "Lot" as used in this section also includes that portion of the lot between the right of way and the pavement.

Section 3. Land Use and Building Type. Each Lot shall be used exclusively for single-family, non-transient residential purposes and, except as allowed by the terms of this Declaration, no building or other structure shall be constructed, placed, allowed to remain on a Lot except one single family dwelling, and an attached or detached garage, and an out building or storage building which meets the requirements contained in this Declaration and any subsequent architectural guidelines, unless the ACC in writing allows an exception. A home office may be maintained and business activities can be carried out within the dwelling as long as there is no sign or other evidence that any type of business activity is being carried out inside the dwelling. There are to be no retail business or commercial customers to a dwelling. There shall be absolutely no business activity carried on outside the residential dwelling. Provided, however, any such sales office, model home and temporary construction or sales trailer or office must be specifically approved by Declarant and must comply with all applicable governmental laws and regulations; and (ii) Declarant and any Person authorized by Declarant may conduct such business activities on any Lot as may be necessary in connection with Declarant's development and/or sales of any part or all of the Property or the Project.

Notwithstanding the foregoing, the provisions in this Section shall in no way limit the ability of the Declarant to subject other subdivision property to additional covenants and/or restrictions.

Section 4. Architectural and Landscaping Standards. No exterior construction, alteration, addition, erection or landscaping of any nature whatsoever shall be commenced or placed upon any part of the Property, except such as is installed by Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition, erection, alteration or landscaping shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, color, texture and location shall have been submitted in writing to and approved by the ACC. Such plans must also be approved and a building permit obtained from the applicable governmental authorities if so

required. Notwithstanding anything contained herein to the contrary, no large bushes or shrubs shall be approved for planting if such bushes or shrubs are to be located in front of the rear elevation line of the dwelling.

The initial ACC shall consist of three (3) members, all initially appointed by the Declarant. The ACC may employ architects, engineers, or other Persons as it deems necessary to enable the ACC to perform its review. The ACC may, from time to time, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee. During the Declarant Development Period, Declarant shall have the sole right to appoint all members of the ACC. Upon the expiration or earlier surrender in writing of such right, the Declarant shall turn full control of the Board over to the Association.

If the ACC fails to approve or to disapprove submitted plans and specifications within thirty (30) calendar days after the completed plans and specifications have been submitted to it, the foregoing will be deemed approved. However, all activities commenced pursuant to such plans which have been deemed approved shall be consistent with such plans. In addition, no approval, whether expressly granted or deemed granted as provided herein, shall be inconsistent with this Declaration or any design guidelines promulgated hereunder unless a variance has been granted in writing.

As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the ACC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the ACC or the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the ACC and the Board, in the event of noncompliance with this Section, the ACC and the Board may, record in the appropriate public registry a notice of violation naming the violating Owner.

PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE BOARD, THE MEMBERS THEREOF, NOR THE ASSOCIATION, IF ANY, ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE ASSOCIATION, THE BOARD, THE BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON

OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE ASSOCIATION, THE BOARD, THE BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

Section 5. Signs. No sign of any kind shall be erected by an Owner within the Property or Subdivision without the prior written consent of the Board except (a) when offering a Lot or residence for sale or for lease, not more than one (1) professionally lettered "For Sale" or "For Rent" sign having a maximum area of five (5) square feet and a maximum height of five (5) feet above ground level, (b) professional security signs (c) any signs required by legal proceedings, and (d) signs erected by Declarant. Professionally lettered "For Sale" or "For Rent" signs may be attached to a post of not more than Five Feet, Six Inches (5'6") in height. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs. Declarant may elect to remove any sign not meeting the above qualifications without any advance notice to Owner and shall not be liable to Owner for such removal. Through December 31, 2022 Declarant may have signs of any size marketing and advertising lots in the subdivision.

