

Hickory Creek HOA

Declaration of Covenants, Conditions and Restrictions Amendment

WHEREAS, Article IX, Section 3 of the Declaration of Covenants, Conditions and Restrictions for the Hickory Creek HOA allows for Amendments to these Covenants should such Amendment be approved by at least two-thirds (2/3) of the Owners; and

WHEREAS, for the health, safety, welfare, and comfort and convenience of all residents, the Board wishes to amend the Covenants as provided herein; and

WHEREAS, the Board distributed a copy of the proposed Amendments to the Covenants; and

WHEREAS, at least two-thirds of all Owners voted to approve these Amendments to the Covenants;

NOW, THEREFORE BE IT RESOLVED that the following Amendments to the Hickory Creek HOA Declaration of Covenants, Conditions and Restrictions are adopted effective <date> and that a copy of the full Declaration of Covenants, Conditions and Restrictions along with these Amendments shall given to the membership within 15 days.

1. Article I Section 7 is amended to read; "Board of Directors [or] Board" means those persons elected as the President, Treasurer and Secretary for the Association. These individuals will act collectively as the directors of the Hickory Creek Homeowners Association.
2. Article III Section 22 is added to read; "No owner shall rent either short or long term his/her dwelling or property without prior written permission from the Board."
3. Article IV Section 1 is amended to read; "An Architectural Review Board consisting of the President and two other Owners shall be appointed by the Board."

By: _____
Association's Secretary

Date: _____

Hickory Creek HOA

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WHEREAS, for the health, safety, welfare, and comfort and convenience of all residents, the Board wishes to amend the Covenants as provided herein; and

WHEREAS, the Board distributed a copy of the proposed Amendments to the Covenants; and

WHEREAS, at least two-thirds of all Owners voted to approve these Amendments to the Covenants;

NOW, THEREFORE BE IT RESOLVED that the following Amendments to the Hickory Creek HOA Declaration of Covenants, Conditions and Restrictions are adopted effective 10/1/2020 and that a copy of the full Declaration of Covenants, Conditions and Restrictions along with these Amendments shall given to the membership within 15 days.

1. Article I Section 7 is amended to read; "Board of Directors [or] Board" means those persons elected as the President, Treasurer and Secretary for the Association. These individuals will act collectively as the directors of the Hickory Creek Homeowners Association.
2. Article IV Section 1 is amended to read; "An Architectural Review Board consisting of the President and two other Owners shall be appointed by the Board."

By: 
Association's Secretary

Date: 10/1/2020

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WAKE COUNTY, NC 919
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/30/2006 AT 15:05:03

BOOK:012040 PAGE:02159 - 02176

Prepared by and Held for: Barringer Law Firm, LLP (Box 16)

NORTH CAROLINA

WAKE COUNTY

**Declaration of Covenants, Conditions and Restrictions
for
Hickory Creek**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HICKORY CREEK (hereinafter called "the Declaration [or] the Covenants") is made this 30th day of June, 2006, by HICKERNUT PROPERTIES, LLC, a North Carolina limited liability company with its principal office and place of business in Wake County, North Carolina (hereinafter called "the Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 20.593 acres, more or less, located in Wake County, North Carolina, which property is more particularly described as follows (hereinafter called the "the Property"):

Being all of lots 1 – 20, inclusive, according to a subdivision plat entitled "Hickory Creek Subdivision" recorded in Book of Maps 2006, Pages 1156 & 1157, Wake County Registry.

WHEREAS, Declarant will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, and charges as hereinafter set forth; and,

WHEREAS, Declarant desires to create thereon a planned residential community; and,

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values and opportunities in said community for the maintenance of the properties and improvements thereon, and to this end desires to subject the property described above to the

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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 desirable for the efficient preservation of the property values in said community to create an agency to which should be delegated and assigned the powers of owning, maintaining, and administering the community properties, administering and enforcing the covenants and restrictions, collecting and disbursing the assessments and charges hereinafter created, and promoting the health, safety, and welfare of the residents; and,

WHEREAS, the Hickory Creek Homeowners Association, Inc. will be incorporated under the laws of the State of North Carolina as a non-profit corporation for the purpose of exercising the functions described above, among others;

NOW, THEREFORE, Declarant and other persons and/or entities joined herein hereby declare all of the property described herein, and hereafter annexed hereunder, to be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which shall run with the said real property, shall be binding on all parties having or acquiring any right, title, or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Hickory Creek Homeowners Association [or] the Association" shall mean and refer to the Hickory Creek Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Hickory Creek [or] the community" shall mean the Hickory Creek community and shall refer to that certain Property subject to this Declaration and such additions thereto as may hereafter be brought within the jurisdiction of the Hickory Creek Homeowners Association.

