

NORTH CAROLINA

WAKE COUNTY

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**PROTECTIVE COVENANTS FOR
THE OVERLOOK AT WHIPPOORWILL**

THIS DECLARATION, made and entered into this 17th day of February, 2000, by
Stonebriar, Inc., a North Carolina corporation, hereinafter referred to as "Declarant";

WITNESSETH:

THAT WHEREAS, Declarant is the owner of that certain tract or parcel of land more particularly described as Lots 1 through 12 of The Overlook at Whippoorwill Subdivision, as the same are shown on map and survey recorded in Book of Maps 2000, Page 284, Wake County Registry;

AND WHEREAS, it is for the mutual benefit of all homeowners, present and future, in said The Overlook at Whippoorwill Subdivision, Lots 1 through 12, for Declarant to subject said lots as referenced hereinabove to the following Protective Covenants;

NOW, THEREFORE, Declarant does hereby declare that all of the properties referred to above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties, or any part thereof, their heirs, successors and assigns, for the term of these covenants as set forth below, and shall inure to the benefit of each holder thereof.

ARTICLE I

LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes, except that nothing herein shall preclude the use of any lot for a utility purpose for the benefit of this subdivision or access by the Declarant or its successors in interest, except that if any lot is purchased

from the developer by an individual lot owner or builder, then said lot must be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family dwelling not to exceed two and one-half (2 ½) stories in height and a private garage for not more than three (3) cars and (with the approval of the Architectural Control Committee) an accessory building or structure for storage or other appropriate use.

ARTICLE II

SITE AND PLAN APPROVAL. No building, fence, swimming pool or any other structure shall be erected, placed or altered on any premises in said development until the building plans, specifications and plot showing the location of such improvements have been approved in writing as to conformity and harmony of external design with existing improvements in the development, and as to location of the improvements with respect to topography and finished ground elevation by an architectural committee (Architectural Control Committee). Said Architectural Control Committee shall be composed of two (2) or three (3) persons designated and appointed by Declarant or its successors in interest. In the event said committee fails to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of such improvements or the making of such alterations has then commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. Members of such committee shall not be entitled to any compensation for services performed pursuant to this covenant.

ARTICLE III

DWELLING SIZE AND DRIVEWAYS. Except with prior written approval of the Architectural Control Committee, no one-story residential structure which has an area of less than two thousand (2,000) finished, heated square feet, exclusive of porches, breeze ways, steps and

garages, shall be erected or placed or permitted to remain on any lot. No one (1) and one-half ($\frac{1}{2}$) story residential structure which has an area of less than two thousand two hundred (2,200) finished, heated square feet, exclusive of porches, breeze ways, steps and garages, shall be erected or placed or permitted to remain on any lot. No two-story residential structure which has an area of less than two thousand four hundred (2,400) finished, heated square feet, exclusive of porches, breeze ways, steps and garages, shall be erected or placed or permitted to remain on any lot. All driveways shall be concrete from street to each house, including parking area. Driveway piping shall be at least twenty (24) feet in width, with a minimum diameter of fifteen (15) inches, unless the Declarant or its successors in interest specifies otherwise. Driveway piping and temporary gravel driveways must be installed before any type of construction is commenced on any lot.

ARTICLE IV

BUILDING LOCATION. Setbacks shall be those as prescribed by the Wake County Zoning Ordinance. If necessary, due to the presence of flood hazard soils on a lot which make it difficult to locate a dwelling, Declarant will co-operate with a new owner in obtaining a zoning variance.

Furthermore, no more trees shall be cut down than those which must be removed to allow the installation of the foundation of the dwelling and/or garage, as well as a reasonable space for a children's play area. At no time will clear cutting of trees be approved.

ARTICLE V

EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the front ten (10) feet of each lot, the rear ten (10) feet of each lot, and ten (10) feet on each sideline, unless shown in excess of such distances on any recorded plat, in which case the plat shall control. Within these easements, no structure shall be placed or permitted to remain which may damage or interfere with the installation and

maintenance of utilities and drainage facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retire the flow of water through drainage channels in the easements. Driveways, sidewalks and landscaping may, with the prior written consent of the Architectural Control Committee, be permitted to encroach upon an easement, but if the Declarant or utility company, or their successors and/or assigns, shall be required for any reason to remove the encroaching driveway, sidewalk or planting, then said Declarant or utility company shall not be required to repair, replace or compensate the lot owner for the lost improvements within the easement area. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

ARTICLE VI

NUISANCES. 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 signs or billboards shall be stored or regularly parked on the premises, and no commercial trucks or tractors may be parked regularly upon the premises. No business activity or trade of any kind whatsoever, which shall include, but not be limited to, the use of any residence as a doctor's office, professional office of any kind, fraternity house, rooming or boarding house, antique or gift shop, shall be carried on upon any lot.