Section 6. Vehicles/Garages. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, limousines and automobiles. All vehicles must be properly licensed, registered, inspected and otherwise kept in compliance with applicable governmental regulations. Vehicles shall not be parked on any street within the Subdivision or on any portion of a Lot other than in the garage or behind the front of the house or on a concrete parking pad; provided, however, if, and only if, the occupants and/or their guests of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles, not to exceed four (4) vehicles, which are an occupant's primary means of transportation on a regular basis may be parked in that portion of the driveway adjacent to the garage. It is hereby allowed that any boat, camper or motor home is allowed to park openly on an Owner's Lot as long as it is parked behind the front of the home on a concrete pad.

Notwithstanding the above, no towed vehicle, trailers, boat, boat trailer, recreational vehicle, motor home, mobile home, bus, truck with camper top, trucks (except pick-up trucks or sport utility vehicles), commercial vehicles (including, without limitation, vehicles with commercial writing on their exteriors), motorcycle, minibike, scooter, go-cart or similar recreational vehicles shall be permitted on any Lot, except if kept in an enclosed garage, for periods longer than forty-eight (48) consecutive hours (the intent of this provision is that the aforementioned vehicles may not be stored on a Lot except if in a garage and the temporary



removal of such vehicle from a Lot to break the continuity of the forty-eight (48) consecutive hours shall not be sufficient to establish compliance with this restriction).

No vehicle may be left upon any portion of the Property or Subdivision, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways unless said vehicle is located in the garage. Any such vehicle shall be considered a nuisance and may be removed from the Property or Subdivision.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 7. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least twelve (12) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration and Supplemental Declarations, if any. The lease shall also obligate the tenant to comply with the foregoing, and the lease shall provide that the violation of any provision of this Declaration and Supplemental Declarations, if any, shall be a breach of said lease, subjecting the tenant to termination of the lease and eviction. In addition, any violations of the covenants contained in this Declaration by the tenant or any person residing at the Lot shall be the responsibility of the Lot Owner.

Section 8. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

Section 9. Animals and Pets. No animals, livestock, poultry, or exotic animal of any kind may be raised, bred, kept, or permitted on any Lot, except that not more than three (3) dogs, cats, or other usual and common household pets may be kept on a Lot. However, horses, cows, sheep, chickens and goats may be so allowed but only with written ACC approval. Notwithstanding the foregoing, those pets which, endanger the health, make objectionable noise, have a vicious or dangerous propensity, or constitute a nuisance or inconvenience to the Owners of any Lot or the owner of any property located adjacent to the Subdivision, must be removed. No pets shall be kept, bred or maintained for any commercial purpose. No household pet that has caused damage or injury may be walked in the Subdivision. If the Declarant determines, in its sole discretion, that a pet endangers the health, makes objectionable noise, has a vicious or dangerous propensity, or constitutes a nuisance or inconvenience, Declarant may issue a written notice to Owner that said pet must be removed from the Subdivision within ten (10) calendar days. If Owner does not remove said pet within the time limit provided in the notification, Declarant may have the pet or horse removed from the Subdivision by an animal control authority or other appropriate authority. The cost of such removal shall be the responsibility of Owner and shall be an assessment against the Lot of Owner.

No structure for the care, housing or confinement of any animal shall be constructed, placed or altered on any Lot unless plans and specifications for such structure have been approved by the Board in accordance with this Declaration. A leash shall be used for all animals and pets which are outside the confines of their house or a fenced-in area.

Section 10. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on such Owner's Lot. No property within the Subdivision shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Subdivision. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Subdivision. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

It shall be the responsibility of each Owner to timely address the removal of debris and/or rebuilding of a dwelling or structure in the event of damage caused by fire, storm, or other occurrence. If Owner does not begin the removal of debris and/or reconstructing within sixty (60) days of said occurrence, the Declarant and/or Association may remove any debris, the costs of which shall be the responsibility of Owner and shall be collected as an assessment, so as to return the Lot to a neat and clean appearance; provided, however, there shall be no removal of any debris if prohibited by an applicable governmental authority.

Section 11. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Property or Subdivision except in an enclosed garage. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot that has a dwelling constructed upon it and no refuse pile or unsightly objects shall be allowed to remain on the Property. No disposal or burning of debris or organic matter shall be permitted within any drainage way ditches on any Property or along any road right of ways within the subdivision. No stone or rock clusters can be used for ornamental landscaping except as approved by the ACC.