Section 3. "Common Area" shall mean and refer to all real property, and any improvements thereon, within Hickory Creek owned by the Hickory Creek Homeowners Association for the common use and enjoyment of all Members.

Section 4. "Member" shall mean and refer to every person or entity entitled to membership in the Hickory Creek Homeowners Association as provided in this Declaration.

Section 5. "Lot" shall mean and refer to any numbered plot of land intended for a residential structure shown upon any recorded subdivision map of Hickory Creek, with the exception of Common Areas and dedicated or public streets.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of Hickory Creek, including

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contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Board of Directors [or] Board" means those persons elected or appointed to act collectively as the directors of the Hickory Creek Homeowners Association.

Section 8. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors for the management, governance and administration of the Hickory Creek Homeowners Association and its Members.

Section 9. "VA" shall mean Veterans Administration, or its successor, and "HUD" shall mean Department of Housing and Urban Development, or its successor.

Section 10. "Bylaws" mean the bylaws of Hickory Creek Homeowners Association as they now or hereafter exist.

ARTICLE II COMMON AREA OWNERSHIP AND MAINTENANCE

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right of enjoyment in and to the Common Area that shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Delegation of Use. Any Owner may delegate his rights of enjoyment of the Common Area to the members of his family, his tenants, contract purchasers who reside on the property, or his guests.

Section 3. Rules and Regulations. The Board of Directors shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area and/or the Hickory Creek community. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place reasonably convenient to the Members and available to them for inspection during normal business hours.

Section 4. Suspensions. The Board of Directors shall have the power to suspend the voting rights of a Class A Member or any person to whom that Member has delegated his right of enjoyment for any period during which any assessment against his Lot remains unpaid, so long as the statutory due process procedures under Chapter 47F, The North Carolina Planned Community Act, of the North Carolina General Statutes (hereinafter called "Chapter 47F") are followed.

Section 5. Declarant's Covenant to Convey Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the property that will be designated Common Area and portions thereof to Hickory Creek Homeowners Association, at such time as it conveys the first Lot to some person other than

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Declarant within the specific area to be developed, as contained in a recorded subdivision plat or map, subject to easements of record for utilities, television antenna or cable, drainage, access or other services.

Section 6. Mortgaging Common Area. The Association shall have the power to borrow money for the purpose of improving the Common Area and pursuant thereto to mortgage the Common Area, or any portion thereof; provided, however, that written notice of the proposed action is sent to every Member not less than thirty (30) days and not more than sixty (60) days in advance of the execution of said mortgage and all statutory procedures and requirements of the said Chapter 47F are followed. The rights of such mortgagee in said Common Area properties shall not be subordinate to the rights of the Members.

Section 7. Common Area Dedication or Transfer. The Association shall have the right 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 to by the Members. No such dedication or transfer shall be effective unless written notice of the proposed action is sent to every Member not less than thirty (30) days and not more than sixty (60) days in advance and all statutory procedures and requirements of Chapter 47F are followed.

ARTICLE III LAND USE; DWELLING SIZE; SETBACKS

Section 1. Restrictions. Each Lot and any Common Area shall be subject to the restrictions and/or rules herein, to any set forth or authorized in the Bylaws, and to any additional sub-covenants restricting Lots in Hickory Creek.

Section 2. Land Use, Building Type and Dwelling Size. All Property designated for residential use shall be used, improved and devoted exclusively to residential use, except as allowed herein. No structure shall be erected, altered, placed or permitted to remain on any Lot other than on detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not less than two (2) cars, and other out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street. The minimum heated square footage of a dwelling may not be less than 2,000 square feet for a one-story dwelling; the minimum heated square footage shall be not less than 2,500 square feet for any dwelling of more than one story with an enclosed area (exclusive of garages, decks, terraces, open and screened-in porches, patios and chimneys) and with no less than 1,000 square feet for the ground floor.

