

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR COLBY CHASE**

Prepared by &
Return to: Moore & Alphin, PLLC (CKT)
3733 National Dr., Ste 100
Raleigh, NC 27612

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLBY CHASE is made as of the date contained in the notary acknowledgment below by Elm Street Builders, LLC, a North Carolina limited liability company (hereinafter referred to as the "Declarant"), and is consented to by Horton Park Investments, LLC, a North Carolina limited liability company ("HPI"), the owner of the Property (as described herein). Declarant and HPI state and declare as follows:

WITNESSETH:

WHEREAS, HPI is the owner of certain real property located in Wake County, North Carolina which real property is hereinafter identified as the "Colby Chase Property" or the "Property", as described on Exhibit A, attached hereto; and

WHEREAS, the Declarant is under contract to purchase the Property, and intends to develop the Colby Chase Property into Lots (as that term is hereinafter defined) for the construction thereon of single family detached homes; and

WHEREAS, the Declarant wishes this development to be subject to the North Carolina Planned Community Act notwithstanding that it may consist of fewer than twenty Lots; and

WHEREAS, the Declarant desires to provide open spaces and other facilities for the benefit of the persons who shall reside in the aforesaid homes; and

WHEREAS, in order to insure the enjoyment of such open spaces and other facilities by the residents of the Lots, and in order to protect and enhance the value of the Lots, it is desirable to create an association to own, maintain, and administer such open spaces and other facilities, and to administer and enforce the covenants and restrictions imposed by this Declaration on the individually owned properties, and to collect, hold and disburse the charges and assessments provided for in this Declaration; and

WHEREAS, it is intended that every Owner of any of the Lots automatically, and by reason of such Ownership and this Declaration, become a member of the aforesaid association and be subject to its valid rules and regulations and the assessments and charges made by such association.

NOW, THEREFORE, the Declarant does hereby submit the "Lots" and the "Common Elements" (as those terms are hereinafter defined) to the provisions of this Declaration.

**ARTICLE I
DEFINITIONS**

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article I, such definitions being cumulative of those set forth elsewhere in this Declaration. In addition, all terms used in this Declaration which are defined in the Act

shall have the meanings ascribed to them in the Act, unless other definitions are ascribed to them in this Declaration.

“Act” shall mean the North Carolina Planned Community Act, North Carolina General Statutes §§47F-1-101 through 47F-3-121, as the same may be amended from time to time.

“Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

“Association” shall mean Colby Chase Homeowners Association, Inc., a North Carolina non-profit membership corporation.

“Base Assessment” shall mean the assessments which, pursuant to the provisions of Section 4 of Article VI of this Declaration, shall be levied by the Association against the Lots for the purpose of raising the funds necessary to pay the Common Expenses.

“Bylaws” shall mean the Bylaws of the Association, as the same may be amended from time to time.

“Colby Chase Property” shall mean the entirety of the real property described on Exhibit A, hereto attached and made a part hereof.

“Common Elements” shall mean all portions of the Colby Chase Property which are not subdivided into Lots. All Common Elements are to be conveyed and transferred to the Association pursuant to Section 1 of Article III of this Declaration. Although a Lot which is acquired by the Association through foreclosure of the lien in favor of the Association as provided for in Article VI of this Declaration shall remain a Lot and shall not be reclassified as Common Elements, the Association shall be responsible for maintaining and repairing such Lot and improvements thereon, and the cost of such maintenance and repair shall be paid from assessments levied against all Lots other than Lots owned by the Association as a result of foreclosure, or deed in lieu of foreclosure, thereof. Without limiting the foregoing, the Common Elements are specifically defined to include stormwater management devices and related BMP and a mailbox kiosk and associated parking pad, any open spaces as shown on the Plat, as well as any perimeter buffers.

“Common Expenses” shall mean those expenses reasonably expected to be incurred by the Association in the course of serving the purposes listed in Section 2 of Article VI of this Declaration, and which are forecast in the budget prepared by the Association in accordance with Section 3 of Article VI. Without limiting the foregoing, the Common Expenses are specifically defined to include a charge to Duke Power for light poles along the public streets in the Subdivision.

“Declarant” shall mean Elm Street Builders, LLC, a North Carolina limited liability company, and any successor or assign thereof.

“Declarant Control Period” shall mean the time period beginning with the date on which this Declaration is recorded with the Wake County Register of Deeds and ending on the earliest of: (i) the date on which the Declarant no longer owns any Lots in Colby Chase, or (ii) September 31, 2032, or (iii) such earlier date as the Declarant shall designate in a written notice delivered to the Association.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, as the same may be hereinafter amended in accordance with the terms and provisions of Article X hereof.

“Dwelling” shall mean a single family detached home constructed on a Lot.