Section 12. Antennas. The Board may issue rules regarding the erection of exterior antennas, including, without limitation, satellite dishes; provided such rules do not prevent reception of acceptable quality signals or cause an unreasonable delay or cost. Unless screened and located in the rear of the home to provide minimum visual impact on neighboring properties and so as to be unseen from the streets, no exterior antennas of any kind, including without limitation, satellite dishes, shall be placed, allowed, or maintained upon any portion of the Property or Subdivision, including any Lot; provided such screening and location do not prevent reception of acceptable quality signals or cause an unreasonable delay or cost. In no event shall any such antenna or satellite dish in excess of twenty-four (24) inches in height, width and depth size be permitted in the Property or Subdivision except if installed by the Declarant as provided in this Section. Declarant shall have the right (but shall not be obligated), to erect a master antenna, satellite dish or other similar master system for the benefit of the Property or Subdivision. Each



Owner acknowledges that this provision benefits all Owners and each Owner agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

Section 13. Tree Removal. No trees that are more than four (4) inches in diameter (twelve and one-half (12 1/2) inches in circumference) at a point four and one-half (4 1/2) feet above the ground shall be removed without the prior written consent of the ACC except (a) dead or diseased trees, (b) trees that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence or a driveway, (c) trees removed by Declarant, or (d) trees removed during the construction of the original dwelling on a Lot. No trees shall be planted in the Property or Subdivision without the prior written consent of the ACC.

Section 14. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for the benefit of Declarant (for as long as the Declarant owns property for development and/or sale in the Property or Subdivision) and the Association, if any, and their respective successors and assigns (perpetually) an easement across the Property and Subdivision property for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 16. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open on the evening before a pick-up is to be made as necessary to provide access to persons making such pick-up. All rubbish, trash, and garbage shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Property or Subdivision except by Declarant or a builder during the original construction on a Lot.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant, the Board and appropriate governmental entity. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant for as long as Declarant has the right unilaterally to annex additional property to the Property pursuant to Article IV, Section 1 of this Declaration. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations and shall not constitute a violation of Section 4 of this Article III of the Declaration.

Section 18. Firearms, Hunting Prohibited. The use or discharge of firearms in the Subdivision is prohibited unless such firearm is used or discharged as a means of self-defense. The term "firearms" includes without limitation "B-B" guns, pellet guns, bows and arrows, sling shots and small firearms of all types. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type or method of propulsion; and no target practice or hunting of any type shall be carried on or conducted on the Subdivision.

Section 19. Fences, Party Walls and Hedges. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Property or Subdivision, including any Lot, without the prior written consent of the ACC. The ACC may issue guidelines detailing acceptable fence styles or specifications, but all such fences or fencing type barriers must be made of metal material and in no event may an uncoated chain link or barbed wire fence be approved. Each wall or fence built as a part of the original construction on the Lots which shall serve and separate any two (2) adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the wall may restore it, and if the other Owner or Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Any Owner performing any such repair or restoration shall have the right to go upon the adjoining Lot(s) to the extent necessary to perform such repair or restoration. Such repair or restoration shall be done expeditiously and upon completion, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such repair and restoration as is reasonably possible. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. No mass plantings/hedges are permitted from the road to the front of the house corners.

Section 20. Utility Lines. Except as may be permitted by the Board, no overhead utility lines, including lines for cable television, shall be permitted within the Property or Subdivision, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 21. Air-Conditioning Units. No window air conditioning units may be installed except as may be permitted by the Board, but in no event shall a window air conditioning unit be installed in any dwelling so as to be visible from the front of any Lot or any adjoining street.

Section 22. Lighting. Except as may be permitted by the Board, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one decorative post light, (c) street lights in conformity with an established street lighting program for the Property or Subdivision; (d) seasonal decorative lights from Thanksgiving to the following New Year's Day; or (e) front house illumination of model homes.

