

REGISTER OF DEEDS  
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DPRUETTE

COUNTY OF DURHAM )  
 )  
STATE OF NORTH CAROLINA )



**Mail to:**

**HLP Developers,  
5310 NC Highway 55, Suite 101  
Durham, NC 27713**

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HIGHLAND PARK SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made this \_\_\_ day of December, 2019 by HLP DEVELOPERS, LLC, a North Carolina Limited Liability Company (hereinafter referred to as "Declarant").

**STATEMENT OF PURPOSE**

Declarant is the owner of certain property in Durham County, North Carolina, which is more particularly described on the map recorded in Plat Book 262 at Pages 225-226 in the Office of the Register of Deeds of Durham County, North Carolina (the "Map"), reference to which is hereby made. Declarant desires to create thereon an exclusive residential community of town home residences to be named HIGHLAND PARK SUBDIVISION.

Declarant desires to ensure the attractiveness of HIGHLAND PARK SUBDIVISION and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within HIGHLAND PARK SUBDIVISION and to provide for the maintenance and upkeep of all common elements in HIGHLAND PARK SUBDIVISION. To this end the Declarant desires to subject the real property described herein 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.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the common elements in HIGHLAND PARK SUBDIVISION, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in HIGHLAND PARK SUBDIVISION, to ensure the residents' enjoyment of the specific rights, privileges and easements in the common amenities, and to provide for the maintenance and upkeep of the common amenities.

To that end the Declarant has or will cause to be incorporated under North Carolina law, HIGHLAND DURHAM OWNERS' ASSOCIATION, INC., as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restriction, does declare that all of the property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restriction, 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, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to HIGHLAND DURHAM HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 2. "Common Elements" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The common elements to be owned by the Association at the time of the conveyance of the first Lot is all of the area labeled as "Common Elements" on the Map and on any maps of any additions to the Property; it will also include any retention or detention pond and any area designated as Open Area as shown on any map.

Section 3. "Declarant" shall mean and refer to HLP DEVELOPERS, LLC, its successors and assigns, and also shall mean and refer to any person, firm or corporation which shall also be designated as a "Special Declarant" by HLP DEVELOPERS, LLC, hereafter when such designee becomes vested with title to two or more undeveloped Lots for the purpose of causing dwellings to be constructed thereon, and any such successor in title to HLP DEVELOPERS, LLC, shall be a Declarant during such period of time as said party is vested with title to two or more Lots (whether undeveloped or developed and unconveyed), but no longer. Said designated as a Declarant shall automatically terminate if such party no longer owns at least two (2) Lots. Eastwood Homes of Raleigh, LLC shall be a Special Declarant pursuant to HLP DEVELOPERS, LLC's designation once it purchases two lots. Notwithstanding the preceding, HLP DEVELOPERS, LLC reserves the right to revoke Eastwood Homes of Raleigh, LLC's designation as a Special Declarant in the event of an uncured default of the sales contract between the two parties including but not limited to failure to purchase Lots according to the takedown schedule.

Section 4. "Development" shall mean and refer to HIGHLAND PARK SUBDIVISION, a town home residential development proposed to be developed on the Properties by the Declarant.

Section 5. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on the Map with the exception of the common elements and public or private roads and streets. .

Section 6. "Map" shall mean and refer to the map of the Property as recorded in Plat Book \_\_\_\_ at Pages \_\_\_\_ in the Office of the Register of Deeds of Durham County, North Carolina, and the maps of any additions to the Property which may be recorded by Declarant in the Office of the Register of Deeds of Durham County, North Carolina, hereafter.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including the Declarant if it owns any Lots, and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Property" or "Properties" shall mean and refer to the "Existing Property" as described in Article II, Section 1, and additional real estate dedicated in additional Phases as described in Section 1 and Section 2 in Article II hereof, and such other property as may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HIGHLAND DURHAM OWNERS ASSOCIATION, INC.

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association, is located in Durham County, North Carolina, and is that certain property shown on the Map recorded in Plat Book 202 at Pages 215-216 in the Office of the Register of Deeds of Durham County, North Carolina (the "Existing Property").

#### Section 2. Additional Properties

- (a) Additional property (the Additional Property") near the Existing Property or any additions to the Existing Property (including any property located within the boundaries of those certain tracts more particularly described in Exhibit attached hereto and incorporated herein by reference), may be brought within the scheme of this Declaration in one or more additional Phases and within the jurisdiction of the Association in future stages of development, without the consent of the Association of its members, provided that such annexations occur within fifteen (15) years after the date of the filing of this instrument. Declarant shall not be obliged to subject any Additional Property to this Declaration.
- (b) The additions authorized under subsection (a) above shall be made by filing Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the Additional Properties in the Office of the Register of Deeds of Durham County, North Carolina, which shall extend the scheme of this Declaration and the jurisdiction of the Association to such Properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein, including,

but not limited to, assessments as herein determined. At the time of the filing of each Supplementary Declaration, there shall be recorded in the Office of the Register of Deeds of Durham County, North Carolina, a Map or Maps which show the boundary line of each Lot annexed pursuant to such Supplementary Declaration and which delineates all Common Elements annexed pursuant to such Supplementary Declaration.

