

**CERTIFIED TO BE TRUE
COPY OF ORIGINAL**

Prepared by: Declarant and Wayne R. Hadler, Esq., Beemer, Hadler & Willett, P.A.

NORTH CAROLINA

COUNTY OF CHATHAM

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS:

HICKORY POND SUBDIVISION

This DECLARATION is made as this 23rd day of June, 2016, by Susan C. Koenigshofer, Hickory Pond Development, whose address is 828 Jack Bennett Road, Chapel Hill, NC 27517, hereinafter referred to as "Developer" or "Declarant".

WITNESSETH:

WHEREAS, Developer is the owner of certain property in Chatham County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and made a part of hereof (the "Property" or "Properties"); and

NOW THEREFORE, Developer hereby declares that all portions of the Property described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which shall protect its value and desirability and run with the real property, being binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to the Hickory Pond Homeowner's Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" or "Properties" shall mean and refer to that certain real property described in Exhibit "A" attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5. "Declarant" shall mean and refer to Developer and/or its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Each Owner of a Lot in HICKORY POND SUBDIVISION shall have a right and easement in common with every other Lot Owner to the benefits and burdens to the easements shown on the recorded plats now and in the future for HICKORY POND SUBDIVISION, and the use and enjoyment of the subdivision entry area off of Jack Bennett Road, including the signage, landscaping and lighting, if any, subject to the following provisions:

- (a) The right of the Association to promulgate and enforce reasonable regulations governing the use of the Easements;
- (b) The right of the Association to suspend the voting rights and right of use by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement over, upon, across and under each lot for the installation, maintenance and conveyance of electrical, computer, telephone, gas, water and cable utilities, including, without limitation, the right to construct, maintain and dedicate any additional storm water drainage facilities whenever such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights include the right to cut trees and other vegetation, grade the soil or to take any other similar action reasonably necessary. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not be considered an obligation of the Declarant to provide or maintain any such utility or service. In exercising these rights, the Declarant shall use its best efforts to locate the utilities within ten (10) feet from the property line or within the road right-of-way, except to

service the property.

- (d) For so long as the Declarant owns any portion of the Property, the right of the Declarant to cause Additional Property to be made subject to the terms of this Declaration by filing Supplemental Declaration(s) in the Office of the Chatham County Register of Deeds. Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property; and
- (e) The right of the Association to dedicate or transfer all or any part of the Easements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members thereof.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

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

Section 2. The Association shall have three classes of voting membership. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but the total amount of votes for each Lot shall be as set forth in the Classes below.

Class A. Class A members shall be Owners of Lots 1, 2, 3, 4 & 5, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned and two (2) additional votes for dwelling unit when constructed. There is no additional vote(s) for a guest house.

Class B. Class B members shall be Owners of Lots 6 & 7, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned and three (3) additional votes for dwelling unit when constructed. There is no additional vote(s) for a guest house.

Class C. The Class C member(s) shall be the Declarant and shall be entitled to one (1) vote for each Lot owned and two (2) additional votes for each dwelling unit constructed. There is no additional vote(s) for a guest house. The Class C membership shall cease and be converted to Class A or B membership on the happening of either of the following events, whichever occurs earliest:

- (a) When the total votes outstanding in the Class A & B membership equal the total votes outstanding in the Class C membership, or
- (b) On January 1, 2020.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments, such assessments to be established and collected as here provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties, for the improvement and maintenance of the road easements of Hickory Pond Road and Kings View Drive, for entry lighting and for the maintenance, landscaping and irrigation of landscaped areas along road rights of way which are adjacent to the entryway(s) and areas that are not abutted by a Lot (said areas being hereinafter referred to as "Road Rights of Way").

Section 3. Annual Assessment. The Annual Assessment shall be as follows, and prorated by portion of year remaining, due and payable at the time the Owner closes on the Lot, or on such other basis as determined by the Homeowner's Association.

The annual assessment is \$200 multiplied by the Lot owner's voting rights, as specified in Article III, Section 2. When a building permit is issued for a Lot, the additional portion of the Annual Assessment is due, prorated by the portion of the year remaining.

The assessments will remain fixed until January 1st of the year immediately following the conveyance of the first Lot to an Owner.

