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DECL

Drawn by and Mail To: J. Kenneth Edwards, Gwynn & Edwards, PA, 5909 Falls of Neuse, Ste. 200, Raleigh, NC 27609

**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
FOR  
THE OAKS AT LYON'S FARM**

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THIS DECLARATION is made on the date hereinafter set forth by The Oaks at Lyon's Farm, L.L.C., a North Carolina Limited Liability Company (hereinafter "Declarant") and by The Drees Company d/b/a The Drees Homes Company, a Kentucky corporation authorized to do business in North Carolina (hereinafter "Drees") (Drees joins in the execution of this Declaration for the purpose of subjecting the lots owned by Drees in the Property to the terms of this Declaration);

WITNESSETH:

WHEREAS, Declarant and Drees are now the owners of all that certain property designated as The Oaks at Lyon's Farm as further described on the attached **Exhibit A**, and being the property more fully depicted on the plat recorded in Plat Book 193, Pages 276-277, Durham County Registry (as hereinafter defined as "Property"); and

WHEREAS, Declarant desires to create on such Property an exclusive residential community of detached single-family homes to be known as The Oaks at Lyon's Farm Subdivision (hereinafter sometimes referred to as the "Subdivision"); and

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

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, including, without limitation, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, THE OAKS AT LYON'S FARM HOMEOWNERS ASSOCIATION, INC., for the purpose of exercising the aforesaid functions; and

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

NOW, THEREFORE, Declarant and Drees declares that the real property described in **EXHIBIT A** to this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

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

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

Section 2. "Association" shall mean and refer to **THE OAKS AT LYON'S FARM HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

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

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

Section 5. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including the area within any storm water easements and the facilities constructed therein and which serve more than one Lot and are not maintained by any governmental authority. Common Area shall also include all earthen dams surrounding the lakes or ponds within the Subdivision. Common Area also includes water and sewer lines that serve more than one Lot and are not located within any Durham County or Declarant utility easement or a public street right-of-way. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to

public use and accepted by a public agency, authority or utility as set forth herein. The maintenance obligation shall also include the maintenance of any Stormwater Control Structure Easements and Access Easements as may be dedicated in future phases of Subdivision and subject to future agreement between Declarant or the Association and Durham County.

Section 6. "Declarant" shall mean and refer to **The Oaks at Lyon's Farm, L.L.C.**, a North Carolina Limited Liability Company. It shall also mean and refer to any person, firm or corporation to whom or which the Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Durham County Registry.

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

- (a) December 31, 2024;
- (b) When ownership of all Lots in the Subdivision is transferred from the Declarant to a third party; provided, however, that Declarant shall retain control in the event that additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it; or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

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

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

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

Section 11. "Common Open Space" or "Open Space" shall mean Common Area, owned by the Association if any, which shall be maintained for buffer purposes, active recreational uses or passive recreational uses, including, but not limited to natural preservation.

Common Open Space shall not include public roads within the property. The Common Open Space and the permitted uses thereon shall be designated herein or on a plat or plats of The Oaks at Lyon's Farm Subdivision recorded or to be recorded in the office of the Durham County Register of Deeds. All Common Open Space may be subjected to easements for utilities, including sewer and waterlines, easements for ingress and egress as necessary for installation, maintenance and repair of utilities, greenway easements and may be subjected to easements for any encroachments arising from initial improvements.

Section 12. "Properties" shall mean and refer to the Property described in **Exhibit A** to this Declaration and any additional property annexed pursuant to Article II.

Section 13. "Special Declarant Rights" means rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans filed with the declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the planned community, and models; (iv) to use easements through the common elements for the purpose of making improvements within the planned community or within real estate which may be added to the planned community; (v) to make the planned community part of a larger planned community or group of planned communities; (vi) to make the planned community subject to a master association; or (vii) to appoint or remove any officer or executive board member of the association or any master association during any period of Declarant control.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**  
**AND WITHIN THE JURISDICTION OF THE**  
**THE OAKS AT LYON'S FARM HOMEOWNERS 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 which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property. At any time prior to December 31, 2024, additional lands may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of plats showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a public street or road) and must be approved by Durham County and, if appropriate, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

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

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

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

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

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

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined). When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to three (3) votes for each Lot that it owns or controls by virtue of a valid purchase option contract, memorandum of which contract shall be recorded in the office of the Durham County Register of Deeds (each a "Class B Lot").