“Executive Board” shall mean the Board of Directors of the Association.

“First Mortgage” shall mean a Mortgage conveying a first priority lien upon or security title to any Lot.

“Institutional Lender” shall mean any “lender”, “creditor” or “dealer” as those terms are defined by the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601 *et seq.*) or any state or federal governmental agency that guarantees or purchases Mortgages.

“Lot” shall mean each portion of the Colby Chase Property which has been subdivided for the use of an individual Dwelling and which is subjected to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Lots by the recording of this Declaration.

“Master Plan” shall mean the land use plan for the development of Colby Chase, as it may be amended, which includes all of the property described in Exhibit “A”.

“Mortgage” shall mean a deed of trust or other instrument conveying a lien upon or security interest to the property.

“Owner” or “Lot Owner” shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Colby Chase Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

“Person” shall mean a natural person, corporation, trust, partnership, governmental unit or any other legal entity.

All pronouns used in this Declaration are intended to be gender neutral, and the use of the masculine gender shall be deemed to include the feminine and neuter genders.

ARTICLE II LOTS

Section 1. Property Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby covenant that the Colby Chase Property is hereby subjected to this Declaration.

The Declarant, for itself, its successors and assigns, hereby further covenants that the above-described property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in the Act and in this Declaration as applicable to the Lots, including, but not limited to, the lien provisions set forth in Article VI hereof. The Declarant specifically intends and covenants that the Act shall apply to the Colby Chase Property notwithstanding that it consists of fewer than twenty lots (Act §47F-1-102(b)(1)). All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots or Common Elements shall be a permanent charge thereon, and shall run with the Lots or Common Elements.

Section 2. Rerecording of the Plat. As Dwellings are constructed on the Lots, the Declarant may, at any time, and from time to time, prior to July 31, 2030, rerecord the Plat to adjust the boundary lines of Lots owned by the Declarant. Notwithstanding any provision of this Declaration, or of any statutory or common law, which may provide to the contrary, from and after the date of each re-recording of the Plat, the boundary lines of all Lots shall be as the same are shown and depicted on such re-recorded Plat. The right of the Declarant under this Section 2 to rerecord the Plat shall terminate at such time as the Declarant shall have re-recorded the Plat after a Dwelling has been constructed on each of the Lots.

No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to adjust the boundary lines of those Lots owned by the Declarant pursuant to the provisions of this Section 2 so long as Declarant owns all the property on either side of a boundary line change.

Section 3. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every Person (including the Declarant) who is a record Owner of a fee or undivided fee interest in any Lot, by acceptance of a deed or other conveyance thereto, and by acceptance of such Ownership, and by taking record title to such Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 4. Easements Over the Lots. The Lots shall be subjected to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:

(a) Each Lot shall be subject to all easements which are shown and depicted on the Plat or in any other document recorded with the Wake County Register of Deeds as affecting and burdening such Lot.

(b) Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.

(c) Each Lot, including the Dwelling located thereon, shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go upon such Lot and into such Dwelling under the circumstances, and for the purposes described in Article X of this Declaration.

(d) The Owner of each Lot shall have an easement over and across any adjoining Lot to the extent reasonably necessary to perform such repair, maintenance, or reconstruction of his Dwelling as is required by Articles VII and X of this Declaration. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

(e) There is hereby reserved for the Declarant an easement for ingress, egress, regress and utility purposes over and upon the Colby Chase Property described herein and in any future amendment or supplement hereto for the purpose of accessing and improving any additional property owned by Declarant that is not subject to the terms of this Declaration. Such easement for ingress, egress, regress, and utility purposes shall be appurtenant to and run with the land, and shall be located within any dedicated right of way, public or private, or any easement shown on any plat filed recorded in the Office of the Register of Deeds for Wake County that Declarant may file.

(f) The Association reserves an easement over and across every Lot for the purpose of performing the maintenance requirements of the Association as prescribed in Articles III, VII and X of this Declaration. The Declarant during the Declarant Control Period, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot. Each Lot Owner shall maintain the drainage devices on its Lot at its own expense. Furthermore, each Lot Owner shall not allow the diversion or concentration of storm water runoff, without the prior written approval of the Executive Board, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation.

(g) Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots and Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, or additional settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachment, which include any encroachments created during the original construction of the Dwelling and related structures on a Lot, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred

due to the willful misconduct of said Owner. In the event a structure on any Lot or any Common Element is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot and the Common Elements agree that such structures shall be rebuilt in such a manner that each Dwelling shall be located entirely on its own Lot (with the exception of party walls), and all structures built on Common Elements shall be located entirely on those Common Elements, at which time this easement shall cease to exist with respect to such rebuilt structures .