Section 23. Artificial Vegetation, Exterior Sculpture, Exterior Statuary and Similar Items. No artificial vegetation or plastic animal decorations, such as pink flamingos, etc., shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, bird baths, bird houses, and similar items must be approved by the ACC; but in no event shall they be located so as to be visible from the front of any Lot or any adjoining street.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ACC.

Section 25. Swimming Pools. No swimming pool or outside jacuzzi or hot tub shall be constructed, erected or maintained upon any Lot without the prior written consent of the ACC, and in no event shall any above-ground swimming pool be permitted.

Section 26. Gardens and Play Equipment. No vegetable garden, hammock, statuary or play equipment (including, without limitation, basketball goals) be constructed, erected or maintained upon any Lot unless the type and location thereof has been previously approved by the ACC.

Section 27. Mailboxes. There shall be a mailbox kiosk as approved by Declarant pursuant to North Carolina law. The mailbox kiosk shall be located within the subdivision at a place and size as determined by the Declarant for the benefit of all lot owners within the subdivision.

Section 28. Exteriors. All exterior finishes and colors must be approved by the ACC and, without exception, must be brick, stone or cement fiber board ("hardiplank"). Any change to the exterior color, finish or texture of any improvement located on a Lot, including, without limitation, the dwelling, the roof on any dwelling or any fence, must be approved by the ACC.

Section 29. Chimneys. Prefabricated fireplaces shall be allowed as long as the chimney does not extend beyond the main ridge of the roof of the dwelling. If such chimney does extend beyond the main ridge of the roof of the dwelling, such chimney must be solid masonry construction.

Section 30. Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.

Section 31. Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by Declarant on any Lot or at the front entrance, or any part of any easement area associated therewith without the prior written consent of the ACC and the Board.

Section 32. Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades or for any other purpose.

Section 33. Fuel or Water Tanks. No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any street or road or from any other Lot, unless used by Declarant in the ordinary course of developing the Property or Subdivision.

Section 34. Outbuildings and Similar Structures. No outbuilding, storage building or similar structure shall be erected, placed or allowed to remain on any Lot except those which are incidental to residential use, are constructed of the same or substantially identical materials as the residential dwelling on the Lot, are architecturally compatible with the residential dwelling on the Lot, are located no closer to the front boundary line of the Lot than the rear wall of the single-family residence located on the Lot and no closer to any side boundary line of a Lot than the applicable building setback requirements, and which have otherwise been approved by the ACC. Any exceptions to this covenant shall only be allowed if in writing and approved by the ACC.

Section 35. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the Board of plans and specifications for the prevention and control of such erosion or siltation. The Board may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling of such erosion or siltation.

Section 36. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be kept, on his/her Lot or on the Common Property which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance or regulation. No waste shall be committed on any portion of the Common Property.

Section 37. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 38. Dwelling Setback Lines. No building shall be built closer to the front, side or rear lot lines than is required by the local governmental authority. In addition to meeting all governmental setback requirements, approval from the Declarant must also be granted including any variances requested.

Section 39. Square Footage. Any dwelling erected on a Lot shall contain a minimum enclosed dwelling area of 1800 square feet above ground. The term "enclosed dwelling area" as used in this Section shall mean the total enclosed area within a dwelling subject to both heating and cooling; provided, however, that the term specifically does not include garages, basements, terraces, porches, decks, stoops and like areas regardless of heating or cooling. Variances of these square footage requirements may be granted by the Declarant.

Section 40. Height and Accessory Building. No structure, except as provided herein shall be erected, altered, placed or permitted to remain on any detached single-family residential

Lot other than a detached single-family dwelling not to exceed two (2) stories in height exclusive of the basement unless additional dwellings are allowed in writing by the ACC. A garage and a small accessory building may also be permitted on the Lot, provided, the use of such dwelling or accessory building does not in the opinion of the ACC or Declarant overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling nor without the approval of the Declarant and ACC.

