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Doc ID: 009379120014 Type: CRP  
Recorded: 10/27/2021 at 08:21:46 AM  
Fee Amt: \$26.00 Page 1 of 14  
Nash County North Carolina  
Sandra D. Davis Register of Deeds

BK 3171 PG 159-172

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**STATE OF NORTH CAROLINA  
COUNTY OF NASH**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR WHITLEY CROSSING SUBDIVISION**

This Declaration is made this the 1st day of October, 2021 by ACE Needham, LLC, (hereinafter referred to as the "Declarant"), and any and all persons, firms, or corporations hereinafter acquiring any of the within described property and any of the property hereinafter made subject to these Restrictive Covenants of Whitley Crossing Subdivision (hereinafter referred to as "Restrictions").

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain property in Bailey Township, Nash County, North Carolina known as Whitley Crossing as conveyed to Declarant by that Warranty Deed recorded in Book 3143, Page 901, Nash County Registry;

WHEREAS, the Declarant, is subdividing the above property into Whitley Crossing Subdivision and is the owner of Lots 1 through 3 and Lots 40 through 54, Phase I which is more particularly described in Map Book 43, Page 188, Nash County Registry to which reference is hereby made for a more complete description; and

WHEREAS, said Whitley Crossing lots are so situated as to comprise a neighborhood unit, and it is the intent and purpose of the Declarant to convey the aforesaid lots to persons who will erect thereon residences to be used for family purposes, subject to the provisions hereinafter set forth; and

WHEREAS, Declarant has agreed to establish a general plan of development as herein set out to restrict the use and occupancy of the property made subject to these Restrictions for the benefit and protection of the property and for the mutual protection, welfare and benefit of the present and the future owners thereof; and

WHEREAS, Declarant desires to provide for the preservation of the value of Whitley Crossing made subject to these Restrictions and for the construction, maintenance and preservation of the Common Property.

NOW, THEREFORE, in accordance with the recitals which by this reference are made a substantive part hereof, Declarant declares that all of the property described herein on above said recorded plats (and all future plats(s) that may be made a part hereof in the manner set forth below) is made subject to these Restrictions and shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of Whitley Crossing as it now exists and may hereafter be expanded, and that such easements, restrictions, covenants and conditions shall burden and be appurtenant to and run with said property and be binding on all parties now or hereafter owning said real property and their respective heirs, successors and assigns, having any right, title or interest in the properties now or hereafter subjected to these Restrictions, and shall inure to the benefit of each owner thereof and their respective heirs, successors and assigns.

## ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Whitley Crossing Homeowners Association, Inc., a North Carolina non-profit corporation. "ARC" shall mean Architectural Review Committee.

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. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all property including improvements thereto owned by the Association for the common use and enjoyment of the Owners to and including any open space as depicted upon the recorded plats. The Common Areas are to be maintained and owned by the Association to and including the entrance signs leading into the subdivision of Whitley Crossing, the cluster box unit (CBU) mailbox area both in its temporary location on Lot 54 as depicted on the recorded plats as well as in its alternate permanent location, and all of the area designated as "open space or common area", if any, on the recorded plats of Whitley Crossing.

Section 5. "Lot" shall mean and refer to any plat of land shown upon any recorded subdivision map of the properties with the exception of the Open Space or Common Area. All Lots in the subdivision are depicted upon the recorded plat(s) referred to herein. The total lot count in the subdivision will be approximately 91, according to the recorded plat(s).

Section 6. "Declarant" shall mean and refer to ACE Needham, LLC, its successors and assigns if such successors and 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. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable fees for the use, upkeep and maintenance upon the Common Areas or any Open Space for the subdivision;

(b) the right of the Association to suspend the voting rights 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 right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Areas to the members of his family, his tenants, or contract purchasers who reside on the property.

**ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Lot, which is subject to assessment, shall be a member of Whitley Crossing Homeowners' Association, Inc. 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 two (2) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. 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 in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (b) on December 31, 2022.

**ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS & INSURANCE**

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 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 capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, 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 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 recreation, health, safety, and welfare of the residents in the Properties and or the improvement and maintenance including but not limited to the Common Areas, sign entrances and any other area designated to the Association. Declarant shall be exempt from all assessments. In the event a builder purchases a lot for a spec house or pre-sale, the assessments shall not be due until closing when the Builder sells the house.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment shall be Two Hundred Forty dollars (\$240.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by not more than five percent (5%) above the maximum assessment for the previous year without a vote of the HOA membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment may be increased by more than five percent (5%) by a vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to the 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 a capital improvement upon the Common or Open Area, including fixtures and personal property related thereto, provided that such assessment shall have the assent of two thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum of 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 or 4 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 each class of 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 6. 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. During and after the development of the subdivision, Declarant shall not be obligated to pay for assessments. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to residential dwelling use shall be exempt from said assessments.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 Board of Directors shall establish the due dates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an office 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 8. 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 percent (8%) per annum. The Association may bring an action at law against the 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 non-use of the Common Area or abandonment of his Lot.