- (c) The obligation for Owners of Lots in any portion of the Additional Properties to pay the assessments described in Article IV hereof shall commence as to such Lots on the date established in Article IV, Section 7. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Existing Property, and such voting rights shall commence as of the date of the filing of a Supplementary Declaration as described in Section 2(b) of the Article II.

## **ARTICLE III**

### **MEMBERSHIP, VOTING RIGHTS AND CONTROL OF THE ASSOCIATION**

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records and financial statements available for inspection by all Owners, mortgagees and insurers and guarantors of mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any mortgages may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 3. Maintenance. Certain features that are owned by the Association and that are deemed common amenities, being of benefit to all Lots, shall be maintained exclusively by the Association. Said common amenities, if any, shall include, without limitation, sidewalks; common walks; any entry monument; irrigation system and equipment; Common Elements landscaping; street lighting; wet detention ponds as directed by the governmental office having jurisdiction for watershed protection; the wastewater collection and disposal system and any street or road prior to its acceptance for public use by any governmental body. The common open space within the development may be kept in its natural state or periodically manicured and maintained as determined by the board of directors or the Association. The Association shall not be responsible for the maintenance of any Lots or the Improvements within the boundaries thereof. The Owner shall be responsible for same.

Section 4. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of all common amenities which the Association is obligated to maintain. Such reserve fund shall be maintained out of the annual assessments or special assessments described in Article IV hereof.

Section 5. Voting Rights and Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

- (a) Class T Lots. Class T Lots shall be all town home Lots as shown on the Plat. Each Class T Lot shall entitle the Owner(s) of said Lots to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any such Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Class T Lot.
- (b) Class D Lots. Class D Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. The Declarant shall be entitled to ten (10) votes for each Class D Lot owned by it. The Class D Lots shall be converted to Class T lots on the happening of either of the following events, whichever occurs earlier: (i) when the total votes outstanding in the Class T Lots equals the total votes outstanding in the Class D Lots, or (ii) on December 31, 2030.

Section 6. Amendment. Notwithstanding the provisions of Section 5 above, so long as the Declarant owns at least one (1) Lot, the Declarant may amend the Bylaws without a vote from the membership, in Declarant sole discretion.

Section 7. Board of Directors. The Association shall be governed by a Board of Directors in accordance with the Bylaws.

## ARTICLE IV

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessment. The Declarant, for each Lot owned within the Properties, hereby covenants, and 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 the Association annual assessments or charges, damage assessments, and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charges, together with interest, costs, reasonable attorneys' fees and any other administrative costs or fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them. Notwithstanding anything contained in this Declaration, any Declarant shall only be subject to one quarter (1/4) of the annual assessment obligation until the closing of any of its homes to a third-party purchaser, whereupon the third party purchaser, now Owner, shall be responsible for full dues and assessments as further outlined herein. Such reduction in annual assessment of Declarant's Lots shall expire three years after the recording of this Declaration.

Section 2. Purpose of Annual Assessments. The annual assessments leveled by the Association shall be used as follows:

- (a) to maintain any landscaping within the boundaries of the Common Element;

- (b) to keep the common elements clean and free from debris and to maintain same in a clean and orderly condition;
- (c) to pay all ad valorem taxes against the common elements and any other property owned by the Association;
- (d) to maintain any entrance sign, landscaping and lighting fixtures at the entrance to the Property within the sign, fence and landscape easement area shown on any Map;
- (e) to restore any common elements improvements in the event of destruction or damage;
- (f) to pay the premiums on all hazard and liability insurance carried by the Association;
- (g) to pay all legal accounting, and other professional fees incurred by the Association in carrying out its duties set forth herein or in the Bylaws;
- (h) to pay all costs for repair and/or maintenance of any permanent wet detention pond; which will include but not be limited to the cost of repairs, replacements and additions, and the cost of labor, equipment, materials, management, and supervision for such repairs, replacements, and additions;
- (i) to pay all costs and assessment for public and private improvements made to or for the benefit of the common elements;
- (j) to pay all costs associated with the maintenance of all property owned or maintained by the Association;
- (k) to maintain a contingency in order to fund unanticipated expenses of the Association;
- (l) to pay any other reasonable costs or expenses designated by the Board from time to time;
- (m) to maintain and repair any street or road prior to its acceptance for maintenance for public use by any governmental body;
- (n) to take any further such acts as authorized in the North Carolina Planned Community Act, §47F-1-101 et seq.,

**Section 3. Maximum Annual Assessment.** Until January 1 of the calendar year following the conveyance of the first Lot by the Declarant to another Owner, the maximum annual assessment of each Class T Lot shall be \$3,500.00 (the “Maximum Annual Assessment”), which Maximum Annual Assessment shall change annually in accordance with the Consumer Price Index:

- (a) The Maximum Annual Assessments established above may be Increased, effective January 1 of each calendar year following the conveyance of the first Lot by the Declarant to another Owner, without a vote of the membership, by an amount not to exceed 10% of the maximum annual assessment of the previous year. If the annual assessment is not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the assessment may be increased by that amount in a future year, by no more than 15% in any given year, by action of the Board of Directors without a vote of the membership, in addition to the maximum increase permitted under the terms of the preceding sentence.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said Maximum Annual Assessments may be increased without limitation by a vote of the members entitled to cast at least 2/3 of the votes of the association, who are voting, in person or by proxy, at a meeting duly called for this purpose; provided, however, during any period of Declarant control, Declarant must also consent to such action.
- (c) The Board of Directors may fix the annual assessments at amounts not in excess of the Maximum Annual Assessment. If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by majority vote, levy a Supplemental Assessment. In no event shall the sum of the initial and Supplemental Assessments for that Year exceed the applicable Maximum Annual Assessment.