Section 41. Driveways. All street connections and driveways in the subdivision shall meet the following criteria:

- a. Each residential structure within the subdivision shall have a paved driveway of concrete extending from the paved portion of the subdivision street it abuts to the dwelling a minimum of twenty feet (20') length in apron and a minimum width of twelve feet (12'). Any additional driveways off a subdivision street to a dwelling or accessory building must be approved by the ACC and constructed with a minimum of gravel materials.
- b. All driveway pipe must be made of concrete, shall be of a sufficient size to ensure proper drainage and shall not be less than 15' in diameter.
- c. Declarant reserves the right for driveway access to meet NCDOT standards even though all Streets shall remain Private within this subdivision.

Section 42. Pond and Pond Maintenance.

- a. The Association shall be responsible for the construction, use, reconstruction, repair and maintenance of the pond and all facilities associated therewith, including but not limited to the dam. The Association shall have the right to drain the Pond only as necessary for maintenance purposes or such other purpose as approved by the Board in order to promote the health and welfare of the members of the Association and only after the Declarant has approved such water release or upon Declarant no longer owning any Property within the subdivision the no such approval is needed. No Owner shall be allowed to drain or use the water within either Pond for their own personal use or consumption. Further no Owner shall be allowed to use the Ponds for dumping of any sewage, waste-water, rubbish, debris, ashes or other refuse as the ponds are to be free of trash and debris at all times.
- b. The Association, at its expense shall be responsible for the repairs and maintenance of the Pond, the cost of obtaining liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) and the cost of any unpaid ad valorem taxes on the Pond, public assessments for improvements of the Pond, any unsafe building or public nuisance abatement liens charged against the Pond, together with all interest being, any attorney fees charged, and all other costs and/or expenses of any such collection of any funds due under this subsection. Any such funds for this subsection shall be part of the annual assessment against each Owner as so determined by the Association pursuant to this Declaration.
- c. The Declarant, the Association, Owners and any contractors or agents of the Association or Declarant, are hereby granted an easement over portions of the lots adjoining the Pond area as so shown on the recorded plats for the purpose of carrying out the responsibilities of the Association as so defined within this Declaration.



- d. Per this Declaration, Owners immediately adjoining the Pond may access the Pond from any point on their property or from the access easements as so shown on the Plats which shall lead to the Common Area and the Pond. No Owner shall be permitted to access the pond by using any adjoining owner's property without the express permission of that Lot Owner. Any Lot Owner's not immediately adjoining the Pond shall have access only by way of Will Let Lane as shown on the Plat.
- e. The Pond within the subdivision is only to be used for fishing. No boats or jet skis are permitted on the Ponds. Further net fishing is not allowed. No swimming is allowed. No docks or decks are allowed on the Pond, to the Pond or over the Pond.
- f. The Association shall accept the Ponds in their original condition and shall serve the Association as aesthetic and recreational amenities. Neither the Association or the Declarant shall be responsible for any loss, damage or injury to any person or property rising out of the authorized or unauthorized use of such bodies of water.
- g. This section of the Declaration may only be amended by the Declarant during the Declarant Development Period or by approval of all Owners thereafter.

## **ARTICLE VI**

### **RIGHTS RESERVED FOR DECLARANT**

Notwithstanding anything contained herein to the contrary, during the Declarant Development Period, Declarant expressly reserves the right to (i) subject additional property to this Declaration by the method described herein; (ii) reasonably amend this Declaration without the consent of any Owners or Members; (iii) select, appoint and remove members of the Architectural Control Committee who need not be Members of the Association; (iv) select, appoint and remove the Officers and the Board of Directors of the Association who need not be Members of the Association. The Declarant may waive or assign any of the rights reserved herein to a Member, a non-Member, another entity (such as a management company) or the Association.

The Declarant Development Period shall automatically terminate upon the Declarant no longer owning any lot or common area. At any time, Declarant may terminate the Declarant Development Period by executing a Notice of Termination of Declarant Development Period and assigning all rights reserved herein to the Association. The Notice of Termination of Declarant Development Period shall be effective when filed in the Wake County Registry.