- (a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than twenty-five percent (25%) above the maximum assessment for the previous year without a majority vote of the membership.
- (b) The Homeowner's Association may fix the annual assessment at an amount not in excess of the maximum unless so voted by the membership.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the roads, paying the cost of preventative actions to protect the Property or any improvements located thereon, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Special Individual Assessments. In addition to the Assessments authorized above, the Association may levy a special assessment applicable to any particular Owner for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Property or road(s) if occasioned by the Owner, members of the Owner's family, agents, guests, employees, tenants or invitees and not the result of ordinary wear and tear. The Association will provide the Owner with an opportunity to be heard prior to levying the Assessment.

Section 6. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3, 4 or 5 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the day of the conveyance of the Lot to the Owner. The first annual assessment shall be adjusted according to the number of days remaining in the calendar year. The Homeowners Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period and written notice shall be sent to every Owner subject thereto. The annual assessment is due January 1st of each year, or as established by the Homeowner's Association.

Section 8. Records. Any member of the Association may review the bookkeeping records for the Association by giving a one (1) week notice. Records will not separate costs for Hickory Pond Road and Kings View Drive.

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 its issuance.

Section 9.

Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at 18% per annum or the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the affected property. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

Section 10.

Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. No mortgagee shall be required to collect assessments affecting a Lot which is encumbered by its mortgage.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1.

No residence, building, fence, wall, driveway, swimming pool, satellite dish/antenna, lighting structure or other structure shall be erected, remodeled or altered unless plans and specifications for such showing the shape, height, materials, color and location have been submitted to and approved in writing by the Architectural Review Committee (ARC). This construction must be accomplished in conformity with such approved plans unless expressly agreed to in writing by the ARC. In the event the ARC fails to approve or disapprove such design and location within thirty (30) days of submittal, or requests further information from the Lot owner, approval will not be required and the Article will be deemed to have been fully complied with, as to that design and location only.

Section 2.

Upon the sale of all lots, the ARC shall be composed of three of the landowners, elected by a majority of ownership votes, as defined under "Common Maintenance and Assessments". Until that time, the developer shall serve as the ARC.

No member may vote on his own submittal to the committee.

Section 3.

A Lot owner may submit written details to the ARC requesting a variance to the Provisions of Article VI below.

Section 4.

No member of the ARC shall be liable for claims, causes of action or damages (except by gross negligence or willful misconduct of such member) arising from services performed pursuant to this Declaration.

ARTICLE VI

USE OF PROPERTIES

Section 1. Protective Covenants. In addition to the covenants, conditions and restrictions enumerated elsewhere in this Declaration, the Properties are also subject to the following:

- (a) Land Use. All of the Lot(s) shall be used for single-family, residential purposes. No more than four (4) adults, their minor children, one (1) live-in caregiver and three (3) unrelated persons may reside at any time on a Lot.

A guest house or garage apartment of not more than 800 square feet and one (1) bedroom may be located within the residence or no farther than thirty-five (35) feet away, and must share the same driveway access. This unit is limited to two (2) adults and their minor children, but shall not exceed the total of four (4) adults per property.
- (b) Size and Height of Buildings. No residence constructed on any Lot shall exceed three (3) stories in height, or a maximum height of forty (40) feet. No accessory building constructed on any Lot shall exceed two (2) stories in height. Each residence constructed on a Lot shall have minimum living space (not including any un-heated area) of at least 1500 square feet.
- (c) Home Office Use. Subject to prior Board approval, a small scale home business is allowed that is clearly incidental and subordinate to its use as a residence. Less than 25% of the square footage may be used and the business shall not significantly increase the normal traffic. One (1) additional person may be employed on site. No displays or advertising shall be visible from the road except for one non-illuminated sign not exceeding four (4) square feet in area.
- (d) Building Location. No residence, garage or other accessory building or structure shall be located closer than twenty-five (25) feet to the edge of Hickory Pond Road and Kings View Road. Nothing herein contained shall be construed as preventing the use of any portion of a Lot for sidewalks and driveways or the planting of trees, shrubbery, flowers or other ornamental plants.
- (e) Temporary Structures. No temporary building or other structure (including, without limitation, any storage shed or barn) shall be permitted on any Lot; provided that trailers, temporary buildings, barricades and the like shall be permitted for construction (not residential) purposes during the construction period of a residence on any Lot.
- (f) Construction Period. Construction of the residence shall be completed within one (1) year of the commencement of construction.
- (g) Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or weed, metal scrap, or garbage, except that such material

may be kept on the Lot or in areas of the Property designated for this purpose by the Declarant (in connection with its construction) or by the Board of Directors, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Owners are responsible for their waste collection unless the Board votes to provide another option. Owners shall keep these stored in the garage of each Dwelling Unit or screened from view. During construction, all rubbish and debris shall be stored and disposed of in accordance with the rules established by the Architectural Review Committee.

