

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR LOTS 1, 2 AND 3 IN BOULDER CREEK
SUBDIVISION, AS RECORDED IN BOOK OF MAPS 1993,
PAGE 827 WAKE COUNTY REGISTRY¹**

This DECLARATION, made this 3rd day of August 1993, by Charles R. Manning, Jr., Gerre M. Manning, Charles R. Manning, (hereinafter referred to as the “Declarant”).

WITNESSETH:

WHEREAS, the Declarant hereby declares that the following described real property located in Wake County, North Carolina (hereinafter referred to individually as a “Lot” and jointly as the “Lots”), is and shall be held, transferred, sold and conveyed subject to the restrictive covenants hereinafter set forth:

Being all of Lots 1, 2 and 3 of Boulder Creek Subdivision, according a plot dated December 31, 1992, prepared by Irvin A. Stanton, R.L.S., recorded in Book of Maps 1993, Page 827, Wake County Registry.

WHEREAS, the restrictive covenants hereinafter set forth shall run with the Lots and be binding on all parties having any rights, title or interest therein, their heirs, successors and assigns and shall inure to the benefit of each owner thereof

1. PREAMBLE: The Lots are hereby made subject to the covenants and restrictions contained herein for the purpose of insuring the most appropriate development and improvement of each Lot; to protect the Lot owners against such improper use of nearby Lots as would depreciate the value of the property of each; to preserve, insofar as practicable, the natural beauty of the Lots, to guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials, to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on the Lots; to secure and maintain proper setbacks from streets, and adequate free spaces between structures, and in general to provide for a high quality of improvement.

2. LAND USE AND BUILDING TYPE: Each Lot shall be used for residential purposes only, except that nothing herein shall preclude the use of any lot as the well site for a community water system or for use in providing a recreational area for the individual lot owners as a group. No structure shall be designed or allowed to remain on any Lot except one detached, single Dwelling Unit not exceeding two stories and an attic (finished or unfinished) in height, a basement (finished or unfinished), a garage for not more than three cars (which may include guest of employee quarters). Mobile homes, manufactured housing or any factory built modular housing is expressly prohibited.

¹ Amended, recorded May 27, 1999 in Book 8321 Page 503 Wake County Registry

3. GARAGES AND PARKING: Each Dwelling Unit shall have an enclosed garage with adequate space for at least two, but not more than three, full-size automobiles. In addition, each Lot shall contain sufficient off-street parking space for at least two automobiles. No automobiles shall be parked on any public or private Street abutting any of the Lots.

4. LEASE OF PORTION OF DWELLING UNIT: An owner may rent or lease his or her entire Dwelling Unit, but no portion of a Dwelling Unit shall be rented or leased nor may any other building located on a Lot be rented or leased separately from the Dwelling Unit.

5. RESUBDIVISION OF LOTS: No Lot shall be resubdivided except with the written consent of the Declarant.

6. NUISANCES: No portion of a Lot shall be used for any business, manufacturing or commercial purposes, nor shall any animals, fowl or merchandise be kept or allowed to remain on a Lot for commercial purposes, and no animals other than household pets shall be kept or allowed to remain on a Lot for any purpose, nor shall anything be done on a Lot which is a nuisance or any annoyance to the community. Each Lot owner shall maintain his or her buildings, improvements, landscaping and grounds in a safe, clean and orderly condition.

7. DWELLING SIZE: No dwelling shall be erected or allowed to remain on a Lot unless the heated interior floor area of the main structure, exclusive of one-story open porches, breezeways, steps, basements and garages, shall be greater than 2,200 square feet.