## **ARTICLE VII**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established

and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs, reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, late charges, costs, reasonable attorneys' fees shall also be the personal obligation of the person(s) who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. The declarant and Builder are not subject to the payment of any dues to the Association.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the welfare of the residents in the Property for the improvement and maintenance of the Common Area, including Entry Features, Roads, Easements and for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, the maintenance of any roads within the subdivision which are considered private roads, payment of insurance premiums for contracts of hazard and liability insurance on the Common Area, payment of insurance and maintenance of the pond area and dam, payment of local ad valorem taxes or governmental charges, if any, on the Common Area, any other major expense for which the Association is responsible, and such other needs as may arise.

Section 3. Budget and Reserves. The Association shall establish and maintain adequate reserve funds for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the property which the Association may be obligation to maintain by the Declarant.

Section 4. Assessment Amount and Due Date. Until December 31st of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment shall be Six Hundred Dollars (\$600.00) for each Lot. There is a one-time member set-up fee due at closing of Fifty Dollars (\$50.00) which shall only be applicable to those Owners who shall actually occupy the property and not to individual Builders. There shall be a Twenty-Five Dollar (\$25.00) late fee assessed for all late payments. Declarant shall pay no annual assessments, Owner's dues or fees whatsoever on the lots that Declarant owns. This condition of no dues for the Declarant shall expire upon the conveyance of the last lot to an owner and the conveyance of the common areas to the association.

From and after December 31st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by not more than ten (10%) percent over the prior years assessment by the Declarant during the Declarant Development Period and thereafter by the Board of Directors of the Association without a vote by the Members.

On and after December 31<sup>st</sup> of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased ten (10%) percent above the prior years assessment by a vote of two-thirds (2/3rds) of the appropriate and affected class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.



Section 5. Special Assessments for Capital Improvements. In addition to the assessments authorized above, the Association and/or the Declarant (if Declarant deems needed) 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, repair or replacement of a capital improvement upon the Common Area, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided, however, any such assessment shall have the assent of two-thirds (2/3) of the votes of each appropriate and affected 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 assessment be levied against all Lots, unless ninety (90%) percent of the total vote of each class of Members vote to reject it ("a Board Issued Assessment").

Section 6. Notice and Quorum for any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 or this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each appropriate and affected class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Maximum assessments must be fixed at a uniform rate for all Lots; provided, however, annual and special assessments for all lots owned by the Declarant and Builders shall not be assessed unless and until dwellings are occupied by residents.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum and shall be subject to a late charge of Twenty-Five and No/100 Dollars (\$25.00) per month. The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest, late charges, costs, management fee and reasonable attorneys' fees of any such action, or foreclose the lien against the Lot. For purposes of this Section 8, the amount of delinquent assessment, plus accrued interest and late charges shall be considered evidenced by this Section 8 and, therefore, evidence of indebtedness shall exist hereby. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot. Further should any Class A Owner be delinquent on assessments or fail to follow these rules and regulations as so stated, the Board may suspend that Owner's voting privileges until said assessments are paid in full or until said infraction is remedied. Any lien granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes as a Claim of Lien against the property of the Owner who is delinquent. Any such Claim of Lien shall include all assessments which are due and payable, plus interest, costs, and attorney fees. Such Claim of Lien shall be signed by an Officer of the Association. Upon full payment of all sums secured by said Claim of Lien, the Association shall

mark the claim as paid in full and shall have the claim satisfied of record at the clerk's office.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Working Capital Fund. At the time of closing of the sale of each Lot, an amount equal to one (1) entire year of association dues at the time of closing shall be collected and transferred to the Association and shall be called "Working Capital Contribution". The purpose of said fund is to ensure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments. This fee is also called "Working Capital Contribution" as described within these covenants.

Section 11. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority or any property owned by a charitable or non-profit organization except from taxation by the State of North Carolina, shall be exempt from the assessments created herein; however, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## **ARTICLE VIII ANNEXATION OF PROPERTY**

As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to annex and subject such additional real property which is contiguous to the boundary of the Property, to the provisions of this Declaration or any Supplementary Declaration thereto, by filing for record in the public registry of the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, Declarant may include additional restrictions and limitations affecting any such annexed real property.

