

WAKE COUNTY, NC 965
 LAURA M RIDDICK
 REGISTER OF DEEDS
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RETURN TO: Hope Derby Carmichael
 P.O. Box 10669, Raleigh, NC 27605

STATE OF NORTH CAROLINA
 COUNTY OF WAKE

AMENDMENT TO DECLARATION
 OF
 PROTECTIVE COVENANTS, CONDITIONS,
 AND RESTRICTIONS
 FOR
 THE MONTCLAIR SUBDIVISION

THIS AMENDMENT to the Declaration of Protective Covenants, Conditions and Restrictions for the Montclair Subdivision made this the 2 day of December, 2002 by the Lot Owners of all Lots subject to the said Declaration within the Montclair Subdivision.

W I T N E S S E T H:

THAT WHEREAS, MONTCLAIR, L.L.C., a North Carolina limited liability company (hereinafter, the "Declarant"), caused to be recorded on 16 September 1998 a "Declaration of Protective Covenants, Conditions and Restrictions for the Montclair Subdivision" (hereinafter, also, the "Declaration") in Book 8146, Page 2451 of the Wake County Registry; and

WHEREAS, Declarant, its successors and/or assigns, is no longer a Lot Owner as defined in the Declaration; and

WHEREAS, Article VIII, Paragraph A, of the Declaration provides that in the event and at such time as the Declarant, its successors and/or assigns, is no longer a Lot Owner, such Declaration may be amended at any time by an instrument signed by not less than two-thirds ($\frac{2}{3}$) of the Lot Owners of the Subdivision, as defined in the Declaration; and in addition, any amendment must be recorded in the Wake County Registry to be effective;

NOW, THEREFORE, the undersigned do hereby declare that the Declaration of Protective Covenants, Conditions and Restrictions for the Montclair Subdivision shall be amended as follows:

1. To amend Article I of the Declaration entitled "Definitions" by deleting Paragraph A thereof entitled "Architectural Committee" in its entirety; and further deleting Paragraph F thereof entitled "Landscape Committee" in its entirety; and such Paragraphs A and F shall be null and void.

2. To further amend Article I of the Declaration entitled "Definitions" by inserting therein immediately after existing Paragraph "L" thereof a new Paragraph "M" entitled "Common Property"; a new Paragraph "N" entitled "Association"; a new Paragraph "O" entitled "Board of Directors or Board", and a new Paragraph "P" entitled "Common Expenses", as follows:

M. "Common Property" shall mean any and all real and personal property and easements and other interests therein, including, but not limited to, Entryway Easements/Streetscape Buffer Areas as defined in the Declaration,

together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Lot Owners.

N. "Association" shall mean Montclair Homeowners Association, a nonprofit North Carolina corporation, its successors and assigns.

O. "Board of Directors or Board" of the Association shall be the appointed or elected body, as applicable, having its normal meaning under North Carolina law.

P. "Common Expenses" shall mean the expense anticipated or actually incurred by the Association in maintaining, repairing, replacing, insuring and operating the Common Property, including, without limit, the payment of ad valorem taxes and assessments levied against the Common Property, and otherwise for the benefit of all Lots.

3. To amend the Declaration by deleting the existing Article II in its entirety (entitled "Subjecting Additional Property to the Declaration"), and inserting in lieu thereof a new Article II entitled "Creation of Homeowners Association" as follows:

ARTICLE II

CREATION OF HOMEOWNERS ASSOCIATION

Every person or entity who is a record owner of a fee or undivided interest in any Lot which is subject to the Declaration, including contract sellers or builders, shall be a member of the Montclair Homeowners Association (hereinafter, also, the "Association"), which may be incorporated and managed by a Board of Directors pursuant to lawfully adopted Bylaws for the corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Bylaws for said corporation shall be adopted only with the approval of 2/3 of the members of the Association who are voting in person or by proxy at the initial organizational meeting of the corporation.

The Association shall have one class of members, which shall be comprised of all of the Lot Owners of Lots subject to the Declaration. Each member shall be entitled to one vote for each Lot in which they hold the interest required for membership by this Paragraph. When more than one person holds such interest in any Lot, all such persons shall be members, and the vote for such Lot, shall be exercised as the majority of such persons among themselves determine; however, in no event may more than one vote be cast with respect to any one Lot. Fractional voting shall be prohibited. At any meeting of the members, a representation by any of such persons that a majority of such persons have agreed as to the vote for such

Lot shall be conclusive unless another of such persons contests such representation at such meeting prior to the casting of such vote.