8. CREATION OF HOMEOWNERS ASSOCIATION: Every person or entity which is a record owner of a fee or undivided interest in any Lot which is subject this Declaration, including contract sellers, shall be a member of the Boulder Creek Homeowners Association (hereafter, "Association"), which may be incorporated and managed by a Board of Directors pursuant to lawfully adopted Bylaws for the corporation. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

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

8A. ARCHITECTURAL CONTROL: No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, buildings, outbuildings, fences, swimming pools, walls and other structures, shall be undertaken upon the Properties, nor shall any exterior addition, change or alteration therein be made until the plans and specifications therefore, showing the nature, kind, shape, height, color, materials, and plat showing the location of the proposed improvements shall have been submitted to the Association and expressly approved in writing by its Board of Directors with respect to conformity and harmony of external design with existing improvements in the development, and as to location of the improvements with respect to topography and finished ground elevation. Only dwellings and other improvements which have been approved in writing by the Board prior to commencing clearing, grading, or construction of any kind on a Lot will be permitted. All improvements shall comply with the plans as presented and as approved, or conditionally approved, unless changes are approved in writing by the Board. In the event the Board fails to approve or disapprove any complete request for approval within sixty (60) days after said plans and specifications have been submitted to it, such approval will not be required and this Paragraph will be deemed to have been complied with; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received by the Association if they contain inaccurate or erroneous information or fail to present adequate information upon which the Board can arrive at a decision. No member shall be entitled to any compensation for services performed pursuant to this Article. The Board of Directors shall have the right, at its election, but shall not be required to, enter upon any of the Properties during site preparation or construction, erection or installation of any improvements to inspect the work being undertaken, and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

9. BUILDING SETBACK: No building shall be located on any lot nearer to the front line than 60 feet or nearer to the side street than 30 feet in the case of a corner lot. No building or garage shall be located nearer than 20 feet to an interior lot line. No other permitted accessory building shall be located nearer than 30 feet to an interior lot line or nearer than 30 feet to a rear lot line, or nearer than 100 feet from the minimum building setback line. For the purposes of this covenant, open decks, eaves, steps, open porches, chimneys and stoops shall not be considered a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. Declarant reserves the right to waive, in writing, any minor violation of this Article of this Declaration, and for purposes hereof; any violation which does not exceed 10% shall be considered a minor violation.

10. UTILITIES: All water, sewer, gas, electric, telephone, television and other utility lines and connections between the main utility lines and the Dwelling Unit and other structures located on each Lot shall be located underground and concealed so as not to be visible. Declarant reserves the right to subject the real property described herein above to a contract with Wake electric Membership Corporation, Heater Utilities, and/or other utility or service companies for the installation of underground electric cables and the installation of Street lighting, either or both of which may require a continuous monthly charge to the owner of each lot and each lot

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owner agrees to pay their assessed charge for the provision of the utility services to the appropriate utility provider.

11. EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved over the front ten (10) feet and rear thirty (30) feet of each of the Lots. A drainage and utility easement ten (10) feet in width is reserved along each side line of each Lot. Within said easements so reserved, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and the flow of water with the easement areas. The owner of each Lot lying within the easement areas as defined herein shall maintain such improvements as may be located thereon except those improvements installed and maintained by a public authority or utility company.

12. TEMPORARY STRUCTURES: No structure of a temporary character shall be erected or allowed to remain on any Lot and no basement (unless said basement is part of a dwelling erected at the same time), tent, shack, garage, barn or other outbuilding erected on a Lot shall be used as a residence either permanently or temporarily. Neither shall any trailer, recreational vehicle, motor home, building material or non-operative motor vehicle be stored on any Lot, except as specifically approved by the Post-Construction Architectural Committee.

13. STREETS, FENCES, WALLS AND SIGNS: No Street shall be laid out or opened across or through any Lot. Fencing shall be allowed only where a specific purpose is served thereby and all fencing must be approved by the pre-construction Architectural Committee if prior to occupancy or the Post-construction architectural committee if occupancy has occurred. No fence, wall, hedge or mass planting shall be permitted to extend beyond the minimum building setback line established herein except upon approval by the pre-construction Architectural Committee if prior to occupancy or the post-construction architectural committee if occupancy has occurred. No signs, other than those pertaining to the sale of real estate, shall be erected or allowed to remain on any Lot except with the written consent of the post-construction Architectural Committee.