Section 4. Special Assessments for Capital Improvements. 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, repair or replacement of any Common Elements, including improvements, fixtures, and personal property related thereto, provided that any such assessment requires the same assent of the Members as provided in Section 3 (b) of this Article. However, any special assessment related to Class T Lots only shall be paid entirely by Class T members.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate within a class of Lots.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of Members or of proxies entitled to cast twenty percent (20%) of all the votes of each 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. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to the Lots in a Phase on the first day of the first

month after the recording of an amendment to the Declaration incorporating the Lots in that Phase. Until such time as a Lot upon which a house is constructed is conveyed to the first Owner, the assessment rate for that Lot for any Declarant shall be 25% of the normal rate, for a period of three (3) years from the recording of this Declaration and shall be paid by the Owner of that Lot at the Closing of a lot to a third party homeowner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. In no event shall a mortgagee of a Lot be required to collect any unpaid assessments owned by the Owner of such Lot.

Section 8. Damage Assessment. In the event the Association finds that an Owner has damaged any of the Common Elements, the Association may levy an assessment on such Owner's Lot for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the common elements, including any sidewalks and street lighting fixtures serving the Development, and the amount of said assessment shall be a lien with respect to said Lot, enforceable as provided in Section 10 herein.

Section 9. Working Capital Assessment. In addition to the assessments authorized above, at the time of the first conveyance of a Lot upon which a residence has been constructed, the first occupant thereof shall pay to the Association an amount equal to two-twelfths (2/12 ths) of the then current annual assessment established by the Association. Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to ensure that the Association will have sufficient monies available to meet its operational needs. No such payments made into the Working Capital fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of the Declaration and the Bylaws. To the extent necessary up to 50% of the Working Capital Fund may be transferred to the Reserve Fund by majority vote of the Board of Directors.

Section 10. 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 lesser of (i) eighteen percent (18%) per annum, or (ii) the then current maximum rate of interest allowed by law of the State of North Carolina. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been therefore established by the Board of Directors of the Association to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot, and 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 not using the common elements or abandoning his Lot. Failure to pay an assessment when due on a particular Lot shall not constitute an event of default under any mortgage or deed of trust encumbering such Lot.

Section 11. Subordination of the Lien to Mortgages. The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage

or deed of trust to the Declarant. 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 lien thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be an annual or a special assessment, as applicable, collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the annual assessment to be in excess of the maximum permitted under Section 3. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

## ARTICLE V

### ARCHITECTURAL CONTROL

Section 1. Architectural Committee. Except for improvements made upon the Properties, or any Lot, by any Declarant, or except as otherwise provided under this Declaration, no building, fence, wall or other structure or improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, material and location of the same shall have been submitted to and approved in writing as to harmony or external design and location in relation to surrounding structures and topography by the Architectural Committee. For purposes of this Article V, the Declarant shall function as the Architectural Committee (the "Committee") so long as Declarant is a Class D Member of the Association and does not surrender its right of architectural control. After the termination of the Declarant right to be the Committee, the Board of Directors of the Association shall appoint the members of the Committee to carry out the functions set forth in this Article. In the event the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Definitions. For purposes of this Article V, the following terms shall have the following meanings unless the context clearly requires a different meaning:

- (a) "accessory building" means every detached garage, carport, tool shed, storage or utility building, detached guest quarters, detached servants' quarters or other similar building constructed on a lot or incidental thereto which is not a dwelling;
- (b) "buildings" means accessory buildings and dwellings;
- (c) "dwelling" means a building constructed for single family residential use but excluding detached servants' quarters and guest quarters; and
- (d) "improvements" or "structures" mean buildings, walls, fences, decks, patios, planters, statuary, terraces, swimming pools, tennis courts or anything else constructed or placed on a Lot.

Section 3. General Guidelines. The placement and construction of improvements on the Lots shall be subject to the following general requirements:

- (a) Since the establishment of standard inflexible building setback lines for the location of dwellings on Lots tends to force construction of dwellings both directly behind and directly to the side of other dwellings with detrimental effects on privacy, preservation of important trees, and other concerns, no specific setback lines are established by these covenants except as shown on the Map, which comply with the regulations and guidelines of the applicable governmental authorities. In order to assure, however, that location of dwellings will be staggered where practical and appropriate, so that the maximum amount of view will be available to each dwelling, and that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of large trees and fields and similar considerations, the Declarant reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvement, dwelling, building, and accessory building upon all Lots and every Lot within the subdivision; provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event, all buildings shall be constructed beyond the minimum setback lines established on the Map.
- (b) All storage areas and facilities must be screened and hidden from view.
- (c) Unless specifically otherwise approved in writing by the Committee, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot.
- (d) All structures approved by the Committee must be completed within one (1) year after the receipt of such approval; provided, however, the Committee may waive this requirement if construction delays have been caused by strikes, war, fire, acts of God or other events which render the completion of construction within such time impossible.
- (e) All driveways, turning areas and parking areas shall be paved and must be completed prior to the occupancy of any dwelling on the Lot. If any driveway is to cross a drainage ditch, the Owner will be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot. The installation of the culvert and any covering must be approved by the Committee and by any local, state or other governing agency or authority.
- (f) The Committee shall have the right to approve or disapprove the design and construction of all mailboxes.
- (g) The Committee shall have the right to approve decorative statues, birdbaths, fountains, ornaments, figurines, or any other decorative fixture in the front or side yard.