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

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

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

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For THE OAKS AT LYON'S FARM HOMEOWNERS ASSOCIATION, INC., recorded in the Durham County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

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

#### **ARTICLE IV PROPERTY RIGHTS**

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

(a) the provisions of the Durham County zoning ordinances and regulations, the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer. or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the provisions of the Durham County zoning ordinances and regulations, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Durham or to another nonprofit corporation for the aforementioned purposes. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, provided that such exchange is approved by Durham County.

(d) the provisions of the Durham County zoning ordinances and regulations, the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association, as provided by and consistent with the Durham County zoning ordinances and regulations, as same may be amended from time to time, to exchange all or part of the Common Area for other property and consideration of like value and utility.

#### Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Durham County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties. Any Owner who rents or leases his or her Lot to a tenant shall be not entitled to use and enjoy any common facilities in the Common Area during the period that the Lot is occupied by such tenant as their principal residence in Durham County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase of the Subdivision to an Owner, it will convey to the Association title to those portions of the Common Area, if any, owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of *ad valorem* taxes not yet due and payable. Any planned improvements or amenities placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements or amenities.

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

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

It is the intent of the Declarant that a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. If an Owner of a Lot on which a Common Area easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such

Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

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

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

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

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

unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

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

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities and maintenance of the Stormwater facilities and access easements in accordance with the provisions of any Stormwater Facility Agreement and Covenant between Declarant or Association and Durham County, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; (vii) costs of maintaining the street lights; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2015, the Maximum Annual Assessment shall be a sum equal to One Thousand Fifty-Six and 00/100 Dollars (\$1,056.00) for each Class A Lot.

(a) From and after January 1, 2016, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed ten percent (10%) of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in § 47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month following conveyance of a Lot to an Owner from the Declarant. There shall be no annual assessment for Class B Lots.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Class A Lots and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

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

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

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

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, and the cost to purchase Lots and dwellings at foreclosure sales of Association liens, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who

are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of capital improvements upon the Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days or more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast fifty percent (50%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

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

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

Section 9. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall

be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, and at every re-sale closing thereafter, a sum equal to Five Hundred and 00/100 Dollars (\$500.00) shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

## ARTICLE VI RIGHTS OF LENDERS

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

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

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

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

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes nor the exchange of real property as provided in Section 1(c) of Article IV hereof shall be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved

to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to Durham County or to another nonprofit corporation for the aforementioned purposes.

(b) Change the method of determining the obligations, assessments, dues or other charges that may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

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

## ARTICLE VII EASEMENTS

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

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

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

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

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

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

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

Section 6. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon or is a clear violation of this Declaration

or the Restrictive Covenants applicable to the Lot, including, but not limited to an obligation of maintaining the subject Lot. This easements shall also specifically include the right of the Association to go on any Lot for the purpose of installing, maintaining or replacing the street lights located on the Properties.

Section 7. Sight Distance Easement. Sight distance easements are hereby established across all Lots as indicated on the recorded map of the Property. Within the sight distance easement, no Owner shall create, plant or erect a wall, fence, foliage, berm, parked vehicle, sign or any other obstruction between two feet and eight feet tall above the curb line.

Section 8. Private Drainage Easement. A ten foot (10') wide private drainage easement is hereby established across all Lots so indicated on the recorded map of the Property. A perpetual, nonexclusive easement over all said Lots is hereby granted to the Association, its employees, subcontractors and utility companies, for the purpose of establishing, maintaining and upkeeping the storm drainage features constructed by the Declarant or the Association and located within the private drainage easement.

Section 9. Sign Easement. Easements are also reserved for the benefit of the Declarant and the Association, and their respective successors and assigns, over, across and under those portions of the Lots, Easements and Common Open Space where entry signs are located, for the purpose of installing, operating, repairing and maintaining landscaping and subdivision entrance signage, landscaping and fencing in the easement area. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article VIII of the Declaration and, if required, by Durham County.