(h) The Property, including each Lot, shall be subject to all easements and rights-of-way for utilities and drainage as shown on any recorded document or map. Such easements are also hereby reserved for the use of Declarant, its successors and assigns, and are hereby established for the use of the Association and its successors or assigns. Additionally, Declarant hereby reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors or assigns, a permanent non-exclusive blanket easement and right of way over, under, and along all lots within the Property for the installation and maintenance of lines, conduits, pipes, and other items or equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, sewer or septic facilities, storm drainage, and/or any other utilities. Within the above-described easements, no structure, planting or other material shall be built, installed, or maintained in such a way as to damage or interfere with the installation of utilities, or which may impede or alter the flow of drainage channels. This reservation of easement shall not prohibit the construction of driveways, dwellings, or ancillary structures on any lot which may be constructed by Declarant, or which may be later constructed in accordance with the terms of Article VIII of this Declaration.

ARTICLE III COMMON ELEMENTS

Section 1. Common Elements. The Declarant shall, from time to time at the discretion of the Declarant but in any case within sixty (60) days following the end of the Declarant Control Period, transfer and convey the Common Elements to the Association.

All portions of Colby Chase Property which are transferred to the Association by the Declarant (a) shall be conveyed to the Association by special warranty deed free of debt and other monetary encumbrances, and (b) shall be conveyed to the Association subject to the rights and easements set forth in Section 2 and 3 of this Article III, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Members' Rights in the Common Elements. Every Owner or any Owner's tenant or social guest shall have a non-exclusive right and easement of enjoyment and use in and to the Common Elements, and such right and easement shall be appurtenant to, and shall pass with, the title to each Lot. Such right and easement of enjoyment and use are and shall be subject to the easements which are described in Section 3 of this Article III and to the right of the Association to promulgate reasonable rules and regulations regarding the use of the Common Elements, and the right of the Association, as provided in the

Bylaws, to suspend the enjoyment rights of the Owner of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and such period as the Executive Board may consider appropriate for any infraction of its published rules and regulations. No such suspension, however, shall prohibit the Owner of any Lot from using the Common Elements to the extent necessary for such Owner to have access and utility services to and from his Lot. In addition, the Executive Board may permit other persons who are not residents of any Lots to use the Common Elements upon such terms and conditions, and for the payment of such fees, as shall be determined by the Executive Board.

Section 3. Easements over the Common Elements. All Common Elements shall be subject to, and Declarant does hereby grant and/or reserve, the following easements:

(a) An easement in favor of Declarant and the Association across, in, under, over and through the Common Elements for the purposes of the construction, installation, repair, maintenance and use of all utility and drainage lines, wires, pipes, storm water facilities, sidewalks, private streets and similar facilities as are shown on any recorded Plat of the Colby Chase Property or are in existence as of the date of recording of this Declaration; and

(b) An easement in favor of Declarant for the exclusive use of such portions of the Common Elements as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Lots and Dwellings thereon, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons whom the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate at such time as the construction on the Lots of all Dwellings has been completed and all of the Lots shall have conveyed to Owners thereof who shall not have acquired the Lots for the purpose of immediate resale of the same. Such easements shall and do exist without affecting the obligation of the Owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Elements shall be used by authorized persons pursuant to the exercise of the easements herein stated.

Section 4. Damage or Destruction. All damage that shall occur to any improvements on any Common Elements on account of the occurrence of any casualty shall be repaired in all events. The term "improvement" shall be deemed to include any storm water management facilities or best management practices (BMPs) which may be erected or constructed on any Common Elements. Such repairs shall be undertaken and completed as soon after the occurrence of any casualty as is reasonably practicable. All repairs to any improvements located on the Common Elements shall be made in

accordance with plans and specifications that shall be approved for the same by the Executive Board of the Association.

As provided in Section 47F-3-113 of the Act, it shall be the duty of the Association to obtain and maintain in effect at all times a policy of casualty insurance on all improvements located on the Common Elements. The amount of such policy shall be in amount that is no less than one hundred percent (100%) of the replacement cost of the improvements to be insured with deductibles in amount to be determined by the Executive Board.

Section 5. Transfer or Encumbrance. In no event shall the Association abandon, encumber, sell or transfer, directly or indirectly, any portion of the Common Elements unless such abandonment, encumbrance, sale or transfer shall be first approved in writing by: (a) the Owners of no fewer than eighty percent (80%) of the Lots; (b) the Institutional Lenders holding Mortgages secured by no fewer than fifty percent (50%) of the Lots (following the rules for Institutional Lenders as provided in Section 1 of Article XII of this Declaration); and, (c) the Declarant during the Declarant Control Period.