4. To amend Article III of the Declaration entitled "Architectural Control and Architectural Committee" by deleting said Article III in its entirety and inserting in lieu thereof a new Article III entitled "Architectural Control" as follows:

ARTICLE III

ARCHITECTURAL CONTROL

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, buildings, outbuildings, fences, swimming pools, walls and other structures, shall be undertaken upon any Lot, nor shall any exterior addition, change or alteration therein be made until the plans and specifications therefor, showing the nature, kind, shape, height, color, materials, and plat showing the location of the proposed improvements shall have been submitted to the Board of Directors of the Association and expressly approved in writing by the Association's Board of Directors with respect to conformity and harmony of external design with existing improvements in the Subdivision, and as to location of the improvements with respect to topography and finished ground elevation. Only dwellings and other improvements which have been approved in writing by the Board prior to commencing clearing, grading, or construction of any kind on a Lot will be permitted. All improvements shall comply with the plans as presented and as approved, or conditionally approved, unless changes are approved in writing by the Board. The Board shall have the authority to condition its approval of any proposed improvement or alteration upon completion of the approved improvement or alteration within a specific time frame, such time frame to be reasonable in light of the improvement or alteration sought to be completed.

In the event the Board fails to approve or disapprove any completed request for approval within sixty (60) days after said plans and specifications have been submitted to it, such approval will not be required and this Paragraph will be deemed to have been complied with; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received by the Board if they contain inaccurate or erroneous information or fail to present adequate information upon which the Board can arrive at a decision. No member of the Board shall be entitled to any compensation for services performed pursuant to this Article. The Board of Directors shall have the right, at its election, but shall not be required to, enter upon any of the Lots during site preparation or construction, erection or installation of any improvements to inspect the work being undertaken, and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

The Board of Directors shall have the authority to promulgate from time to time Architectural Standards and Guidelines which may be used as a guide to lot owners for the types of architectural changes or improvements to be made to a lot, provided further, however, the initial Architectural Standards and Guidelines shall not become effective without the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of the members of the Association, who are voting in person or by proxy at a meeting duly called for that purpose. Said Architectural Standards and Guidelines shall be published to every member of the Association. Thereafter, the Board of Directors shall have the right to amend the initial Architectural Standards and Guidelines provided all changes are published to the lot owners within 30 days of adoption of same by the Board.

5. To amend Article IV of the Declaration entitled "Maintenance Assessments and Landscape Committee" by *deleting* said Article IV in its entirety and *inserting in lieu thereof* a new Article IV entitled "Maintenance Assessments" as follows:

ARTICLE IV

MAINTENANCE ASSESSMENTS

A. Creation of the Lien and Personal Obligation of Assessments. The Lot Owner of each Lot owned within the Montclair Subdivision hereby covenants, and each Lot Owner of any Lot and by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association; (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements. The annual and special assessments, together with interest, late fees, costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the Lot Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title, unless expressly assumed by them. Provided, however, that nothing herein shall obligate the Lot Owner of any Lot upon which a dwelling has not been constructed to pay the assessment created under this paragraph.

The Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot to secure the liability of the Lot Owner thereof to the Association arising from breach by such Lot Owner of any of the provisions of this Declaration, which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Lot Owner for himself, his heirs, successors and assigns covenants to pay each assessment levied by the Association on the parcel described in such conveyance to him within then ten (10) days after receipt of an invoice for the

same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Lot Owner at the address of the parcel or to such other address as said Lot Owner shall have designated, the amount of such charge shall become a lien upon said Lot Owner's Lot and shall continue to be such lien until fully paid.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to accomplish the maintenance responsibilities for the Common Property located within the Montclair Subdivision, including, but not limited to, landscaping, drainage and repairs to Common Property, and to promote the recreation, health, safety, and welfare of the residents of the Montclair Subdivision, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

C. Annual Assessment.

1. The initial annual assessment for each Lot within the Montclair Subdivision shall not exceed \$210. Subsequent annual assessments shall be set by the Board of the Association for each year thereafter. The annual assessment as initially established herein may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed five percent (5%) of the amount of the annual assessment of the immediately preceding calendar year.