## **ARTICLE IX EASEMENTS AND ROADWAYS**

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or

altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, occupant or the Association, if any.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to such Lot.

(b) Any Lot Owner may extend such Owner's right of use and enjoyment granted hereunder to the members of such Owner's family and to such Owner's tenants and social invitees, as applicable. An Owner who leases such Owner's Lot shall be deemed to have delegated all such rights to the lessee of such Lot.

Section 3. Easements for Utilities. There is hereby reserved to Declarant a blanket easements upon, across, above and under all property within the Property and Subdivision for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or Subdivision or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which Declarant might decide to have installed to serve the Property or Subdivision. It shall be expressly permissible for Declarant, or the designee of the Declarant, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant shall have the right to grant such easement. Within any easements for the installation and maintenance of utilities and drainage facilities shown on a recorded plat of any portion of the Property or Subdivision, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of waters through drainage channels in the easements.

Section 4. Easement for Entry. In addition to the right of the Declarant to exercise self-help as provided herein, the Declarant shall have the right, but shall not be obligated, to enter upon any part of the Property for emergency, security, and safety reasons, which right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Declarant to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or occupant fails or refuses to cure the condition upon request by the Declarant.

Section 6. Easement for Entry Features. There is hereby reserved to Declarant an easement for ingress, egress, installation, construction, landscaping and maintenance of Entry Features including the gates, signs and similar streetscapes for the Property or Subdivision, over and upon each Lot in the Subdivision on which Entry Features, signs and similar streetscapes have been installed by Declarant. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such Entry Features. Entry Features shall be maintained by the Association at the termination of the Declarant Development Period, or earlier if Declarant so desires.

Section 7. Easements Over the Lots. The Lots shall be subjected to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:

- (a) Each Lot shall be subject to all easements which are shown and depicted on any recorded plat as affecting and burdening such Lot;
- (b) Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plat slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (c) Those Lots shown on any plat for the Barham Reserve Subdivision, as defined within the Additional Declaration, as having any "landscape easement" shall be subject to an easement for the installation and maintenance of the landscaping, walls and fences located on the area designated;
- (d) Those Lots shown on any plat for the Barham Reserve Subdivision as having any "pedestrian access easement" shall be subject to an easement for access across, over and through the area designated on said plat;
- (e) Each Lot shall be subject to a non-exclusive perpetual access easement for the repair, maintenance or reconstruction of any dwelling located on an adjoining Lot where the dwelling is located closer than five (5) feet from the lot line common to such adjoining lots. The repair, maintenance or reconstruction shall be done expeditiously, and, upon completion of the work, the owner of the benefited Lot shall restore the adjoining burdened Lot to as near the same condition as that which prevailed prior to the commencement of such repair work as is reasonably practicable.

Section 8. Streets. Declarant has reserved for the benefit of, and grants to, all Lot Owners and the Association the non-exclusive right of ingress and egress on, over and across all streets located on or to be located on a portion of the subdivision. All streets shall be maintained, insured and repaired by the Association in accordance with this Declaration. All streets are considered "Private" and as such the streets will not be accepted by the NCDOT or the County for any maintenance. Initially the maintenance of the streets shall be borne by the Declarant and/or the Association. Upon the initial occupancy of all nine (9) lots by Owners, said maintenance and subsequent responsibility shall rest solely with the Association and its members and no longer with the Declarant. Neither Wake County or any other local municipality shall be responsible for



failing to provide any emergency or regular fire, police or other public service to the Lots within this subdivision when such lack of access is due to inadequate design or construction of such access via the streets or due to the blocking of access routes or any other factor within the control of the Association, the Declarant, any Owner or any occupant or guest of any Lot. There shall be recorded along with these covenants a Road Maintenance Agreement defining the rights and obligations of the Association and lot owners in the maintenance of the subdivision street.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 1. Enforcement. Each Owner and occupant shall comply strictly with this Declaration and Supplemental Declarations, if any. It is stipulated and agreed that the Owner and their heirs, successors, or assigns, may enforce this Declaration or Supplemental Declarations, if any, by injunction and that this shall not be in exclusion of, but in addition to, all other remedies available in law or equity. The Association shall have all enforcement rights as provided in the Planned Community Act including the right to fine for violations of this Declaration pursuant to the procedures provided in the Planned Community Act