Section 6. Maintenance of the Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, including all storm water facilities and/or BMPs. However, the cost of any maintenance or repair made necessary by the act or omission of an Owner or such Owner's family, tenants, guests or invitees shall be the responsibility of the Owner. The Association's voluntary act to maintain or repair Common Elements damaged by such act or omission does not relieve the Owner of responsibility for the cost of repair.

ARTICLE V THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration is filed of record with the Register of Deeds of Wake County, North Carolina, the Declarant has caused the Association to be formed, and the Association shall be governed by and under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the Ownership, management and operation of the Common Elements, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as the Executive Board shall deem to be in the best interests of the members of the Association. The Association shall have all the power and authority provided in the Association by the provisions of Section 47F-3-102 of the Act.

Section 2. Membership. Every Owner is and shall be a member of the Association; provided, however, that any such person who holds such interest merely as security for the performance of an obligation shall not be a member of the Association. The transfer of Ownership of a fee or undivided fee interest in any Lot shall automatically

transfer membership in the Association, and in no event shall such membership be severed from the Ownership of such Lot.

Section 3. Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

(a) Class A. The Class A members shall be all those persons holding an interest required for membership in the Association, as specified in Section 2 of this Article V, except for those persons who are Class B members. Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be entitled to vote only in regard to the following matters: (a) any proposal of merger, consolidation or dissolution of the Association; (b) any proposal to transfer or encumber any portion of the Common Elements; (c) any proposal pursuant to Article XI of this Declaration to amend this Declaration; (d) any proposal to modify or amend the Articles of Incorporation or by the Bylaws; and (e) any other matter for which it is herein specifically provided, or for which it is provided by the Act, the North Carolina Nonprofit Corporation Act or any other law, that approval of each and every class of membership of the Association is required. Except in regard to the foregoing matters, the Class A membership shall be a non-voting membership until such time as the Class B membership shall terminate, at which time the Class A membership shall be the sole class of membership and shall be entitled to full voting privileges.

When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership by Section 2 of this Article V.

(b) Class B. The Declarant shall be the sole Class B member. Subject to the provisions of this subsection, Declarant shall be entitled to twenty (20) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Assessment of Lots owned by the Declarant is governed by the provisions of Article V of this Declaration. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 4. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote and to use the Common Elements (except for the right to use the Common Elements for access and utility services to and from the Lot owned by such member), may be suspended by the Executive Board pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's property in favor of the Association.

Section 5. Meetings of the Membership. All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of

business at any meeting, and the vote required on any matter, shall be as specified in the Act, in the North Carolina Nonprofit Corporation Act, in this Declaration, or in the Articles of Incorporation or the Bylaws.

Section 6. Association Acts Through Its Executive Board. Whenever approval of or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Executive Board of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation, the Bylaws or the Act that, with respect to such action, inaction or approval that the members of the Association must vote. No member of the Executive Board of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B member) shall be personally liable to any Owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 7. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, and may enter into such agreements for the management of the Common Elements as the Executive Board deems to be in the best interests of the Association.

ARTICLE VI ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) Base Assessments; (2) working capital assessments; (3) special assessments; (4) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (5) individual assessments for any expense under the Act or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (6) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (7) all other assessments and charges imposed or allowed to be imposed by this Declaration.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of

Common Areas; (ii) maintenance, repair and reconstruction of Common Areas and improvements thereon, including, without limitation, storm water drainage facilities and BMPs, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots, if any, as provided in Article VII hereof; (iv) payment of taxes and public assessments levied against Common Areas owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other persons or firms for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Date of Commencement of Assessments; Amount of Assessments; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the assessments provided for herein shall commence as to a Lot on the day that Declarant transfers said Lot to a third party.

Subject to the provisions of this Section, the Board of Directors may fix the Base Assessment for Lots owned by Class A members at any amount. The annual assessment for Lots owned by the Declarant shall be zero, provided, however, that any Lot which contains a dwelling occupied by any person as a residence shall be assessed at the Class A rate. Unless a lower amount is set by the Board of Directors, the initial Base Assessment shall be _____ per month until December 31, 2024. Assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors. Any monies paid at any time by the Declarant or Developer for common expenses or otherwise for or on behalf of the Association shall be credited against past or future assessments due from the Declarant or Developer, if any.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an Base Assessment per Lot for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments

(Base, special, and limited special assessments) for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 4. Special Assessments. In addition to the Base Assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, provided that any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for Lots owned by the Declarant shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 5. Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VII hereof. Any fine imposed against an Owner pursuant to Section 3 of Article VIII of the Bylaws shall also constitute a limited special assessment against such Owner's Lot. Special assessments and limited special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 6. Effect of Nonpayment of Assessments; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Areas or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Areas.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the office of the Clerk of Superior Court of Wake County in the manner provided in §47F-3-116(g), shall be a continuing lien upon the

Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an Ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

Section 7. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 8. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum of \$ _____ shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 9. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the Person providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. If for some reason Declarant does pay Assessments, any monies paid at any time or by the Declarant for or on behalf of the Association shall be credited against past or future assessments due from the Declarant. In no event shall this section obligate Declarant to pay any assessments.