**Section 9. Subordination of Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments, which become 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.

**Section 10. Insurance.** The following provisions shall govern insurance coverage on the Property:

(a) **Ownership of Policies.** The Association for the benefit of all the Association and the Owners shall purchase all insurance policies upon the common area or amenities to the subdivision.

(b) **Coverage.** The Association shall provide adequate insurance for the Common Areas. All improvements and personal property included in the Permanent Common Open Space shall be insured in an amount as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard coverage endorsement, and  
(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, if any.

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) **Liability.** Public liability insurance shall be secured by the Association with limits of liability as determined by the Association and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage, as the Association shall determine from time to time to be desirable and necessary, including coverage for any pond areas.

(d) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of this Article set forth above.

(e) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the By-Laws and for the benefit of the Association and Owners in the following shares:

(i) Proceeds on account of damage to Permanent Common Open Space and facilities held for the Association.

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(f) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association, as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(i) Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made therefore.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

## ARTICLE V ARCHITECTURAL CONTROL

Section 1. Developer's Rights. All duties and responsibilities conferred upon the Architectural Review Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its Designee, so long as Declarant shall own any lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration. Declarant reserves the right and option to alter, change or convert any lot in the subdivision into an area for ingress, egress or for a utility easement or for other developmental purposes so long as Declarant owns a lot in the subdivision.

Section 2. Building, Site Improvements, Plan Approval & Construction Time Limits.

(a) No dwelling, fence, wall or other structure shall be commenced, erected, or maintained upon any Lot in the Properties, nor shall any exterior addition to or change or alteration therein be made, including landscaping, until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all lots by Declarant, by the Board of Directors of the Association, or by an Architectural Review Committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Refusal of approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations that in the sole and uncontrolled discretion of the Declarant or Architectural Review Committee shall seem sufficient. One copy of all plans and related data shall be furnished to the Declarant or Architectural Review Committee, as the case may be, for its record. Neither the Declarant nor the Architectural Review Committee shall be responsible for any structural or other defects in plans or specifications submitted to it or any structure erected according to such plans and specifications.

(b) The exterior and square footage requirements for each lot are set forth in Section 3 of this Article. All foundations of any dwelling shall be 22" above grade and shall be constructed of 4 sided brick or stone veneer or other material approved by Declarant or Architectural Review Committee.

(c) All driveway connections for each Lot shall be installed to meet the Nash County Ordinances and the North Carolina Department of Transportation (NCDOT) "Typical Driveway Turnout Grades" and the

driveway pipe shall be installed to meet Nash County and the NCDOT specifications and standards. Any Lot Owner shall comply with the special installation provisions required by Nash County for driveway installations as depicted on the recorded plat. All driveways shall be constructed of concrete or other suitable material as approved by Declarant. Any driveway pipes or connections that are not properly installed and require any type of work or reinstalling before the NCDOT will accept the public road for addition to the state road system shall be the responsibility of the owner of each individual lot. Declarant, or its successors or assigns shall have the right to correct improperly installed driveways and be paid by the individual lot owner should the individual lot owner not remedy the driveway property which might delay NCDOT from accepting the road for maintenance. The Declarant shall be responsible for the construction and maintenance of the roads within the subdivision and shall insure that all such roads are in compliance with the regulations of the NCDOT until such time as such roads are accepted and dedicated to the State of North Carolina for state maintenance.

(d) No slab, mobile homes, manufactured or modular homes shall be permanently or temporarily located on a Lot. All houses shall be "stick built or engineered trusses" pursuant to local and state building codes and must be constructed with an attached garage. No house or structure shall be moved onto any Lot. All structures built or placed upon any Lot shall be subject to review and approval of the Declarant or Architectural Review Committee.

(e) Time Limits. By acceptance of a deed, each Lot Owner or assigns agrees to have all public or private approvals necessary and shall start physical construction of a dwelling within twelve (12) months of acceptance of such deed. In the event construction is not started within twelve (12) months of acceptance of deed, the Lot Owner shall, at the Declarant's option, sell the Lot back to the Declarant at the original sales price, exclusive of any other costs incurred by Lot Owner. Declarant may extend the twelve month start time by up to 6 months for any reason deemed acceptable to Declarant. At the end of any time extension the buy-out option would then exist again for the Declarant. Time is of the essence. Notification will be by certified mail.