Section 2. Self-Help. In addition to any other remedies provided for herein, the Declarant or its duly authorized agent, during the Declarant Development Period, shall have the power to enter upon any Lot or any other portion of the Property or Subdivision to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restrictions. Unless an emergency situation exists, the Declarant shall give the violating Lot Owner ten (10) days' written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as, and to the extent that, North Carolina law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of twenty (20) years, unless a written instrument reflecting disapproval signed by the then Owners of at least two-thirds (2/3) of the Lots and Declarant (so long as Declarant owns any property for development and/or sale in the Property or Subdivision or has the right unilaterally to annex additional property to the Property or Subdivision or still owns the Common Areas) has been recorded within the year immediately preceding the beginning of a twenty (20) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. Further, during the Declarant Development Period, Declarant may unilaterally amend this Declaration for any other purpose as is solely defined by Declarant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots (other than Lots of Declarant so long as the consent of Declarant is required) and the consent of Declarant, during the Declarant Development Period. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to Declarant shall be amended without Declarant's prior written approval during the Declarant Development Period. Once the Declarant Development Period expires, the Owners within the subdivision may amend this Declaration upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least seventy-five (75%) of the Lots within the subdivision.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the appropriate court in the county in which the Subdivision is located within one (1) year of the recordation of such amendment in the public registry of the county in which the Subdivision is located.

Section 5. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 8. Notice of Sale or Lease. In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Declarant, during the Declarant Development Period, and thereafter to the Association prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Lot and such other information as the Declarant may reasonably require. The lot Owner shall fully inform all prospective purchasers of the Declarations and the requirements thereunder. The lot Owner shall also give to the purchaser of the Lot a copy of the Declarations and any amendments.

Section 9. Variances. Notwithstanding anything to the contrary contained herein, the Declarant or its designee, during the Declarant Development Period, shall be authorized to grant individual variances from the provisions of this Declaration, and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Subdivision.

Section 10. Security. The Declarant may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety in the Subdivision. Notwithstanding the providing of any such measures or taking of any such action by Declarant, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Declarant is not a provider of security and shall have no duty to provide security in the Subdivision. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner. The Declarant shall not be held liable for any loss or damage due to the failure to provide adequate security or ineffectiveness of security measures undertaken or provided.

## **ARTICLE XI** **AUTHORITY FOR AMENDMENTS**

The authority for the amendments is found in Article VI and Article X, Section 4. At the time this Declaration is made, the Declarant, Barham Estates, LLC, is the owner of all lots and common areas in this subdivision and by reason of such ownership is entitled to make amendments unilaterally without the joinder of any future Owner of any Lot or the Association.

## **ARTICLE XII** **DECLARANT RIGHTS**

All references to "Declarant" and all rights reserved therein are for BARHAM ESTATES, LLC, a North Carolina Limited Liability Company.



IN WITNESS WHEREOF, the undersigned, Declarants herein, hereby execute this instrument by and through its duly authorized representatives and under seal this 30th day of April, 2020.

**BARHAM ESTATES, LLC**

*Michael A. Moss* (SEAL)  
BY: Michael A. Moss  
Title: **Manager**

STATE OF NORTH CAROLINA  
WAKE COUNTY

I, Kimberly P. Thomas a Notary Public of Franklin County, North Carolina, do hereby certify that Michael A. Moss, Manager of BARHAM ESTATES, LLC, a North Carolina limited liability company, personally appeared before me this day and that he as Manager being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 30<sup>th</sup> day of April, 2020.

*Kimberly P. Thomas*  
Notary Public

My Commission Expires: 6/30/2021