Section 3. Building Setbacks. No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the Subdivision or as otherwise required or permitted by the zoning ordinances of Wake County (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a building permit for such

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dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts, or face either of the streets on which the corner Lot abuts.

Section 4. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

Section 5. Fences. No fence or wall shall be erected on any Lot closer to any street than the front or side building setback line. Any fence or wall installed within the Hickory Creek Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article IV herein. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot of Lots, nor shall anything in this paragraph apply to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

Section 6. Nuisances. No individual or entity shall make or do any immoral, improper, offensive or unlawful use of any Lot or Common Area in Hickory Creek. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by the appropriate Board of Adjustment or zoning inspector. In addition, all rules and regulations of the Association and of all governmental agencies having jurisdiction over Hickory Creek shall be observed.

Section 7. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes.

Section 8. Designated Residential Property Use. All Lots or other property designated for residential use shall be used, improved and devoted exclusively to residential use. All Common Area shall be used, improved and devoted exclusively for the benefit of the Owners.

Section 9. Common Area Offensive Use. No individual or entity shall make or do any immoral, improper, offensive or unlawful use of any of the Common Area. In addition, all rules and regulations of the Association and of all governmental agencies having jurisdiction over Hickory Creek shall be observed.

Section 10. Common Area Construction or Alteration. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and/or with the express written consent of the Association.

Section 11. Nuisance or Annoying Activity. No obnoxious or offensive activity shall be carried on, in or upon Hickory Creek, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within Hickory Creek.

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Section 12. Parking. The Association may regulate or prohibit the parking of boats, campers, trailers, and the placing of tents and other such items on the Common Area and/or on any Lot except in a fully-enclosed garage. No automobiles, trucks, tractors, boats, campers, trailers or any other vehicles shall be regularly parked within the right-of-way of any street in or adjacent to Hickory Creek. In addition, each Lot shall contain sufficient off-street paved parking space for not less than two automobiles or pick-up trucks. Finally, no owner of a Lot shall store or keep a trailbike, motorcycle, motorized tri-wheel bike, tractor, truck or other such motorized riding vehicle on the premises without specific written approval by the Association; provided, however, that each Member shall be entitled to store or keep one or more operational automobile(s) and/or pick-up truck(s) on the premises so long as such automobile(s) or truck(s) are parked in the aforesaid off-street paved parking space. In granting approval for any other vehicle(s), the Association may attach specific conditions that shall be binding on the Owner and occupants of the home built on the Lot.

Section 13. Satellite Dishes and Antennas. No radio or television transmission or reception towers or antennas shall be erected on a Lot other than a customary television or radio reception antenna, which shall not extend more than ten (10) feet above the top roof ridge of the house. However, a satellite antenna receiver or disc will be permitted on a Lot if: (i) the receiver or dish is not larger than two feet (2') in diameter; (ii) the receiver or dish is located on the side of the house away from the street and within the building setback lines applicable to that Lot; and (iii) the receiver or dish is located or screened in such a way that it cannot be seen from any street within the subdivision. Any such screening must be approved pursuant to Article IV herein. In no event shall any free-standing transmission or receiving tower, nor any radio and/or cellular towers(s), be permitted on any Lot.

Section 14. Signs. Except as otherwise required by Wake County, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the Property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed in a lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

Section 15. Swimming Pools. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable and/or mobile wading pools shall be permitted.

Section 16. Mailboxes. No mailbox shall be placed or maintained on any Lot unless the same has been approved as provided herein.

Section 17. Clotheslines. No clotheslines may be erected or maintained on any Lot.

Section 18. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage

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cans stored behind the house in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot for more than five (5) calendar days; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 19. Wells. No well 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 mains furnish domestic water from sources beyond the boundaries of the Lot. With the prior written approval of the Architectural Review Board, private wells shall be permitted on a Lot solely for the purpose of landscape and/or lawn irrigation but shall not otherwise service any dwelling.

Section 20. Removal of Trees. Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6 inches in diameter at a point measured 3 feet above the ground shall be removed from any Lot without the approval of the Declarant. The foregoing provision shall apply only to Lots that have been issued a certificate of occupancy issued by Wake County.