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

## ARTICLE VIII ARCHITECTURAL CONTROL

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

Declarant may, at any time after approval of the construction plans of all the initial dwellings on the Lots, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three (3) or more persons appointed by the Board. Such delegation shall be made by the Declarant by recording in the Durham County Registry an Assignment Of Declarant's Rights. Declarant shall approve all initial construction plans and shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, and no termination of Special Declarant Rights shall be deemed a termination or assignment of the rights reserved to Declarant in this Article VIII. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

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

## ARTICLE IX GENERAL PROVISIONS

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

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

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

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

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

easement or exchanges permitted by Article IV, Section 1(c) hereof), and amendment of this Declaration.

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

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

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

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

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

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association shall not have the right to suspend the right to use private streets providing access to an Owner's Lot.

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

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

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

## ARTICLE X

### 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 Deed Book 7801 Page 274, 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/ich/op/pwd/storm/Documents/BMCProgramChanges2013/Owner%27s%20>

[Maintenance%20Guide%20for%20Stormwater%20BMPS.pdf](#) 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 (1) wet detention pond with a drainage area of 3.85 acres, a design storm surface area of 7,555 square feet and a design storm storage volume of 27,729 cubic feet;
- ii. one (1) water quality swale with a length of 154 feet and a depth of 2.29 feet; and
- iii. one (1) level spreader with a 100-foot level spreader Lip and a 50-foot riparian area vegetated filter strip.

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

**Section 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.

**Section 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.

**Section 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. 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 **\$5,316.00** [WP: \$2,720.00; Swale: \$1,298.00; Level Spreader: \$1,298.00] from its collected dues for the Inspection and Maintenance Fund and **\$972.00** [WP: \$640.00; Swale: \$166.00; Level Spreader: \$166.00] 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.

**Section 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.

**Section 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.

**Section 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.

**Section 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.

**Section 8. Facility/ies to Remain with Association; Lot Owners' Liability.** To the extent not prohibited by law, 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.

**Section 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 above, do such work itself, upon 30 days' 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 located and all other private and public 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 Facility/ies, as provided in the Stormwater 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 these Covenants, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above.

Section 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.

Section 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.

Section 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.

(Signature Page To Follow)

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized officer, as of the 21<sup>st</sup> day of August, 2015.

DECLARANT

**The Oaks at Lyon's Farm, LLC**, a North Carolina Limited Liability Company

By: [Signature] (SEAL)  
Name: JARROD EDENS  
Title: Member/Manager

STATE OF NORTH CAROLINA \_\_ COUNTY OF WAKE

I, Eliza E. Bridgers, a Notary Public for said County and State, certify that Jarrod Edens, Member/Manager of The Oaks at Lyon's Farm, L.L.C., a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of the limited liability company.

Witness my hand and official stamp or seal, this the 21<sup>st</sup> day of August, 2015.

**Eliza E. Bridgers  
Notary Public  
Wake County, NC**

[Signature]  
Notary Public ELIZA E. BRIDGERS  
My commission expires: 8-14-2019

IN WITNESS WHEREOF, Drees has caused this instrument to be executed in its name by its duly authorized officer, as of the 16<sup>th</sup> day of September, 2015.

The Drees Company d/b/a The Drees Homes Company,  
a Kentucky corporation authorized to do business in North Carolina

By: [Signature] (SEAL)  
Name: John H. Nance  
Title: Vice President

STATE OF NORTH CAROLINA \_\_ COUNTY OF WAKE

I, J. Kenneth Edwards, a Notary Public for said County and State, certify that John H. Nance, Vice President of The Drees Company d/b/a The Drees Homes Company, a Kentucky corporation authorized to do business in North Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of the corporation.

Witness my hand and official stamp or seal, this the 16<sup>th</sup> day of September, 2015.



[Signature]  
Notary Public J. Kenneth Edwards  
My commission expires: \_\_\_\_\_

EXHIBIT A

BEING all that certain property reflected on plat entitled "Final Plat Conservation Subdivision Plat of: The Oaks at Lyon's Farm", including, but not limited to, all residential lots, open space areas (primary and secondary), right of ways, buffers and easements areas as the same are shown on the plat recorded in Plat Book 193, Pages 276 – 277, Durham County Registry.