Section 4. Approval of Plans, Specifications, and Construction. In addition to the requirements imposed by all applicable governmental agencies governing the issuance of building

permits and certificates of occupancy, no structure shall be erected on any Lot without the approval of the Committee as provided in this Section.

- (a) Prior to commencing any construction or reconstruction on a lot, the Owner thereof shall submit to the Committee one set of all building plans and specifications (the "Plans") covering such construction which have been prepared by a qualified registered architect or reviewed, approved and sealed by a registered architect for the specific use of the Owner submitting the same. The Plans shall contain the following: (i) foundation plans, (ii) elevation drawings of all exterior walls, (iii) roof plan, (iv) plot plan showing location and orientation of all structures proposed to be built on the Lot, (v) the square footage of the proposed structures on a floor-by-floor basis, (vi) a list and description of all proposed building materials, and (vii) the location of any driveway, and, where the driveway is to cross a drainage ditch adjacent to any roadway, the installation of the culvert and covering to be used under the proposed driveway.
- (b) The Committee shall have the absolute and exclusive right to refuse to approve the proposed Plans. In passing upon such Plans, the Committee may take into consideration in the suitability and desirability of the proposed construction and the proposed materials for the Lot involved, the harmony of the external design with the natural features, the existing structures of the surrounding neighborhood, and the appearance of such proposed improvements as viewed from neighboring Lots. Refusal to approve the proposed Plans may be based by the Committee on any grounds, including purely aesthetic considerations. If the Committee approves the construction of such improvements, it shall issue a letter evidencing such approval, which approval, for any Special Declarant, includes the right to utilize the approved plans throughout the Property without need for further approvals. No alterations in the external appearances of any structure shall be made without approval by the Committee as provided herein; provided, however, that no approval by the Committee granted hereunder shall constitute or be construed as approval by Declarant or any other person of the structural stability or quality of any structure.
- (c) Upon completion of approved construction, the Committee shall inspect the construction to ensure that the approved Plans were complied with by the Owner. If the construction is approved by the Committee and the Owner so requests, the Committee will issue to the Owner a letter of compliance. The letter of compliance shall be issued by the Committee without fee; provided, however, that in the event that the Committee's first inspection of the construction reveals deviations or deficiencies from the approved Plans, the Committee may charge a fee of \$50 for every subsequent inspection which is necessary to ensure compliance with the approved Plans. Any such fee must be paid before the issuance of the compliance letter.
- (d) Notwithstanding the foregoing, the Declarant shall not be subject to the provisions set forth in this Article V, Section 4.

## ARTICLE VI

### EXTERIOR MAINTENANCE AND PARTY WALLS

Section 1. Exterior Maintenance. In addition to maintenance of the common elements, the Association shall provide exterior maintenance upon each Class T Lot which is subject to assessment hereunder, as follows: paint and/or stain the exterior of the townhouses, repair, replace and care for roofs (excluding the structural roof system of each unit), exterior building surfaces, trees and shrubs (excluding those planed by an Owner), grass, walks, mailboxes, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Further, the Owner of any Class T Lot may, at his election, plant flowers in the front and rear beds. If any, established by Declarant in developing the Lot, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Association. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association. If an Owner shall erect a fence that encloses a portion of his Lot, the Association shall not be liable for a repair or maintenance within the fenced-in area or for the fence structure.

Any assessment(s) for the exterior maintenance of the Class T Lots shall be paid by the Class T Lot owners only. (As a matter of information to future Members of the Association, the Declarant wishes to make it known that due to differing amounts of exposure to the elements and other factors, some dwellings may require more maintenance than others. It is in the best interest of the entire Association that all units be properly maintained and the Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each dwelling.)

In the event that the need for maintenance or repair is caused through the willful or negligent act to the Owner, his family, guest, or invites, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association's hereunder.

## Section 2. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Class T Lots shall constitute a party wall, and, to the extent and inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to the negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use, and any insurance policy shall include condominium type provisions which conform to same.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed and damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use 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.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(c) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, the Declarant, in its sole discretion, shall make the final determination(s) whose decision controls.

## ARTICLE VII

### Obligations Regarding Stormwater Facilities

The Property includes one or more stormwater management facilities (hereafter "Facility/ies") that is/are the perpetual responsibility of the Association. Such Facilities are the subject of a Stormwater Facility Agreement and Covenants ("Stormwater Agreement") between Declarant, the Association, and the City of Durham ("the City") that is binding on the Association. The Stormwater Agreement is recorded at **DB 8665 Page 677**, Durham County Register of Deeds. The Property subject to that Stormwater Agreement is the "Property" referred to in this Article. The Stormwater Facilities must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols and in accordance with the recorded Stormwater Agreement. In particular the City's current "Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Durham" (available at the time of recording this document at <http://durhamnc.gov/DocumentCenter!View/2239> and the operation and maintenance manual prepared specifically for the Facility/ies contain requirements that apply to the Association's Facilities.