ARTICLE VII DAMAGE OR DESTRUCTION OF IMPROVEMENTS; INSURANCE

Section 1. Damage or Destruction In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Dwellings, such damage or destruction shall be repaired or rebuilt in all events. All repair, reconstruction or rebuilding of any Dwelling shall be substantially in accordance with the plans and specifications for such damaged or destroyed Dwelling prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the Owner of the Dwelling which is to be so repaired, reconstructed or rebuilt, and by the Executive Board. The work of repairing, reconstructing or rebuilding any damaged or destroyed Dwelling shall be completed as soon after the occurrence of such damage or destruction as is reasonably practicable.

Section 2. Insurance. As provided in Section 47F-3-113 of the Act, it shall be the duty of the Association to obtain and maintain in effect at all times a comprehensive policy of public liability insurance. The comprehensive policy of public liability insurance shall have a reasonable amount of coverage, as shall be determined by the Executive Board, and shall provide for such deductibles, as shall be determined by the Executive Board. During the Declarant Control Period, both insurances may be provided by a self-insurance program maintained by the Declarant. No Owner shall make any use of his Lot or Dwelling which would cause an increase in the cost of any insurance policy to the Association.

ARTICLE VIII ARCHITECTURAL CONTROL

Section 1. Architectural Control.

- (a) No building, fence, awning, lawn statute, wall, garage, carport, playhouse, swimming pool, mail-box or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to, change in (including, without limitation, any change in the type of roofing material or in the color of the paint, stain or varnish), or alteration of, the Dwelling located on any Lot or any other structure located on any Lot be made until complete and final plans and specifications, setting forth the information hereinafter described, shall have been submitted to, and approved in writing by, the Executive Board as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography. All plans must meet city zoning and building codes, but it shall not be the responsibility of the Executive Board to determine compliance with same. In the event the Executive Board fails to approve or disapprove such design and location with thirty (30) days after said plan and specifications have been submitted to it, approval will not be required, and this Section 1 of Article VIII will be deemed to have been fully complied with.

- (b) The plans and specifications which must be submitted to the Executive Board prior to the alteration or addition to any Dwelling or the commencement of any structure upon any Lot; as hereinabove provided, shall contain at least the following information:
- (i) A site plan showing the shape and size of the proposed structure and its location on the Lot on which the same is proposed to be constructed; and
 - (ii) Building plans of the proposed structure which shall include an exterior elevation drawing of the proposed structure;
 - (iii) In the case of any fence proposed to be erected on any Lot, a site plan showing the location of the proposed fence and a statement of the material out of which it will be constructed; and
 - (iv) In the case of the alteration of the exterior of any Dwelling, a complete description of the alteration proposed to be made, including a sample of any varnishes or paints proposed to be used.
- (c) The Association shall upon demand at any time, furnish to any member of the Association a certificate in writing signed by an officer of the Association, stating that any building, fence, wall, garage, carport, playhouse, swimming pool, or other structure erected upon such Owner's Lot, or any exterior addition to, change in, or alteration of any Dwelling or other structure owned by such member on a Lot, is in compliance with the provisions of this Section 1 of Article VIII, and such certificate shall be conclusive as to whether the same is in such compliance.
- (d) In the event that any construction or alteration work is undertaken or performed upon any Lot without application having been first made and approval obtained as provided in paragraph (a) of this Section 1, said construction or alteration work shall be deemed to be in violation of this covenant, and the Person upon whose Lot said construction or alteration work was undertaken or performed may be required to restore to its original condition, at his sole expense, the property upon which said construction or alteration was undertaken or performed. Upon the failure or refusal of any Person to perform the restoration required herein, the Executive Board, or their authorized agents or employees, may, after fourteen (14) days' notice to such Person, enter upon the property upon which such unauthorized construction or alteration work has been performed, and make such restoration as the Executive Board, in the exercise of its discretion, may deem necessary or advisable. The Person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in Article VI of this

Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Base Assessment payment, as provided in Section 3 of Article VI of this Declaration, or at such earlier time, and in such installments, as the Executive Board shall determine.

Section 2. Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article VIII shall be construed as prohibiting any construction by the Declarant upon any Lot while such Lot is owned by the Declarant. Any new construction performed upon any Lot while such Lot is owned by the Declarant shall be exempt from the provisions of Section 1 of this Article VIII.