Section 21. Exterior Maintenance. The Owner of each Lot shall maintain the grounds and improvements on his Lot, including, by not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.

ARTICLE IV ARCHITECTURAL CONTROL

Section 1. Architectural Review Board. An Architectural Review Board consisting of three (3) persons shall be appointed by or before the sale and transfer of title to the first Lot by the Declarant. The Declarant shall have the right to appoint a majority of the members of the Architectural Review Board until all new or initial construction of all homes on all Lots in Hickory Creek is completed. After the time when all said new or initial construction of all homes on all Lots in Hickory Creek is completed, the Architectural Review Board shall be appointed by the Board of Directors of the Association.

The Declarant shall have the right but not the obligation to appoint an Architectural Advisory Committee, a majority of which advisory committee shall be comprised of Owners in Hickory Creek, which shall advise the Architectural Review Board on all changes, modifications or additions to the initial construction of all homes in Hickory Creek which are proposed to be done by a homeowner. However, the Architectural Review Board shall have the final authority on all architectural decisions.

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At such time as the Architectural Review Board is appointed by the Board of Directors of the Association rather than by the Declarant, the Architectural Advisory Committee shall cease to exist and thereafter all architectural advisories, recommendations and/or decisions shall be made by the Architectural Review Board.

Section 2. Plan or Design Approval. No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to houses, outbuildings, fences, walls, signs, antennas, clotheslines, and other structures, excavation, or changes in grade shall be undertaken upon any Lot unless the plans and specifications therefore, showing the nature, kind, shape, height, materials, and location of the proposed improvements shall have been submitted to the Architectural Review Board and expressly approved in writing. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain on any of the Lots without the review and express written approval of the Architectural Review Board, which, as described above, may be advised on such subsequent alterations or modifications by an Architectural Advisory Committee.

Section 3. Effect of Failure to Approve or Disapprove. In the event that the Architectural Review Board fails to approve or disapprove the design of any proposed improvements within forty-five (45) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Review Board if they contain erroneous data or fail to present adequate information upon which the Architectural Review Board can arrive at a decision.

Section 4. Right of Inspection. The Architectural Review Board or its designee shall have the right, at its election, to enter upon any of the Lots in Hickory Creek during preparation, construction, erection, or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications.

Section 5. Exterior Maintenance. The exterior maintenance of Lots and all improvements constructed thereon shall be the duty of the Owners of such Lots (except where specifically provided otherwise) and shall not normally be interfered with by the Association or any person. If, however, in the opinion of the Association any Owner shall fail to maintain any Lot or any improvements thereon in a manner which is reasonably neat and orderly, or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, the Association at its discretion, and following ten (10) days advance written notice to the Owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the Lot such as, but not limited to the removal of trash, cutting grass, pruning of shrubbery, and seeding for erosion control. The Association, or its agents, shall have an easement for the purpose of accomplishing the foregoing. All costs actually incurred by the Association in rendering such services plus a service charge of twenty percent (20%) of such costs, shall be added to and become a part of such other assessments to which the Lot is subject.

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ARTICLE V MEMBERSHIP AND VOTING RIGHTS

Section 1. Members. The Declarant, for so long as it shall be an Owner, and every person or entity who is an Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in Hickory Creek.

Section 2. Member classes and Voting Rights. The Association shall have two (2) classes of voting members:

Class A Members. Class A Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the required ownership interest. When more than one person or entity holds such interest in any Lot all such persons shall be Members. The vote for such 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 Lot and no fractional vote may be cast with respect to any Lot.

Class B Member. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the required ownership interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- a. The total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided, that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, additional lands are annexed to the properties without the assent of the Members, all within the times and as provided herein; or
- b. December 31, 2009.

Section 3. Voting Rights Suspension. The right of any Class A member to vote may be suspended by the Board of Directors of the Association for just cause pursuant to its rules and regulations, so long as the statutory due process procedures under Chapter 47F are followed.