Nothing in the remaining Article of these Restrictive Covenants filed by Declarant as part of this Declaration or any subsequent modifications of this Declaration may reduce the Association's or Lot Owners' obligations with regard to the Facility/ies. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facility/ies and their location are as follows:

- i. One wet detention pond (WPI -NORTH) designed to have a drainage area of 9.08 acres, a design storm surface area of 17,727 square feet and a design storm storage volume of 46,909 cubic feet;
- ii. One wet detention pond (WP2 - SOUTH) designed to have a drainage area of 3.28 acres, a design storm surface area of 6,218 square feet and a design storm storage volume of 12,846 cubic feet; and
- iii. One wet detention pond (WP2) designed to have a 100-year, 24-hour storm event surface area of 28,528 square feet. This pond has already been constructed and was approved by the City on October 25, 2011.

In addition to the above obligations, the Association's obligations with regard to the Facilities are:

1. **Inspections/Routine Maintenance.** In accordance with City Requirements, the Association shall cause the Facility/ies to be inspected i) annually; and, ii) after major storm events that cause visual damage to the Facility; and iii) upon notification from the City to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City who shall document those things mandated under City Requirements. The inspection shall occur annually during the month in which the Facility/ies as-built certification was accepted by the City, which month may be determined through contact with the City of Durham Department of Public Works, Stormwater Division. The inspection shall be reported to the City as further described below.

2. **Repair and Reconstruction.** The Association shall repair and/or reconstruct the Facility/ies as it determines is necessary, and, at a minimum, as set forth in City Requirements or as directed by the City to allow the Facility/ies to function for its intended purpose, and to its design capacity. The Association shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

3. **Stormwater Budget Line Items & Funding.** The dues of the Association shall include amounts for upkeep and reconstruction of the Facilities which shall be included in dues charged to Lots or members from the point that Lots or members are charged dues for other common purposes.<sup>1</sup> The Association shall maintain two (2) separate funds in its budget for the Facility/ies. The first, the "Inspection and Maintenance Fund," shall be for routine inspection and maintenance expenditures and shall be used for annual inspections, maintenance, and minor repairs. The funds for this purpose may be maintained as part of the Association's general account. The second fund, the "Major Reconstruction Fund," shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in an account that is separate account from the Association's general account as described below. At a minimum, the Association shall, annually, earmark **\$8,575.00** [WPI-NORTH: **\$2,888.00**; WP2-SOUTH: **\$2,720.00**; WP2:\$2,967.00] from its collected dues for the Inspection and Maintenance Fund and **\$2,025.00** [WPI-NORTH: **\$683.00**; WP2-SOUTH: **\$639.00**; WP2: **\$703.00**] for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year's amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facility/ies. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association's other obligations. The Association may compel payment of dues through all remedies provided in these Covenants or otherwise available under law.

4. **Assessments/Liens.** In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association's obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in these Covenants. As allowed under NCGS §47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessment remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association's rights may, in the discretion of the City, be exercised by the City, as a third party beneficiary of the recorded Stormwater Agreement and/or as Attorney in Fact for the Association, as provided in Section 7 of the recorded Stormwater Agreement.

5. **Stormwater Expenditures Receive Highest Priority.** Notwithstanding any contrary

provisions of the covenants of which this Article is a part, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facility/ies shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

**6. Separate Account for Major Reconstruction Fund. Engineer's Report.** The Association shall maintain the Major Reconstruction Fund for the Facility/ies in an account separate from the Association's general account. The Association shall use the Fund only for major repairs and reconstruction of the Facility/ies. No withdrawal shall be made from this fund unless the withdrawal is approved by two Association officials who shall execute any documents allowing such withdrawal. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director of the City's Department of Public Works, and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the Stormwater Services Division of the Department.

**7. Annual Reports to City.** The Association shall provide to the City annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the Association's affairs, the report shall so indicate. The Officer's signature and attestation shall be notarized. At a minimum each report shall include:

- i. the annual Facilities inspections report described in section (1) above;
- ii. a bank or account statement showing the existence of the separate Major Reconstruction Fund described in Section (6) above and the balance in such fund as of the time of submission of the report;
- iii. a description of repairs exceeding normal maintenance that have been performed on the Facility/ies in the past year, and the cost of such repairs;
- iv. the amount of Association dues being set aside for the current year for each of the two stormwater funds-the Inspection and Maintenance Fund and the Major Reconstruction Fund.

**8. Facility/ies to Remain with Association; Lot Owners' Liability.** To the extent not prohibited by Jaw, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations under this Agreement. Such Lot Owners shall have the right of contribution from other owners with each Lot's pro rata

share being calculated as Lot Owner's proportional obligations are otherwise defined in these Covenants. The City may also exercise the rights described in Section 7 of the recorded Stormwater Agreement and other remedies provided by law.

9. **City Rights; Liens Against Owners.** In addition to rights granted to the City by ordinance or otherwise, the City shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

- a. Direct the Association in matters regarding the inspection, maintenance, repair, and /or reconstruction of the Facility/ies;
- b. If the Association does not perform the work required by ordinance, by these covenants, and by the Stormwater Agreement referenced written notice to the Association.
- c. Access the Facility/ies for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facility/ies are easements that exist within the Property subject to these covenants.
- d. Require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Agreement referenced above.
- e. Enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of Covenants, and may be made a lien on each owner's property, owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above

10. **No Dissolution.** To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person who has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations
11. **No Amendment.** Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of these Restrictive Covenants, the Association may not amend or delete this Article with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other.
12. **Stormwater Agreement Supersedes.** The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other Articles of these Covenants. However, such Articles may supplement the obligations of the Association as set forth in that Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by these Covenants.