Section 3. Architectural Advisory Committee. The Executive Board shall be authorized but is not required to appoint an architectural advisory committee to advise it and assist it in connection with its performance of its responsibilities under Section 1 of this Article VIII. If such committee is appointed, the functions which it may perform shall include reviewing plans and specifications which are submitted to the Executive Board in connection with proposals to construct or alter improvements upon the Lots and to make recommendations to the Executive Board with respect to such plans and specifications.

ARTICLE IX RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots and Dwellings located thereon by all of the residents thereof and to provide protection for the value of the same, the use of the Lots and Dwellings located thereon shall be restricted to, and shall be only in accordance with, the following provisions:

Section 1. Single-Family Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this Section 1 shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Lot as said Declarant shall determine (including but not limited to, using any Dwelling as a model home and sales office); (b) the Owner of any Dwelling from using a portion of that Dwelling as an office, provided that such use does not create regular customer or client traffic to and from such Lot and Dwelling located thereon and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot or (c) the Owner of any Dwelling from renting that Dwelling to residential tenants for a profit.

Section 2. Prohibited Activities. No noxious or offensive activity shall be conducted on any Lot. Each Owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot.

Section 3. Nuisances. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, wind chimes, barking dogs, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot; or any portion thereof.

Section 4. Garbage and Refuse Disposal. No Lot shall be used in whole or in part for storage or rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or private waste services or other similar garbage and trash removal units. In addition, all trash, garbage and other waste shall be stored in sanitary containers in the space provided in the garage or in the fenced area on each Lot designated for sanitary container or public safety authority having a jurisdiction over the Property.

Section 5. Vehicles; Trailers; Boats; Automobiles. No boat, trailer, boat trailer, camper, truck or utility trailer shall be permitted to be openly stored or repaired upon any part of Colby Chase Property, except with the permission of the Executive Board, and then, only in compliance with all requirements imposed by the Executive Board as a condition to the issuance of such permission. Boats, trailers, boat trailers, campers, trucks and utility trailers may be stored within a garage. No automobile may be parked upon any Lot unless the same is parked on a paved area located on such Lot for such purpose, and the same is in operating condition and has affixed thereon a then current license tag and operating sticker.

Section 6. 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 common household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. Under no circumstances shall dog houses, dog runs or similar structures or apparatuses be permitted on any Lot.

Section 7. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Executive Board, except for (a) customary name and address signs (b) one "for sale" sign advertising a Lot for sale and (c) reasonably sized political signs of which the right to display is protected by the North Carolina or United States Constitutions. The restriction herein stated shall include the prohibition of placement of any sign within a Dwelling in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle. Notwithstanding the foregoing, the Declarant and its agents, with the prior consent of Declarant, shall have the right to erect and maintain signs of any type and size on any lot which Declarant owns and on the Common Area in connection with the development and sale of the Lots.

Section 8. Antennas; Aerials; Satellite Dishes. Except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no outside radio or transmission tower or receiving antenna,

including a satellite dish antenna, and no outside television antenna or satellite dish may be erected or installed on or be permitted on his or her Lot without prior written approval of the Executive Board. Even if so approved, so long as reception of any acceptable quality is not precluded, the antenna, aerial, satellite dish or other reception of appropriate size shall be located only on that portion of the Lot which is least visible from public view and shielded so as to minimize any risk and to ensure a nuisance is not created.

Section 9. Clotheslines. No clothesline shall be erected on any portion of any Lot other than inside an area wholly enclosed within a fence.

Section 10. Window Air-Conditioners. No air-conditioner shall be installed in any window of any Dwelling, nor shall any air-conditioner be installed on any Dwelling on any Lot so that the same protrudes through any exterior wall of such Dwelling.

Section 11. Temporary Structures. Subject to the right of the Declarant to promote the sale of Lots, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other building, shall be permitted on any Lot at any time, whether temporarily or permanently, except with the prior written consent of the Executive Board; provided, however, that temporary structures may be erected or placed upon a Lot for use in connection with the repair or construction of structures upon such Lot.

Section 11. Fences. Fences shall be wood or black metal only. No chain-link or other metal fences shall be permitted.

Section 12. Subdivision of Lots. Lots may not be subdivided without approval from the appropriate municipality and written consent of the Executive Board. The former provision shall not affect the right of the Declarant to alter the boundaries of Lots as provided in Article II, Section 2 of this Declaration.

Section 13. Town of Apex Zoning Requirements. In addition to the foregoing, the Property shall be subject to all conditions set forth by the Town of Apex in Zoning Case #15CZ24 (the "Zoning Case"), including:

- a. Each Lot shall be limited to one (1) single-family dwelling unit.
- b. Each dwelling constructed on the Property shall be constructed on a crawl space.
- c. All siding on any dwelling in the subdivision shall be made of: brick, stone, wood, hardiplank, or some combination of the same. No vinyl siding shall be permitted.
- d. Roof pitch for any dwelling shall be greater than or equal to 6 on 12.
- e. All dwellings shall be constructed to include a backyard deck or patio.
- f. All homes shall be constructed to include a front porch over the front door.
- g. Density within the Property shall be limited to no more than two (2) dwellings per acre.