14. OUTDOOR, STRUCTURES AND VEHICLES: No outside clothes lines, motorcycles, supplies, tractors, boats, trucks (other than one pick-up truck rated one-half ton or less), trailers, vans (except one non-commercial van owned and operated on a regular daily basis by the owner-occupants of the Lot and dwelling in question), campers or other equipment or vehicles, except for operative automobiles, shall be regularly parked or stored in any area on a Lot except inside an enclosed building, behind screening approved by the post-construction Architectural Committee, or as consented to in writing by the post-construction Architectural Committee. Non-operative vehicles must be stored in a completely enclosed building or removed from the premises with sixty (60) days after becoming non-operative, unless specifically approved by the post-construction Architectural Committee. Garbage and refuse containers, transformers, air conditioning and other mechanical equipment, including solar and other alternative energy devices approved by the pre or post-construction Architectural Committee, shall be either concealed with a screen or integrated with the building design so as to be inconspicuous. All outdoor equipment and accessories on a Lot, be concealed by approved screening or approved in writing as compatible and harmonious with the surroundings by the

15. APPEARANCE: Each owner shall keep his lot free of tall grass, undergrowth, dead trees, trash and rubbish and properly maintained so as to present a pleasing appearance. At least 25% of the gross area of each lot shall be left as undisturbed woods. Ten feet along all property lines shall be left undisturbed, except for utilities if necessary. In the event an owner does not properly maintain his lot as above provided, in the opinion and sole discretion of the Homeowners Executive Committee, the Homeowners Executive Committee may take action to correct the situation after notifying the owner of the violation. This action may include without limitation having the required work done with the costs incurred paid by the owner.

16. ANIMALS: No animals, livestock or poultry of any kind, other than house pets, shall be kept or maintained on any lot. Dogs, cats or other household pets may be kept upon any lot provided that they are not kept, bred or maintained for commercial purposes.

17. SEWAGE REMOVAL: All lots shall control sewage by individual septic tank system and lines serving each Dwelling Unit. Each private septic system must meet the requirements of the applicable municipal and state health and zoning regulations. Each Lot owner shall be responsible for obtaining any necessary permits for the septic system from the applicable municipality, and shall maintain and operate the septic system in compliance with all local and state zoning and health regulations, and in such a manner so as not to create any nuisance or offensive conditions. The above mentioned condition only applies to Lots not serviced by a community sewer system.

18. APPLICATION OF RESTRICTIONS: The foregoing covenants and restrictions shall apply only to the Lots and nothing contained herein shall preclude the pre-construction Architectural Committee from altering the size or direction of frontage of any property other than the Lots, or the location of any streets or roads other than portions of such streets or roads as abut the Lots, or from establishing business districts or from establishing or allowing to be established hospitals, schools, hotels, or other institutions which in its opinion will be for the benefit of the community in which the Lots are located. Developer will retain control until such time as permanent and complete control is transferred to the Homeowners Association.

19. WAIVER OF AND CONSENT TO VIOLATIONS: The Declarant may waive any violation of these restrictive covenants prior to occupancy by the owner by an appropriate instrument in writing; provided, however, that if the violation occurs on any Lot or Lots which abuts a Lot or Lots which have been conveyed to a fee simple owner or owners of such contiguous Lot or Lots, the written waiver of such violations by such owner or owners shall also be obtained. The provisions of this paragraph shall not apply to paragraphs 4, 5, 8, 9, 12, 13, 14 and 16, where only the written consent of the Declarant shall be required.

20. TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the Lots has been

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recorded, agreeing to change said covenants in whole or in part.

21. ENFORCEMENT: If there shall be any violation or attempt to violate any of the covenants or restrictions herein contained, either directly or indirectly, it shall be lawful for the owners of any portion of said property, or any of said lots, to prosecute with any proceedings at law or in equity against the violator or the attempting violator, either to prevent such violation or attempt, or to recover damages of such violation. Nothing herein contained shall be considered from preventing the application of any remedies given by law against a nuisance, public, or private but the remedies herein contained shall be deemed to be in addition to any other remedies given by law.

No owner of any portion of said property or any portion of said lots shall directly or indirectly do or permit to be done on or in any portion of said property any act which is in violation of any law of the United States Government, the State of North Carolina, or any county or local ordinance having jurisdiction on said property.