## ARTICLE VIII

### USE RESTRICTIONS

Section 1. Subdivision of Lots. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the Map, except by and with the written consent of the Declarant and provided same is also permitted under applicable governmental regulation and private restrictions affecting said Lot.

Section 2. Right of First Refusal Respecting Unimproved Lots. Before any unimproved Lot may be sold or resold to any person, firm or corporation by any Owner thereof, except Declarant or its successors, the Owner of such Lot first shall offer in writing to sell the Lot to Declarant, or its successors, at a price and on terms designated by said Owner. If Declarant, or its successors, does not accept or reject in writing said offer of sale within seven (7) days of its receipt of the same, then the Owner of such Lot shall have the right to sell the lot to any third party; provided, however, the sale of said Lot to such third party shall be at a price and on the terms and conditions not less favorable to said Owner than the offer made to Declarant.

Section 3. Transfer to Declarant. In the event that Declarant exercises the right of first refusal pursuant to Section 2 of this Article, the closing of the conveyance of such Lot shall occur within sixty (60) days after receipt by the Owner of written notice from Declarant that it elects to exercise its right of first refusal with respect to such Lot. At the closing, Declarant shall make such payments in cash, by a promissory note, or otherwise to the Owner as described in the third-party offer. Owner shall deliver to Declarant a general warranty deed conveying the Lot free and clear of all exceptions except as may be set forth in the written offer and subject to this Declaration. In the event the closing occurs after the death of an Owner, Declarant may, in its discretion, require the personal representative of the Owner to post such bonds or other assurances as the Declarant may deem reasonable in order to protect Declarant from any loss which might be caused by the failure to pay any federal or state inheritance tax or the failure to pay the claims of any creditors who may have a lien on the Lot superior to Declarant rights as a purchaser of said Lot.

Section 4. Reserved Easements. The Declarant reserves for itself, its successors and assigns, a permanent easement in and the right any time in the future to grant a permanent right-of-way over, under and along an area uniformly ten (10) feet in width along the rear and five (5) feet in width along the side lines of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary of useful for furnishing electrical power, gas, water, sewer, telephone service and other utilities, as well as within those areas shown as easements on the Map. Within such areas, no structures, planting, fences or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage channels in such areas. The area of each Lot containing the easement and all improvements thereon shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible. In the event that

any Lot is subdivided pursuant to Section 1 hereof, an easement uniformly ten (10) feet in width shall exist both along the rear and five (5) feet in width along the side lines of the Lot both as shown on the Map and along the rear and side lines as exist upon the Lot as so subdivided; provided, however, that upon request by the Owner of the subdivided Lot, the Declarant may release the easement reserved along the rear or side line of the Lot if doing so would not interfere with the installation or maintenance or any utilities or the drainage within the Property. In the event two or more Lots are combined into one building Lot with the residence to be constructed over the common interior lot lines, the easement reserved along side lines shall be released provided that the easements have not previously been used for the installation of utilities and their release shall not interfere with the drainage within the Property.

Section 5. Residential Use of Property. All Lots shall be used for residential purposes only and no structure shall be erected, placed or permitted to remain on any Lot other than one single-family dwelling, and any necessary structure customarily incidental to such residential use. No garage constructed on any Lot shall be used for living quarters of any kind for guests, members of the family, or domestic employees. The construction and maintenance of "garage apartments" on any Lot is expressly prohibited. Notwithstanding the foregoing, a Lot may be used by a professional home builder as a "model home" and for sales or marketing purposes so long as such professional home builder owns at least one other Lot on the Property upon which is built, is being built, or is planned to be built, a home for sale to third parties.

Section 6. Intentionally deleted.

Section 7. Building Restrictions. No building on a Lot shall be located nearer to the front, side, or rear line of each such Lot than as shown on the building setback lines and side lines shown on the Map. For the purposes of this covenant, eaves and stoops shall not be considered as part of a building; provided, however, this shall not be construed to be deemed to permit the encroachment of any improvement onto another Lot.

Section 8. Building Line Requirements. The minimum setback lines described hereinabove and as shown on the Map are not intended to create uniformity of setback. They are meant to create a sense of spaciousness and to avoid monotony. For such purposes, it is the Declarant intent that setback lines may be staggered where appropriate. The Declarant reserves the right to select the precise site location of each house or other structure on each Lot and to arrange the same in such manner and for such reasons as the Declarant deems sufficient; provided, however, the Declarant shall make such determination so as to ensure that the development of the Lots subject to this Declaration is consistent with the provisions set forth herein.

Section 9. Outbuilding and Similar Structures. No trailer, camper or other structure of a temporary nature shall be erected or allowed to remain upon any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence either temporarily or permanently upon any Lot; provided, however, that this Section shall not be construed to prevent the Declarant from permitting any party building a structure upon any Lot to erect or maintain temporary structures during construction. No wells shall be installed, used or maintained on any Lot for human domestic water consumption nor shall any well be

connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling which furnish domestic water from sources beyond the boundaries of the Lots.