2. Subject to the provisions of this Paragraph, the annual assessment may be increased without limit by the written approval of not less than two-thirds ($\frac{2}{3}$) of the members of the Association, as defined in the Declaration.

D. Special Assessments. In addition to the other assessments authorized herein, the Association may levy special assessments upon written approval by not less than two-thirds ($\frac{2}{3}$) of the members of the Association, as defined in the Declaration. Any such special assessments shall be paid as determined by the Board, and the Board may permit such special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

E. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis.

F. Date of Commencement of Annual Assessments: Due Dates. 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 Lot Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an

officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance. Assessments shall commence for each Lot upon the certificate of occupancy being issued for the dwelling constructed on the Lot, and the assessment shall be collected on a pro-rata basis for the year, based upon the date of issuance of the certificate of occupancy.

G. Effect of Nonpayment of Assessments: Remedies of Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight percent (8%) per annum, which rate can be increased in the discretion of the Board of Directors; provided such increase does not exceed the highest rate of interest permitted by North Carolina law. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, and/or foreclose the lien against the property. No Lot Owner may bring an action at law against another Lot Owner personally obligated to pay the same, or foreclose the lien against the property. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his/her Lot.

H. Subordination of the Lien to Mortgages and Ad Valorem Taxes.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage or tax foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

6. To amend Article V of the Declaration to correct an original typographical error in the numbering of sub-paragraphs, by renumbering the Paragraph entitled "Dwelling Size" to be subparagraph "4(a)," rather than a duplicate subparagraph "4." To further amend the new subparagraph "4(a)" of Article V of the Declaration by deleting the phrase "One Thousand Seven Hundred (1700)," and inserting in lieu thereof the following phrase: "Two Thousand Six Hundred (2600)."

7. To generally amend the Declaration by *deleting* any and all references to "Architectural Committee" wherever that term may appear therein, and in each instance *substituting and inserting in lieu thereof* the term "Board of Directors of the Association."

8. This Amendment shall be effective upon recordation in the Office of the Wake County Register of Deeds.

9. Except as amended hereinabove, the remaining portions of the Declaration as originally recorded are hereby restated and re-acknowledged.

IN WITNESS WHEREOF, the undersigned, being at least two-thirds ($\frac{2}{3}$) of the Lot Owners of Lots within the Montclair Subdivision, have consented to this Amendment and have caused this Amendment to be executed under seal in their names, the day and year first above written.

NORTH CAROLINA

ACKNOWLEDGMENT

WAKE COUNTY

I, Cassandra S. Cummings a notary public of Wake County, North Carolina, certify that KARINA PATE personally appeared before me this day, and being duly sworn, stated that in his/her presence the following individuals signed the foregoing instrument:

Constance ~~Durr~~Kathleen M. GioiaGreg L. ChartierMichael P. CalareoMichael P. GleasonJohn P. MohrKimberly A. PilosimRick S. MauneyJamie SharpeFrank BarberD. Scott MacaleerLinda ScottHenry W. EnswilerJim StamatelosJemi SamuelKyle SkrinakMichael E. JohnsonDonna M. MooreChristopher D. WestonKathryn E. PetersonLisa CunninghamAlan D. HolmesSandra K. HobbsLisa A. MusmannoDiane D. ButlerBrian PateMary E. CartElliott M. BladesDavid WorleyMauro ZalloccoSusan C. TarabokiaFaye Doe-AlexanderRose M. JosephReginald T. SkinnerStephen FrankMing Horn HwangHenry LaiDavid G. Quidort, Jr.Chinh NguyenZiqiang ChengJustin NguyenWesley M. FenskeStephen C. MageeKathleen LaRosaJoy A. JurgensenKarina Pate

Signature of Karina Pate

Witness my hand and official seal, this 25th day of November, 2002.