(f) Once construction begins, each Lot Owner will be required to complete construction of any dwelling ready for occupancy within 270 days. Start date for construction will be the date the Nash County building permit is issued. Completion date will be the date that Nash County issues a certificate of occupancy. If construction is not completed within the allowed 270 days, then the Lot's Owner will pay to the Declarant \$10.00 dollars a day for each day over the 270 days until completions. Time is of the essence. Notification will be by certified mail.

**Section 3. Minimal Square Footage for Houses and Additional Requirements. \*Lot Owners shall be responsible for verifying these covenants regarding the permissible square footage and building materials for the dwelling, which is set forth below.**

(a) All Lots depicted upon the recorded plats referred to herein are subject to the following restrictions. No house plans will be approved unless the proposed house shall have a minimum heated square feet total of 1550 square feet for the enclosed dwelling area and if the house is more than one level, the bottom level shall have at least 600 square feet of heated space. All house plans must provide for the construction of an attached garage, which garage shall have garage doors with glass windows. Vinyl siding is permissible for the exterior of the house or any other material as approved by the Declarant.

(b) The term "enclosed dwelling area" as used in this section shall be defined as the total enclosed area within a dwelling, provided, however, that such term does not include garages, terraces, decks, open porches, and like areas; provided, further, that shed type porches, even though attached to the house are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

(c) In the sole discretion of the Declarant, there may be a variance of no more than ten percent (10%) regarding the square footage for any dwelling area as set forth in this section and Declarant has the absolute discretion to approve exterior building materials and colors.

(d) All lots shall comply with the setback requirements from the Nash County ordinances or any other governmental agency having jurisdiction to regulate the setbacks for each lot. Setbacks are set forth on the recorded plats referred to herein.

(e) The exterior and landscaping of all houses and other structures must be complete within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner of builder, due to strikes, fires, national emergency or natural calamities. This deadline may only be extended in writing by Declarant or ARC.

(f) No structure shall be erected, altered, placed, or permitted to remain on any lot, except one (1) single family dwelling not to exceed the maximum height allowed by Nash County ordinances then in effect and a private garage for not more than three (3) automobiles, unless the Declarant or the Architectural Review Committee, as the case may be, approves in writing a structure of more height and a variance is obtained from Nash County and one or more small accessory buildings (which may include a detached private garage, servants quarters, or guest facilities) provided the use of such dwelling or accessory building does not in the opinion of the Declarant or Architectural review Committee overcrowd the site, and provided further, that such buildings are not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main dwelling.

(g) All service utilities, fuel tanks, wood piles, and trash and garbage accumulations are to be enclosed within a fence, wall or plant screen of a type and size approved by a Declarant of the Architectural Review Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision.

(h) Off street parking for not less than two (2) passenger automobiles must be provided on each lot prior to the occupancy of any dwelling constructed on said lot, which parking areas and the driveways thereto shall be approved by Declarant or Architectural Control Committee.

(i) All ditches and road right-of-ways in the front yards shall be seeded with straw or other areas designated by the Declarant or the Architectural Control Committee.

Section 4. Maintenance by Association. The Association at its expense shall be responsible for maintaining, repairing, and replacing utility and drainage lines and pipes, which are located on the properties, except those located within individual lots. The Association shall have the right to go onto the lots at reasonable times for the purpose of maintaining, repairing, or replacing all utility and drainage lines and pipes that might be located on such lots; and each Owner hereby grants permission to the Association to enter the lot for such purposes.

In the event that the need for maintenance, repair, or replacement (other than said be caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies) is caused through the willful, or negligent act of the Owner, his family, guests or invitees, the costs of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such lot is subject.

Section 5. Easements. There is hereby reserved to Declarant and its Assignees a blanket easement upon, across, above and under all property within the community for access, ingress, egress, installation, repairing, and maintaining all utilities serving the community or any portion thereof, including, but not limited to, gas, water, sanitary, sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant might decide to have installed for either of themselves or their designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining or to authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party requesting such utility or service, request a specific license or easement by separate recordable document, the Declarant shall have the right to grant such easement. In addition, the following restrictions apply to these covenants:

(a) Declarant reserves the right to subject the real property in the subdivision to a contract with any power company for the installation of street lighting, which requires a continuing monthly payment to the power company provider by each Lot owner being a residential customer.

(b) All of the Properties, including Lots and Permanent Common Open Space, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Permanent Common Open Space conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Permanent Common Open Space, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties.

(c) All Lots shall be subject to easements for the encroachments constructed on adjacent Lots by Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

(d) An easement is hereby established over the Permanent Common Open Space and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

(e) All easements as depicted on the recorded plats for the subdivision are incorporated into this provision fully by reference.

(f) Declarant reserves a sign easement for entrance way signs for the subdivision along NCSR 1956 (Needham Road) and Whitley Road as set forth in the recorded plat in the Nash County Registry.