22. ASSIGNMENT BY THE DECLARANT: The Declarant shall have the right to assign its rights under this Declaration, in whole or in part, to any person or entity by an express transfer of such rights, including but not limited to the right to transfer its powers under paragraphs 5, 8, 10, 19, 23, 27 of this covenant to the Homeowners Executive Committee, and paragraph 9 of this covenant to the post-construction architectural committee.

23. SEVERABILITY: If any paragraph, subdivisions of paragraphs, sentence, clause or phrase contained in this Declaration shall be held to be invalid by any court for any reason, the invalidation thereof shall not affect the validity of the other portions of the Declaration, it being the intent of the Declarant that the whole of said Declaration, with the exception of such invalidated portion or portions shall remain in full force and affect and Declarant hereby declare they would have executed this Declaration and each portion thereof irrespective of the fact that any portion of it be declared invalid.

Provided further that a breach of any of the foregoing provisions, conditions, restrictions, or covenants, or any re-entry by reason of such breach shall not defeat or render invalid the Lien of any mortgage or deed of trust made in good faith and for value as to any parcel thereon, but said provisions, conditions, restrictions and covenants, shall be binding upon and effective against the owners thereof, whose title thereto is required by foreclosure of any mortgage or deed of trust or otherwise.

24. AMENDMENT OF COVENANTS: These covenants, conditions and restrictions may be amended at any time by written instrument executed by at least seventy-five percent (75%) of the current lot owners of the subdivision. Any amendment must be duly recorded in the Wake County Registry to be effective.

25. ANNEXATION OF ADDITIONAL PROPERTIES: Declarant its successors or assigns, without the consent of any Lot Owner reserves the right to annex any portion of the additional property, more particularly described as Tract 1 containing 77.177 acres and/or Tract 3 containing

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68.626 acres as shown on a map recorded in the Book of Maps 1992, page 706, Wake County Registry and subject this additional property to the terms and conditions of this Declaration. Provided, however, that said annexation shall occur in five (5) years from the date of this Declaration

26. MAINTENANCE ASSESSMENTS:

Section (a). Creation of the Lien and Personal Obligation of Assessments. The owner of each Lot owned within the Boulder Creek Subdivision hereby covenants, and each owner of any Lot and 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 for extraordinary maintenance and capital improvements. The annual and special assessments, together with interest, late fees, costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title, unless expressly assumed by them.

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

Each owner for himself, his heirs, successors and assigns covenants to pay each assessment levied by the Association on the parcel described in such conveyance to him within then ten (10) days after receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Owner at the address of the parcel or to such other address as said Owner shall have designated, the amount of such charge shall become a lien upon said Owner's Lot and shall continue to be such lien until fully paid.

Section (b). Purpose of Assessments. The assessments levied by the Association shall be used exclusively to accomplish the maintenance responsibilities for the common areas located within the Boulder Creek Subdivision, including, but not limited to, landscaping, drainage and repairs to common property, and to promote the recreation, health, safety, and welfare of the residents of the Boulder Creek Subdivision, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section (c). Annual Assessment.

- (i) The initial annual assessment for each Lot within the Boulder Creek Subdivision shall not exceed \$200.00. Subsequent annual assessments shall be set by the Board of the Association for each year thereafter. The annual assessment as initially established herein may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed ten percent (10%) of the amount of the annual assessment of the immediately preceding calendar year.
- (ii) Subject to the provisions of this Paragraph, the annual assessment may be

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increased without limit by the affirmative vote of two-thirds (2/3) of the votes of the member present or represented by proxy at a duly called meeting of the Association at which a quorum is present.

Section (d). Notice and Quorum for Any Action Authorized Under Sections (c) Written notice of any meeting called for the purpose of increasing the annual assessment beyond the 10% limit by the Board 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 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 (e). Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section (f). Date of Commencement of Annual Assessments: Due Dates. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section (g) 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 the rate of eight (8) percent per annum, which rate can be increased in the discretion of the Board of Directors; provided such increase does not exceed the highest rate of interest permitted by North Carolina law. The Association may bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the property. No owner may bring an action at law against another owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

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

27. TERM OF COVERAGE: The provisions herein contained shall run with the land and

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bind the land included in said subdivision and shall inure to the benefit of and be enforceable by the Declarant or their nominees, their heirs, successors, and assigns.