ARTICLE VII

TEMPORARY STRUCTURES. Except as hereinbefore set forth, no trailer, tent, shack, barn or other out building, except a private garage for not more than three (3) cars, shall be erected or placed on any lot covered by these covenants. Except with the prior consent of the Architectural Control Committee, no detached garage shall at any time be used for human habitation, either

temporarily or permanently.

ARTICLE VIII

FENCES. No fence, wall, hedge or mass planting shall be permitted beyond the line extending from the front of the house to either side lot line, except upon approval by the Architectural Control Committee. No fence or fencing-type barrier of any kind shall be placed, erected, allowed or maintained upon any portion of the community, including any lot, without the prior written consent of the Architectural Control Committee. The committee may issue guidelines detailing acceptable fence styles or specifications, but in no event shall any type of wire or chain link fence be approved.

ARTICLE IX

ACCESSORY BUILDINGS. No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, doghouses, and greenhouses) shall be placed on any lot without the prior written approval of the Architectural Control Committee, with said committee to have the sole discretion relating to the location and type of accessory building which shall be permitted on any lot. Under no circumstances shall metal storage buildings be permitted, and at no time shall any storage building exceed 280 square feet. All accessory buildings must conform to the same architectural style as the residence located on the same lot. Carports opening to the front of the house are expressly prohibited hereby.

ARTICLE X

APPEARANCE. Each owner shall keep his building site free from tall grass, undergrowth, dead trees, trash and rubbish, and properly maintained so as to present a pleasing appearance within the subdivision. In the event an owner does not properly maintain his building site as above-provided, in the opinion of the Declarant and/or Architectural Control Committee, then Declarant

(or its successors in interest), at its option, may have the site cleaned to its or the Architectural Control Committee's satisfaction, and the costs thus incurred shall be the responsibility of the lot owner. The costs of clean-up, if expended by the Declarant or its successors in interest, shall be a continuing lien upon the property until the sums due and payable are paid in full.

Location of satellite television receivers must be approved in writing by the Architectural Control Committee, but in no event shall any receiver be visible from any road within the subdivision. No clothes line shall be permitted if visible from any road within the subdivision. Trash cans must be located as to not be visible from any road within the subdivision. Screening for satellite television receivers, LP gas tanks, clothes lines and trash cans are subject to approval by the Architectural Control Committee. Communication towers are expressly prohibited. All primary fuel storage tanks must be placed underground; LP tanks may be above ground; however, they must be screened from view. Home curtain foundation walls are expressly prohibited unless approval for same is first obtained, in writing, from the Architectural Control Committee. Brick mailboxes are expressly prohibited. Brick or masonry chimneys must extend beyond the roof line, and wood frame chimneys are expressly prohibited. No inoperable motor vehicles may be parked on any lot if visible from any road within the subdivision. All pools must be in-ground pools. At no time will above ground pools be allowed.

ARTICLE XI

ANIMALS. No animals or poultry of any kind, other than ordinary household pets, shall be kept or maintained on any part of said property.

ARTICLE XII

PARKING. Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles owned by such owner, and owners of lots shall not be permitted to park their

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automobiles on the streets in the subdivision. Owners of lots shall not be permitted to park boats, trailers, campers, commercial vehicles and all other similar property on the streets in the development, and such property shall not be permitted to be parked where it is visible from any streets within the subdivision.

ARTICLE XIII

UNDERGROUND UTILITIES AND STREET LIGHTING. Declarant reserves the right to subject the real property described hereinabove to a contract with Wake EMC or its successors in interest for the installation of underground electric cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the owner of each lot.

ARTICLE XIV

WATER AND SEWER. All lot owners shall be subject to monthly charges as approved by the proper public authorities for water and sewer for domestic usage. Individual wells may be allowed for watering lawns and other gardening purposes, but only after approval is granted for same by the Architectural Control Committee and, if necessary, the appropriate governmental authority.

ARTICLE XV

TERM. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded with the Wake County Register of Deeds office, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants, in whole or in part.

ARTICLE XVI

ENFORCEMENT. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, and the aggrieved party may request restraint of the violation or damages resulting from said violation.

ARTICLE XVII

SEVERABILITY. Invalidation of any one of these covenants or any part thereof by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect, and the failure of any person or persons to take action to enforce these covenants shall not be construed as a waiver of any future enforcement rights.

IN TESTIMONY WHEREOF, the Declarant has caused this instrument to be executed in its corporate name by its President, attested by its Secretary, and sealed with its corporate seal, by authority of its Board of Directors, as of the day and year first above-written.

STONEBRIAR, INC.

BY:

Susan Lee

Susan Lee-President



Laura K. Howell

Laura K. Howell-Secretary

NORTH CAROLINA

WAKE COUNTY

I, the undersigned, a Notary Public in and of said County and State aforesaid, do hereby certify that Laura K. Howell personally appeared before me this day and acknowledged that she is Secretary of Stonebriar, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its corporate name by its President, sealed with its corporate seal, and attested by her as its Secretary.

Witness my hand and official stamp or seal, this the 17th day of February, 2000.

Vickie L. Basham
Notary Public

My Commission Expires: 8/1/2001