Section 10. Nuisances and Unsightly Materials. No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance to the neighborhood. No person may keep any animal upon any part of the Lot except that any owner then occupying a residence upon a Lot may keep customary household pets upon such Lot, provided that such pets are not kept, bred or maintained for any commercial purposes or in such a manner as to become a nuisance to the other Owners or residents of the subdivision.

Section 11. Maintenance of Lots. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fine or other casualty. No clothes-line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing that will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, or other debris for collection by governmental or other similar garbage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contact to purchase such Lot and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant may enter and correct the same at Owner's expense. Each owner, by acquiring a Lot(s) subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant. No such entry as provided herein shall be deemed a trespass.

Section 12. Signboards. No signboard, billboards or advertising sign of any description shall be displayed upon or above any Lot, with the exception of:

a. Signs displaying or marketing a Lot as a "Model Home" and listing applicable sales information regarding the construction and sale of homes on such Lot and other Lots, which signs shall not exceed four feet by eight feet in dimension, shall refer only to the Lot on which displayed, and shall be limited to one sign per Lot:

b. Signs stating "For Rent" or "For Sale," which signs shall not exceed two feet by three feet in dimension, shall refer only to the Lot on which displayed, and shall be limited to one sign per Lot; and

c. The name of the resident of any Lot and the street address, the design of which shall be furnished to Declarant and shall be subject to approval by Declarant.

Section 13. Antennas, Satellite Dishes or Discs. No satellite dishes or discs, radio or television aerial, antennas, towers or any other external electronic equipment or devices may be

installed or maintained on any exterior of any structure erected on a lot or elsewhere upon any Lot or within the Property without the prior written approval of the Committee pursuant to Article V and hereof and, so long as Declarant shall own a Lot, without the prior written approval of Declarant, which approval Declarant may withhold in its sole and absolute discretion; provided, however, that satellite dishes which are eighteen (18) inches or less in size, may be installed without such approval.

**Section 14. Fences.** Except as may be approved by the Architectural Committee, no fence or wall shall be erected on any Lot closer to the street than the rear building corner except for temporary decorative fencing installed by a builder on a model home. Perimeter fencing and privacy fencing around patios, decks, or pools may not exceed six (6) feet in height and must be approved prior to construction by the Architectural Committee. The structural side of the fence must face the interior of the Lot, with the decorative side of the fence facing the adjacent property. Chain link fencing is expressly prohibited, except that 2 x 4 mesh may be used with split rail fencing to contain animals within the yard.

**Section 15. Metal Garages, Carports, Buildings and Accessory Structures.** No metal carports, metal garages or metal storage building shall be erected on any Lot or attached to any residence located on the Lot. No building or accessory structure of any kind shall be placed on any Lot except that one (1) utility building or noncommercial greenhouse may be placed in the rear one-quarter (1/4) of any Lot so that it is directly behind the residence as viewed from a point on a line of sight perpendicular to the street. No chain link or metal fabricated animal enclosures shall be placed on any Lot.

**Section 16. Above-Ground Pools.** No above-ground pools shall be erected on a Lot.

**Section 17. Playground Equipment.** All playground equipment including without limitation sandboxes, wading pools, trampolines, swings, gym sets, soccer goals, basketball goals, and volleyball nets shall only be placed or kept in the rear of residences and garages and shall not be placed or kept in front or side yards or in the street, sidewalk, or right of way; provided, however, that such equipment may be placed or located in the front or side yard with the express written consent of the Architectural Committee, at such location as approved by the Architectural Committee.

## **ARTICLE IX**

### **EASEMENTS AND RIGHT TO NOTICE**

**Easements Reserved by Declarant.** Declarant reserves easements for the installation and maintenance of driveways, walkways, parking areas, telephone and electric power lines, cable television lines, water and sewer lines, drainage ditches and for other utility installations over the Properties. Each Owner, by his acceptance of a deed to a Lot, acknowledges such reservations and the rights of Declarant to transfer such easements to the Association or to such utility companies as Declarant may choose. The easements reserved by the Declarant include the right to cut any trees, bushes or shrubbery, make any gratings of the soil or take any similar

action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development. Certain easements are reserved by the Declarant and the Association for the benefit of themselves and others are shown on the Map. Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of utilities, or which may cause the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, the Declarant shall have the continuing right and easement, but not obligation, to maintain all sewer and water items located on the Lots.

**Right to Notice of Design or Construction Claims.** No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Property in connection with or in anticipation of any potential or pending claim, demand or litigation involving that design or construction unless Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the applicable Owner to discuss the Owner's concerns and conduct their own inspection pursuant to the rights reserved in Section 11.9.

**Easement to Inspect and Right to Correct.** Declarant reserves for itself, the Special Declarant or builder who obtained the permit for construction and others it may designate, the right to inspect, monitor, test, redesign and correct any structure, improvement or condition that may exist on any portion of the Property, including Units, and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise that right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at that person's own expense, any damage resulting from such exercise.