- (h) Lot Maintenance. The grounds of each Lot (whether vacant or occupied) shall be maintained in a neat and attractive condition. Upon the failure of any Owner to maintain his or her Lot (whether vacant or occupied), the Association or its authorized agent or successors and assigns may, after ten (10) days' notice to such Owner, enter upon such Lots and have the waste, grass, underbrush, and other vegetation cut and debris removed, and as often as the same is necessary in the Association's judgment. Such Owner shall be personally liable to the Association for the cost and the liability for amounts expended shall be a permanent charge and lien upon such Lot, enforceable by the Association by any appropriate proceeding at law or in equity. All costs incurred by the Association on behalf of such Owner shall be reasonable. Said permanent charge and lien shall be subordinate to the lien of any first mortgage on the Lot and shall be foreclosable.
- (i) Vehicles Not in Use. No inoperable automobile or motor vehicles shall be left on any lot for a period longer than two (2) weeks, unless it is screened from view. After such period of time, the vehicle shall be considered a nuisance and detrimental to the welfare of the Properties and may be removed from the Lot by the Association at the Owner's expense.
- (j) Hobbies. Hobbies or other activities which tend to detract from the aesthetic character of the Properties and any improvements used in connection with such hobbies or activities shall not be permitted unless conducted within a building erected upon the Lot in a manner which is not visible from either the road or any adjacent Lot. This restriction refers specifically, but not exclusively, to such activities as automotive and boat repair.
- (k) Animals. No outdoor animals shall be kept or structures for animals erected without approval of the ARC. Roosters are not allowed. Lot owners must maintain adequate fencing and noise control to prevent animals from being a nuisance.
- (l) Boat, Trailer, and Vehicle Parking and Storage. No truck, trailer, boat, camper, recreational vehicle or commercial vehicle shall be parked or stored on any Lot, unless it is in a garage or other vehicle enclosure and out of view from the road and adjacent Lots; provided, however, that nothing herein shall prohibit the occasional, temporary parking of any such truck, trailer, boat, camper, recreational vehicle or commercial vehicle on a Lot for a period not to exceed 48 hours in any period of thirty (30) days. No vehicle shall be parked on the Development's common roads.

- (m) Antennas. No antennas or satellite dish for the transmission or reception of television or radio signals of any kind shall be erected or permitted on any Lot unless same is invisible from the road and has prior written approval of the ARC.
- (n) HVAC Equipment. Air conditioning and heating equipment shall be screened from view of the road by landscape improvements or a fence.
- (o) Grading and Drainage. No construction, grading or other improvement shall be made to any Lot if the same would interfere with or otherwise alter the general grading and draining of the Properties or of any existing swales, floodways or other drainage configurations serving the Properties.
- (p) Fencing. Fencing shall be permitted on a Lot provided that it is no higher than six feet tall with a 2" gap at the bottom for drainage. Chain link fencing is not permitted unless it cannot be seen from the road or by the neighbors, or it receives a variance from the ARC. An owner must obtain the prior written consent of the ARC for any fence, temporary fence or change to an existing fence.
- (q) Mailboxes. All mailboxes serving a residence within this project shall be of a similar type, grade, and color established by the Board of Directors of the Association or its designated ARC.
- (r) Landscaping. Each Lot Owner shall be required to maintain all landscaping on its Lot, including, without limitation, any landscaping located between the road and the Lot and any easement which abuts or crosses their lot. All such landscaping (including, without limitation, shrubs, trees, grass, flowers and plantings of every other kind and description) shall be kept well-maintained, properly cultivated and free of trash and other unsightly material.
- Trees may be removed for the construction of driveways, sidewalks and building structures or if located within twenty feet of the building foundation. All other trees over fifteen (15) inches in diameter and all Redbud and Dogwood over four (4) inches in diameter shall be retained, unless approved by the ARC.
- (s) Utilities. All utilities and utility connections shall be located underground, including electrical, telephone, data and cable television lines. Transformers, satellite dishes, electric, gas or other meters of any type, or other apparatus shall be adequately screened as required by the ARC. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of any residence.
- (t) Road Use. Residents and guests of Lots 1, 2 and 3 may use either Hickory Pond Road or Kings View Drive (if and when constructed) to access their own Lot.
- (u) Lighting. No lot shall have outdoor illumination that burns all night if the direct rays of which are visible from a neighbor's home. Entry lights and other safety lights controlled by a switch within a residence or a motion detector are permitted.