Section 4. Right of Declarant to Representation on Board of Directors of the Association. Notwithstanding anything contained herein to the contrary, until December 31, 2009, the Declarant (or its express assignee of the rights granted in this Section) shall have the right to designate and select a sixty-seven percent (67%) majority of the Board of Directors of the

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Association. Whenever the Declarant shall be entitled to designate and select any person(s) to serve on any Board of Directors, the manner in which such person(s) shall be designated, shall be as provided in the Articles of Incorporation and/or Bylaws of the Association. The Declarant shall have the right to remove any person(s) selected by it to act and serve on said Board of Directors and to replace such person(s) with another person or other persons to act and serve in the place of any Director(s) so removed. Any Director designated and selected by the Declarant need not be an Owner. Any representative of the Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between the Declarant and the Association where the Declarant may have a pecuniary or other interest. Similarly, the Declarant, as a member of the Association, shall not be required to disqualify itself upon any vote upon or entry into any contract or matter between the Declarant and the Association where the Declarant may have a pecuniary or other interest.

ARTICLE VI ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned, hereby covenants, and every other Owner of any Lot covered by this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed or other covenant, is deemed to covenant and agrees to pay to the Association:

- (a) Annual assessment or charges;
- (b) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Lot together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees, as provided by law, incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time when the assessment became due. The obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the beautification of Hickory Creek, the health, safety and welfare of the Owners in Hickory Creek, the enforcement of the covenants and the rules of the Association, and in particular, the improvement and maintenance of the Common Area.

Section 3. Annual Assessment. To and including December 31, 2007, the annual assessment shall be shared equally and shall not be in excess of Four Hundred Dollars (\$400.00)

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per Lot, except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors in accordance with the following provisions:

(a) From and after January 1, 2008, the basic annual assessment may be increased by the Board of Directors of the Hickory Creek Homeowners Association effective January 1, of each calendar year, without the vote of the Members, by a percentage which may be up to but shall not exceed Ten Percent (10%) over the amount of the maximum annual assessment specified above;

(b) After January 1, 2008, the basic annual assessment may be increased by a percentage which may exceed Ten Percent (10%) over the amount of the basic annual assessment for the immediately preceding year but only by the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting called for such purpose and the vote of Declarant (if applicable). . Written notice of the meeting shall be given to all Members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. The provisions of this section shall not apply to nor be a limitation upon any change in the basic annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 4. Special Assessment for Repairs. In the event any portion of any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents, or family members, such Owner does hereby authorize the Association to repair said damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material, shall become a special assessment upon the Lot of said Owner.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy one or more special assessments applicable to that year only for the purpose of defraying the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting.

Section 6. Uniform Rate of Assessment. Both Annual and Special Assessments, (with the exception of the Special Assessment authorized by Article VI, Section 4 above) must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis in advance.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the point in time when the Lot is both: (a) included on a recorded plat map filed for registration with the Wake County Registry after June 1, 2006; and, (b) conveyed to a record Owner other than the Declarant. (For example, assessment liability shall not commence on any Lots that though they may have been approved and/or authorized by Wake County have not yet

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been designated or placed on a plat map recorded in the Wake County Registry). Despite anything herein to the contrary, Declarant's assessments for any Lot(s) for which it holds record title shall be twenty-five percent (25%) of the annual assessment on all other Lots, and professional home builders who purchase Lots from Declarant for the purpose of constructing a house for an ultimate homeowner and who hold record title to the Lot, whether on a pre-sale or speculative basis, shall not pay any annual or special assessments until after January 1, 2007.

The Declarant may make voluntary contributions to or payments on behalf of the Association, as determined in the sole and exclusive discretion of the Declarant, for the purpose of defraying maintenance and repair costs until such time as the annual assessments are sufficient to fund all of the operations, expenses and liabilities of the Association.

The first annual assessment on any Lot shall be adjusted according to the number of months remaining in the calendar year. Thereafter, 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 subject thereto. The due dates and appropriate charges or fines for late payment shall be established by the Board of Directors. The Hickory Creek Homeowners Association, upon request at any time, shall furnish written confirmation of whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of such written confirmation. Such written confirmation shall be conclusive evidence of payment status.