Cassandra S. Cummings
Notary Public

2/17/2007

Constance Duerr
(name of owner)

KATHleen M. Gioia
(name of owner)

GREG L. CHARTIER
(name of owner)

Michael P. Calarco
(name of owner)

Michael P. Gleason
(name of owner)

JOHN P MOHR
(name of owner)

Kimberly A Orsini
(name of owner)

(name of owner)

Constance Duerr
(name of owner)

KATHleen M. Gioia
(name of owner)

GREG L. CHARTIER
(name of owner)

Michael P. Calarco
(name of owner)

Michael P. Gleason
(name of owner)

JOHN P MOHR
(name of owner)

Kimberly A Orsini
(name of owner)

(name of owner)

Ricks Mauney
(Name of Owner)

Ricks S. Mauney (SEAL)
(Signature as printed)

Jamie Sharpe
(Name of Owner)

Jamie Sharpe (SEAL)
(Signature as printed)

FRANK BARBER
FRANK MARLENE BARBER
(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

Scott Macaleer
(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

~~Donna Scott~~
(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

LINDA SCOTT
(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

HENRY W ENSWILER
(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

Jim Stamatielos
(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

Jemi Samuel
(Name of Owner)

Jemi Samuel (SEAL)
(Signature as printed)

KYLE SKRINAK
(Name of Owner)

M. Skrinak (SEAL)
(Signature as printed)

Michael E. Johnson
(Name of Owner)

Michael E. Johnson (SEAL)
(Signature as printed)

Donna M. Moore
(Name of Owner)

Donna M. Moore (SEAL)
(Signature as printed)

Christopher D. Weston
(Name of Owner)

C. Weston (SEAL)
(Signature as printed)

Lisa A Musmanno
(Name of Owner)

Lisa A Musmanno (SEAL)
(Signature as printed)

Diane D Butler
(Name of Owner)

Diane D Butler (SEAL)
(Signature as printed)

Brian Pate
(Name of Owner)

Brian Pat (SEAL)
(Signature as printed)

Mary E. Cart

(Name of Owner)

Mary E. Cart (SEAL)
(Signature as printed)Elliott H. Blades

(Name of Owner)

Elliott H. Blades (SEAL)
(Signature as printed)DAVID WORLEY

(Name of Owner)

David Worley (SEAL)
(Signature as printed)Mauro Zallocco

(Name of Owner)

Mauro Zallocco (SEAL)
(Signature as printed)Susan C. Tarabokia

(Name of Owner)

Susan C. Tarabokia (SEAL)
(Signature as printed)Faye Doe-Alexander

(Name of Owner)

Faye Doe-Alexander (SEAL)
(Signature as printed)Rose M. Joseph

(Name of Owner)

Rose M. Joseph (SEAL)
(Signature as printed)Reginald T. Skinner

(Name of Owner)

Reginald T. Skinner (SEAL)
(Signature as printed)

Stephen Frank

(Name of Owner)

Stephen Frank (SEAL)
(Signature as printed)

MING-HORN HWANG

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

Henry Lai

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

David G. Guider Jr.

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

CHINH NGUYEN

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

ZIQIANG CHENG

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

Justin Nguyen

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

WESLEY M FENSKE

(Name of Owner)

[Signature] (SEAL)
(Signature as printed)

Kathryn E. Peterson
(Name of Owner)

Kathryn E. Peterson (SEAL)
(Signature as printed)

Stephen C. Magee
(Name of Owner)

Stephen C. Magee (SEAL)
(Signature as printed)

LISA Cunningham
(Name of Owner)

Lisa Cunningham (SEAL)
(Signature as printed)

KATHLEEN LaRosa
(Name of Owner)

Kathleen LaRosa (SEAL)
(Signature as printed)

Alan D Holmes
(Name of Owner)

Alan D Holmes (SEAL)
(Signature as printed)

Joy A. Jurgensen
(Name of Owner)

Joy A. Jurgensen (SEAL)
(Signature as printed)

Sandra K. Hobbs
(Name of Owner)

Sandra K. Hobbs (SEAL)
(Signature as printed)

(Name of Owner)

(Signature as printed) (SEAL)

Laura M Riddick
Register of Deeds
Wake County, NC



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Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate___ of Cassandra S. Cummings

____ Notary(ies) Public is (are) certified to be correct. This instrument
and this certificate are duly registered at the date and time and in the book and
page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Murray M. Parker
Assistant/Deputy Register of Deeds

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