- h. All dwellings shall be constructed to include conduits for future connection to solar panels.

In accordance with the conditions set forth in the Zoning Case, the Property shall be limited to the following uses:

- a. Single-Family Residential
- b. Accessory Apartment
- c. Utility, Minor
- d. Greenway
- e. Park, Active
- f. Park, Passive
- g. Recreation Facility, Private

Any violation of this Section 13, any condition of the Zoning Case, or any other Town of Apex zoning ordinance or construction condition shall be a breach of these covenants and shall be subject to enforcement by the Association, the Declarant, or by any Owner.

Section 14. Enforcement by Members. In the event that the Owner of any Lot, or any Person who is entitled to occupy any Lot, shall fail to comply with or abide by any restriction set forth in this Article IX, the Owner of any other Lot who is aggrieved by such failure of compliance or abidance shall have the right to proceed at law or in equity to compel such Owner or such occupant to comply therewith and abide thereby. Additionally, any Owner of any Lot who, or whose tenant, shall fail to comply with or abide by any such restriction shall be liable for any damages as may be suffered by any other Owner of any Lot as a consequence of such failure.

ARTICLE X MAINTENANCE OF DWELLINGS, LOTS, AND LANDSCAPING

Section 1. Maintenance by Owner. The Owner of each Lot shall be obligated to maintain and repair in good condition such Lot and the Dwelling constructed thereon, including but not limited to the exterior walls, fence, driveway, landscaping, water well and septic tank located on that Owner's Lot. Without limiting the foregoing, each Owner shall make a good faith effort to maintain his yard and landscaping in a green and growing condition.

Section 2. Failure of Maintenance. In the event that the Owner of any Lot shall fail to maintain any portion of his Lot, including the Dwelling that is located on such Lot, as required under the terms and provisions of this Article X, the Executive Board shall have the right, exercisable by it or through its agents or employees, and after giving the Owner of such Lot at least five (5) days notice and an opportunity to correct the unsatisfactory condition, to enter upon the Lot, and correct the unsatisfactory condition. The Owner of the Lot upon which such maintenance work is performed by the Association (or its agents

or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article VI of this Declaration. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or tenants, guests, contractors, or invitees, or contract purchasers the cost of such maintenance or repairs shall be added to, and become a part of, the assessment to which such Lot is subject. All such costs shall be paid to the Association by such Owner at the same time as the next due annual assessment payment, as provided in Section 2 of Article VI of this Declaration, or at such earlier time, and in such installments, as the Executive Board shall determine.

ARTICLE XI AMENDMENT

Section 1. Amendment by Members. The terms provisions, covenants and restrictions of this Declaration may be amended upon the approval of such amendment by (a) those members of the Association who own in the aggregate, no-fewer than sixty-seven percent (67%) of the Lots not owned by the Declarant, (b) the Declarant, if the Declarant shall then own any Lot; and (c) the Institutional Lenders holding Mortgages secured by no fewer than fifty percent (50%) of the Lots (following the rules for Institutional Lenders as provided in Section 1 of Article XII of this Declaration). The approval of any such amendment by the members of the Association shall be given by each such member either by casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such member signing a written approval of such amendment after the date on which such meeting was held, notwithstanding anything set forth to the contrary in the Articles of Incorporation or Bylaws.

Section 2. Evidence of Member Approval. Any amendment to the terms, provisions, covenants or restrictions of this Declaration shall become effective only upon the recording with the Wake County Register of Deeds, supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF COLBY CHASE HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the COLBY CHASE HOMEOWNERS ASSOCIATION, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action

approved] was approved by at least ____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate.

Section 3. Amendment by Declarant. Notwithstanding any other provision of this Declaration, the Declarant shall have the right to amend this Declaration without restriction and without the consent or joinder of any other Owner or the Association, for so long as it owns any property which is subject to this Declaration as further described in Article XII.

Section 4. Acceptance of Amendments. Each person who shall own any Lot, by acceptance of a deed or other conveyance thereto, and by acceptance of such Ownership, and by taking record title thereto, and each holder of a Mortgage upon any portion of any Lot, by acceptance of such Mortgage, thereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as further provided in this Article XI.