Section 8. Remedies for Non-Payment of Assessments. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date the assessment shall bear interest from the due date at a rate not to exceed 12% and, pursuant to Chapter 47F, shall constitute a lien on that Lot when a claim of lien is filed and recorded with the Clerk of Superior Court. The Association may levy late charges in addition to the interest specified above, may bring an action at law against the Owner personally obligated to pay any assessments, late charges and/or interest, or, pursuant to said Chapter 47F, may foreclose the lien created herein in the same manner as prescribed under Chapter 45 of the North Carolina General Statutes, for the foreclosure of Deeds of Trust. Costs and reasonable attorney's fees as provided by law of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by the nonuse of the Common Area or abandonment of his Lot.

In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall be further empowered to execute on that judgment in such manner and to the full extent provided and permitted by the laws of the State of North Carolina.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage, deed of trust or first purchase money deed of trust representing a first lien on said property and shall be subordinate to ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to a decree of

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foreclosure on a mortgage thereon or any proceeding or transfer in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or liens arising from assessments thereafter becoming due.

Section 10. Exempt Property. Any portion of Hickory Creek dedicated to, and accepted by, a local public authority shall be exempt from the assessments created herein; provided, however no land or improvements devoted to the current or future development of Lots shall be exempt from said assessments.

Section 11. Annual Budget. By a majority vote of the directors, the Board shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration and any and all Supplementary Declarations will be met. Within thirty (30) days of the Board's adoption of an annual budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting, to be held not less than ten (10) nor greater than sixty (60) days after the mailing of the notice and summary, to consider ratification of the budget. The budget shall be ratified unless, at the meeting, a majority of Owners rejects the budget. Such notice shall include a statement that the budget may be ratified without a quorum.

ARTICLE VII EASEMENTS

Section 1. Walks, Drives, Parking Areas, Utilities, and other Similar Aspects of Hickory Creek. All areas of Hickory Creek shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities and for the maintenance of and general access to all stormwater control structures, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall be established by the Declarant or by its predecessor in title, prior to the conveyance of the property designated to be the Common Area to the Association; and the Association shall have the power and authority to grant and establish further easements upon, over, under, and across the Common Area.

Section 2. Encroachments and Declarant's Easement to Correct Drainage. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on any Lots or Common Area by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. For a period of five (5) years from the date of conveyance of the first Lot in a parcel, phase or section, the Declarant reserves a blanket easement and right on, over, and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water 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 reasonably necessary. After such action has been completed, the Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give

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reasonable notice of intent to take such action to all affected owners. These rights and reservations are assignable by the Declarant.

Section 3. Easement to Wake County. An easement is hereby established for municipal, state, public or private utilities (such as private providers of water and/or sewer services) serving the area, their agents and employees, over all Common Area hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection and general access to all stormwater control structures in Hickory Creek.

ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, additional lands may be added and annexed to Hickory Creek only if two-thirds (2/3) of each class of all the votes entitled to be cast, in the aggregate, by Members are cast in favor of annexation. In such event the holder of Class B voting rights shall be entitled only to one vote for each Lot owned. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days and not more than sixty (60) days in advance of the meeting. If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation, and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which the Member was entitled under this Declaration to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant 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, the Declarant 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. Rights of Lenders and Insurers of First Mortgages. Lenders and insurers of first mortgages shall have the following rights:

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(a) In the event that any Member is in default in any obligation hereunder which default remains uncured for a period of sixty (60) days, every lender who is a mortgagee as to the Lot of the defaulting Member and the insurer of any such first mortgage, shall be promptly notified of such default, provided that such lender and/or insurer shall have given written certified notice to the Association that it is a mortgagee or insurer as to the Lot of such Member and shall have requested the notice of default as herein set forth.

(b) Every first mortgagee and/or insurer of the first mortgage of the Lot of a Member of the Association shall have the right, during regular business hours, to examine the books and records of the Association.

Section 3. Amendment by Owners. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of the Declaration may be amended during the first thirty (30) year period or thereafter by a written instrument signed by the Owners of not less than two-thirds (2/3) of the Lots provided, however, that the Board of Directors of the Association (with prior approval of VA or HUD) may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction or to approve any amendment requested by VA, HUD or the Federal National Mortgage Association, without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and the Association and recorded in the Wake County Registry.