## **ARTICLE X**

### **PROPERTY RIGHTS**

**Section 1. Ownership of Common Elements.** Prior to the conveyance of the first Lot by Declarant to a non-affiliated Owner, Declarant shall convey the Common Elements to the Association free and clear of all liens and encumbrances other than the lien of ad valorem property taxes and all valid and enforceable easements and restrictions of record. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Elements shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that Declarant or the Association may offer roads and streets previously a part of the Common Elements for dedication to the appropriate governmental authorities and if such roads or streets are accepted for dedication by such governmental authorities, then such roads or streets shall then be considered dedicated to the use and enjoyment of the public.

**Section 2. Owners' Rights to Use and Enjoy Common Elements.** Except as otherwise limited by this Declaration, each Owner shall have the right to use and enjoy the common elements which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

(a) the right of the Association to promulgate and enforce reasonable regulations governing the use of the common elements to ensure the safety and rights of all Owners;

(b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common elements;

(c) the right of the Association to suspend the voting rights in the Association and right to use the common elements by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) the right of the Declarant or the Association to grant utility, drainage and other easements of the type and for the purposes set forth in Article VII across the common elements;

(e) the right of the Association to mortgage all or any part of the common elements or to dedicate or transfer all or any part of the common elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such mortgage, dedication or transfer shall be effective unless such mortgage, dedication or transfer is approved by at least two-thirds (2/3) of each class of Members.

**Section 3. Owner's Easements for Ingress and Egress.** Every Lot shall be conveyed with a perpetual, nonexclusive right to use any roadway which maybe constructed by the Declarant and dedicated to the public and accepted for maintenance by the State Highway Department or any other governmental agency, for the purpose of providing access to and from each Lot.

**Section 4. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws of the Association, his right of enjoyment to the common elements and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on his Lot.

**Section 5. Rules and Regulations.** The Board of Directors of the Association shall have the right to adopt and enforce reasonable regulations governing the use of the Lots in the Subdivision, the streets and roads in the subdivision, and the common elements in the subdivision.

## ARTICLE XI

### GENERAL PROVISIONS

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

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

Section 3. Amendment. This Declaration may be amended by Declarant, without the permission of Lot owners or the Association, as long as Declarant owns at least twenty five percent (25%) of the Lots in the Development within the period of Declarant control, thereafter, the Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots in the total Development.

Section 4. FHA/VA Approval. Notwithstanding anything to the contrary contained in this Declaration, as long as there is a Class D membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans' Administration: (i) annexation of additional properties other than those defined as "Additional Properties" herein, (ii) dedication of common elements for public use, (iii) amendment of this Declaration which materially change the Declaration or rights of Owners, (iv) mergers and consolidations, and (v) dissolution of the Association.

Section 5. Waiver of Unintentional Violations. Declarant reserves the right, but shall not be obligated, to waive in writing any violation of the designated and approved building location line or either side lot line, provided that such violation does not exceed ten percent (10%) of the applicable requirements and the violation thereof was unintentional.

Section 6. Default by Association. Upon default by the Owner's Association in the payment to the jurisdiction entitled thereto for any assessments for public improvements or ad valorem taxes levied against the common elements, which default shall continue for a period of six (6) months, each owner of a lot in the development shall become personally obligated to pay to the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of lots in the development. If the sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the owner, his heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the owner.

Section 7. Amendments to Declaration of Covenants, Conditions and Restrictions,

Amendments to this Declaration of Covenants, Conditions, and Restrictions relating to the maintenance and ownership of the permanent wet detention ponds shall not be permitted without review and approval by governmental office having jurisdiction for watershed protection.

Section 8. Planned Community Act. Except as otherwise provided herein, all applicable required terms of the North Carolina Planned Community Act (the Act) set forth in NCGS Chapter 47F are incorporated herein by reference. To the extent any conflict exists between the terms hereof and a required provision of the Act, the required provisions of the Act shall govern and control such conflict.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first above written.

**DECLARANT**

**HLP DEVELOPERS, LLC,**  
a North Carolina limited liability company

By: Bruce W. Knott  
Name: Bruce W. Knott  
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Durham

I certify that the following person personally appeared before me this day, acknowledging to me that (s)he voluntarily signed the foregoing document for the purpose stated therein and, in the capacity, indicated: Bruce Knott, Manager.

Dated: December 19, 2019

Deanne P. Fabricatore  
Official Signature of Notary Public

Deanne P. Fabricatore  
Notary printed or typed name

[OFFICIAL SEAL]

My commission expires: November 4, 2024

Deanne P. Fabricatore  
NOTARY PUBLIC  
Durham County, North Carolina  
My Commission Expires 11/04/2024

IN WITNESS WHEREOF, the undersigned, President and Secretary of the Association, hereby certify and affirm the adoption of the provision of this Declaration by the requisite Owners as aforementioned, and have caused this instrument to be duly executed as of the date first above written.

**HIGHLAND DURHAM OWNER'S ASSOCIATION,  
INC.**, a North Carolina non-profit corporation

By: Bruce W. Knott  
Printed Name: Bruce W. Knott  
Title: President

County of Durham  
North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and, in the capacity, indicated: \_\_\_\_\_, President.

Date: December 19, 2019

Deanne P. Fabricatore

Official Signature of Notary Public

Deanne P. Fabricatore

Notary printed or typed name

[OFFICIAL SEAL]

My commission expires: November 4, 2024

Deanne P. Fabricatore  
NOTARY PUBLIC  
Durham County, North Carolina  
My Commission Expires 11/04/2024