ARTICLE XII MISCELLANEOUS

Section 1. Rights Reserved to Institutional Lenders. So long as any Institutional Lender shall hold any Mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- (a) To be furnished with at least one copy of the annual budget of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such budget to be furnished within 120 days of the end of each fiscal year.
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- (c) To be given notice of default in the payment of assessments of sixty (60) days or more by any Owner of a Lot encumbered by a Mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it or they may designate in writing to the Association.

- (d) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours and to obtain copies thereof.
- (e) To be given notice by the Association of any substantial damage to any part of the Common Elements.
- (f) To be given notice by the Association if any portion of the Common Elements is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.
- (g) To be given notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (h) To be given notice of any proposal requiring consent of the Institutional Lender, including but not limited to any proposed amendment to this Declaration under Article XI.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, identifying the Lot upon which any such Institutional Lender holds any Mortgage, or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

Notwithstanding any other provision in this Declaration, for any proposal for which Institutional Lender consent is required, the following rules shall apply: (1) any Institutional Lender which has not served notice as provided in the foregoing paragraph shall be deemed to have consented to the proposal; (2) in the case of an abandonment, encumbrance, sale or transfer of the Common Elements under Article III, Section 5 of this Declaration, an Institutional Lender which has served notice as provided in the foregoing paragraph shall be deemed to have consented to such abandonment, encumbrance, sale or transfer if it has been given notice of the proposal at least thirty (30) days prior to the date on which the transfer or encumbrance will take effect and has not objected to such in writing; (3) in the case of an amendment under Article XI of this Declaration, an Institutional Lender which has served notice as provided in the foregoing paragraph shall be deemed to have consented to such amendment if it has been given notice of the amendment at least thirty (30) days prior to the date on which the amendment will be recorded with the Wake County Register of Deeds and has not objected to such in writing.

Section 2. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Lot, then the Owner of any other Lot shall have the right to file an action in a court of competent jurisdiction for an order from such court requiring that the Association enforce such compliance; provided, however, that decisions to enforce or not enforce this Declaration in a particular case are subject to the business judgment rule; and provided further that in no event shall the Executive Board, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 3. Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 4. Duration. This Declaration and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with and bind the land (the Colby Chase Property), shall be and shall remain in effect, and shall inure to the benefit of, and be enforceable by the Association, and by any Owner of any Lot, their respective legal representatives, heirs, successors and assigns, perpetually. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

Section 5. Notices. Any notice required to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of any Lot owned by such member. The date of service shall be the date of mailing.

Section 6. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 7. Enforcement. Notwithstanding any other enforcement method provided for in this Declaration, enforcement of these covenants and restrictions may be by any proceeding at law or in equity against any person or persons or other entities violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration.

Section 8. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of Colby Chase Property at foreclosure, sale, under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

Section 9. Conflicts. In the event of a conflict between this Declaration and the Article of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control. Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act and the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A) shall in all cases control over any construction inconsistent therewith.

Section 10. Termination by HPI. In the event that Declarant fails to purchase the Property within the time provided in the Declarant's purchase contract with HPI, HPI shall have the unilateral right to terminate this Declaration by recordation of a written termination hereof, independently and without the joinder or consent of Declarant.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGES ATTACHED

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer on the day and year indicated in the notary acknowledgment below.

ELM STREET BUILDERS, LLC

By: 

Print Name: Christopher R. Weir

Print Title: Manager

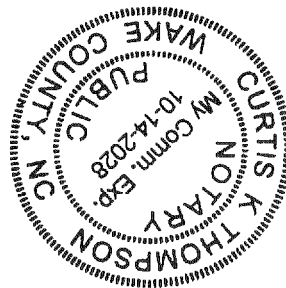
NORTH CAROLINA
_____ **COUNTY**

I, the undersigned, a Notary Public for said County and State, do hereby certify that Christopher R. Weir, personally appeared before me and acknowledged that he/she is the Manager of Elm Street Builders, LLC, and that he/she as Manager being authorized to do so, executed the foregoing on behalf of the Company.

Witness my hand and seal, this 23rd day of October, 2024


Notary Public

My Commission Expires: _____



IN WITNESS WHEREOF, Horton Investments, LLC has consented to and acknowledged this Declaration, and has caused it to be executed by its duly authorized officer on the day and year indicated in the notary acknowledgment below.

HORTON PARK INVESTMENTS, LLC

By: 

Print Name: **Pablo Reiter**

Print Title: **Manager**

NORTH CAROLINA

Wake COUNTY

I, the undersigned, a Notary Public for said County and State, do hereby certify that Pablo Reiter, personally appeared before me and acknowledged that he/she is the Manager of Horton Park Investments, LLC, and that he/she as Manager being authorized to do so, executed the foregoing on behalf of the Company.

Witness my hand and seal, this 21st day of October, 2024.



Notary Public

Eric Richard Spence

My Commission Expires: 3-25-2025

EXHIBIT A