Section 4. Amendment to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Board of Directors of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, with the consent and approval of VA or HUD, and without the consent of any Owner, in order to qualify the Association or Hickory Creek, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 5. Certification and Recordation of Amendment. Any instrument amending these covenants, conditions and restrictions, (other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following approval by the Owners, to the Board of Directors. Thereupon, the Board of Directors, shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been duly approved by the Owners as provided in Section 3 of this Article. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association.

(c) Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

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Section 6. Effect and Validity of Amendments. All amendments shall be effective from the date of proper recordation in the Wake County Registry. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors and recorded as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots in Hickory Creek.

Section 7. Exchange of Common Area. Notwithstanding any provision herein to the contrary other than Section 4 of this Article IX, it is expressly provided that the Association may convey to the Declarant, as well as any other Member, for fair market value any portion of the Common Area previously conveyed to the Association, as provided in the Articles of Incorporation of the Association. Any such conveyance shall be subject to prior VA or HUD approval. Upon such conveyance, the area conveyed shall cease to be Common Area and shall cease to be subject to the provisions of these covenants relating to the Common Area. Any area purchased by the Association pursuant to the foregoing language shall become Common Area and subject to the provisions of these covenants relating to the Common Area. (The following hypothetical situation is by way of illustration, but not of limitation: Due to a surveying error an undesirable drainage area is designated for the location of Lots. Under this provision, the Declarant and the Association exchange deeds so that the Lots may be relocated within the Common Area and the area previously designated for Lots may be converted to Common Area.)

Section 8. Protective Covenants for Single-Family Dwellings. Nothing herein shall affect the Declarant's right to establish, from time to time, appropriate specific additional covenants for the development and use of Lots for single-family home sites in Hickory Creek.

Section 9. Conflicts. In the event of any irreconcilable conflict between the Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration or the Bylaws of the Association and Articles of Incorporation of the Association, the provisions of this Declaration shall control.

Section 10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE X DISSOLUTION OR INSOLVENCY OF THE HICKORY CREEK HOMEOWNERS ASSOCIATION

The Hickory Creek Homeowners Association may be dissolved in accordance with the provisions of Chapter 47F and the Non-Profit Corporation statutes of North Carolina. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created and/or in accordance with Chapter 47F. In the event that such dedication is refused, such assets shall be granted, conveyed and assigned to any non-

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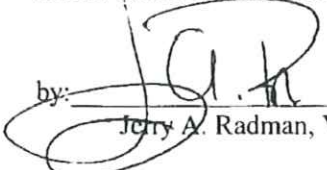
profit corporation, association, trust or other organization to be devoted to such similar purposes so long as the provisions of Chapter 47F are followed.

**ARTICLE XI
VA AND HUD APPROVAL**

As long as there is a Class B member, the following acts will require the prior approval for compliance with established VA and HUD guidelines: Annexation of additional properties, dedication of common area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, HICKERNUT PROPERTIES, LLC, as the Declarant hereunder, has caused this instrument to be executed by its duly authorized Administrative Member, MacGregor Development Company, a North Carolina corporation, by its duly authorized President and with its corporate seal thereunto affixed, all by order and authority duly granted by its corporate board of directors, and all as of the day and year first above written.

Hickernut Properties LLC,
a North Carolina limited liability company, Declarant
by: MacGregor Development Company,
a North Carolina corporation
and its Administrative Member

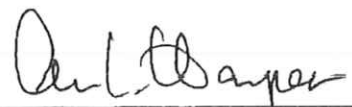
by: 
Jerry A. Radman, Vice-President

NORTH CAROLINA, WAKE COUNTY

I, Ann L. Harper, a Notary Public of Wake County, North Carolina, do hereby certify that Jerry A. Radman personally appeared before me this day and acknowledged that he is Vice-President of MacGregor Development Company, a North Carolina corporation, that MacGregor Development Company is the duly authorized Administrative Member of Hickernut Properties, LLC, a North Carolina limited liability company, and by authority duly given he voluntarily executed the foregoing instrument on behalf of MacGregor Development Company, acting in its capacity as the duly authorized Administrative Member of Hickernut Properties, LLC, on behalf of and as an act of that limited liability company.

Witness my hand and official stamp or seal, this the 30th day of June, 2006.




Notary Public
My Commission Expires: 8/8/06