- (v) Signs and Flagpoles. No signs, banners, billboards or advertisements of any kind shall be permitted unless approved in advance by the ARC. Flagpoles are not permitted.
- (w) Clotheslines. Clotheslines and outdoor clothes drying must be screened from the road and from the other Lots.
- (x) Firearms. The use of firearms is prohibited on any portion of the Property, including within each Lot.
- (y) The Pond on Lots 6 and 7. The Owners of Lot 6 and Lot 7 shall be responsible for maintenance, landscaping, repair and all costs associated therewith for the portion of the Pond located on their respective Lot. It is encouraged that the Owners work together to provide for a healthy and vibrant Pond.

ARTICLE VII

ROAD MAINTENANCE PROVISIONS

- Section 1. Maintenance and Repair. The Association shall be responsible for all maintenance and repair of Kings View Lane; and also for the maintenance and repair of Hickory Pond Road. The terms "Maintenance" and "Repair" shall include, but not be limited to, repairing the road surface, clearing obstructions, cleaning or re-cutting ditches as necessary, trimming brush along the roadside, removing snow, unplugging or opening culverts or drainpipes and performing any and all other necessary work required to maintain the road in a condition that will allow for reasonable and safe access of standard passenger vehicles.
- (a) Cost. The maintenance and repair cost shall be shared by the factor set forth in Article IV, Section 3; provided, however, that in the event that a party's agent or business or professional invitee causes damage to the road other than normal wear and tear, said party shall be required to repair such damage and bear the cost thereof exclusively; provided further, in the event of further subdivision of the above listed lots, each of the resulting lots so created that have an easement or right of use of the road shall share in the cost and the maintenance and repair on a pro rata basis with all of the other lots.
 - (b) Terms. This maintenance agreement shall run with the land described above and owned by the parties hereto and shall be binding on their heirs, personal representatives, successors and assigns. Each party shall grant to the other parties hereto a temporary construction easement across the lot owned by such party for the purpose of maintaining, repairing or upgrading the road.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Notwithstanding, the Association and Owners are encouraged to seek mediation services prior to engaging in any proceeding in law or equity to resolve a dispute.

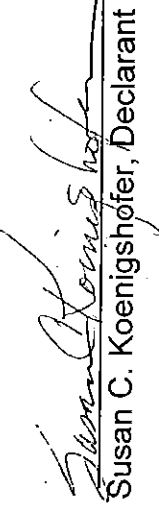
Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall **not invalidate** any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by no less than two-thirds of the Owners and recorded in the Public Records of Chatham County, North Carolina.

Section 4. Annexation. Additional residential property may be annexed to the Properties without Class A or B membership consent as long as there is Class C membership consent, and thereafter, with the consent of two-thirds (2/3) of the members of the Association. Notwithstanding the foregoing, Declarant shall be free to add additional residential property to the Properties at any time by the recording of a Supplemental Declaration executed only by Declarant or its designated successor or assign, and such portion of the Property added to the Properties shall, from the date of recording of such Supplemental Declaration, be governed by the terms, provisions, conditions, and restrictions set forth in this Declaration.

Section 5. FHA/VA Approval. As long as there is a Class C membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties other than portions of the Property described at Exhibit "A", dedication of Common Area and amendment of this Declaration of Covenants, Conditions, and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as the day first set forth above.


Susan C. Koenigshofer, Declarant

NORTH CAROLINA
COUNTY OF ORANGE

I, Wayne R. Hadler, a notary public in and for said county and state do hereby certify that the following person(s) personally appeared before me this day, acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Susan C. Koenigshofer, Declarant

Date: 6/23/16

My commission expires:

Wayne R. Hadler
Notary Public

WAYNE R. HADLER
NOTARY PUBLIC
Orange County
North Carolina
My Commission Expires 05/22/2020

EXHIBIT "A"

BEING LOTS 1-7 as shown on a map and survey entitled "Exempt Final Plat Showing Changes In Private Roads in The Subdivision For Susan C. Koenigshofer" prepared by Holland Land Surveying, dated August 7, 2015 and recorded in Plat Slide 2016-144, Chatham County Registry.

TOGETHER WITH AND SUBJECT TO that certain 30' Private Access and Utility Easement shown as Hickory Pond Road on Plat Slide 2016-144, Chatham County Registry; and TOGETHER WITH AND SUBJECT to that certain 30' Private Access and Utility Easement shown as Kings View Lane on Plat Slide 2016-144, Chatham County Registry.