Section 6. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, use restrictions, and any amendments to any of the foregoing, Declarant hereby expressly reserve unto themselves and their successors and assigns a non-exclusive, perpetual right, privilege, any easement with respect to the community for the benefit of Declarant, their successors, and assigns, over, under, in and/or on the community, without obligation and without charge to Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the community and any other property now owned. The reserved easement shall constitute a burden on the title to the community and specifically includes, but is not limited to:

A. the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on or in the community; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services,

including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the community; and

B. the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs, model residences, and sales offices in the community;

C. no rights, privileges, any easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the community, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit-claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

D. Declarant reserves the right and option to alter, change or convert any Lot in the subdivision into an area for ingress, egress or for a utility easement or for any other reason to further the development of the subdivision.

## ARTICLE VI USE RESTRICTIONS

Section 1. Land Use, Building Type. No Lot in Whitley Crossing Subdivision shall be used except for residential purposes, provided, however, this shall not prevent the Declarant from constructing models or sales offices within the subdivision and from operating offices for the purpose of sales and other related activities from said model or office. With the exception of Declarant's development rights, all Lots (herein referred to as "single family lots") in Whitley Crossing shall be restricted for the construction of single-family dwellings only. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article V of this Declaration relating to architectural control. Different land use restrictions and architectural control guidelines may be established for adjoining properties to develop by the Declarant.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature that may diminish or destroy the enjoyment of other property in the neighborhood by the Owners thereof. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly, or un-kept condition of buildings or grounds on such lot, which would tend to substantially decrease the beauty of the neighborhood area as a whole or the specific area. The discharging of any firearm in the subdivision is prohibited.

Section 3. Lot Maintenance and Dividing. In the event that any Lot Owner shall fail or refuse to keep such premises free from weeds, underbrush or refuse piles, or unsightly growth or objects, then, after thirty (30) days' notice from the Architectural Review Committee, the Association or its designee shall enter upon such lands and remove the same at the expense of the Owner, and such entrance shall not be deemed a trespass, and in the event of such removal a lien shall arise and be created in the favor of the Association for the full amount thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefore. Such lien shall be enforceable by Court proceedings as provided by law enforcement liens. No Lots shall be re-subdivided nor shall any portion of a Lot be conveyed to reduce its size without the express written consent of the Declarant, which may be withheld.

Section 4. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or any other out building shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 5. Recreational Vehicles. Any boat, motor boat, PWC, ATV, camper, utility trailer, motor homes, RV, or similar type vehicle remaining on any lot at any time shall be garage stored or parked in the back yard with back yard being defined as the rear corners of the house. The riding or use of any-ATV; go-cart, dirt bike, and other gas powered motorized vehicles is prohibited in the subdivision. This provision does not apply to street approved motorcycles, riding lawn mowers or gas or electric golf carts but all Lot owners shall comply with state highway laws regulating vehicles.

Section 6. Animals. No animals, livestock, or poultry of any kind shall be maintained on any Lot or in any dwelling except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed or contained.

Section 7. Outside Antennas. No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Declarant, Board of Directors of the Association or its Architectural Review Committee (ARC). Only satellite dishes twenty-four inches (24") in diameter or smaller are permissible.

Section 8. Exterior Lights and Paint Colors. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white or non-frost lights or bulbs. Declarant or the Architectural Review Committee shall approve exterior Paint colors.

Section 9. Junk Vehicles, Commercial Vehicles and Race Cars. No unlicensed, inoperable or unregistered motor vehicle shall be allowed to stand on any Lot, street, or street right of way for more than forty-eight (48) hours. No stripped, partially wrecked, or junk motor vehicles, or part thereof, shall be permitted to be parked or kept on any street, right of way or Lot, in such a manner as to be visible to the occupants of other Lots or the users of any street. No trucks, cars, other automobiles, or trailers of any kind shall be parked in the streets or along the street right of way. Commercial vehicles are prohibited in the subdivision except one pick-up, van or truck rated at one (1) ton or less and operated on a daily basis by the owners of the lot unless otherwise approved in writing by Declarant or ARC. No racecars or racecar trailers are permitted in the subdivision. The Association shall have the right to have all such vehicles towed away at the Owner's expense.

Section 10. Signs. No "FOR SALE" signs or any other signs shall be permitted on any lot or in the common areas without the permission of the Declarant or the Board of Directors, except that a sign conforming to the Nash County Sign Ordinance may be placed by Declarant on any Lot used by Declarant as a sale/rental office for the project so long as Declarant owns any Lot in the Properties. This covenant shall not apply to any subdivision entrance signs installed by Declarant at any designated sign easement area set forth on the recorded plat or for signs used during construction. The Homeowners' Association shall maintain all entrance signs.

Section 11. No fence or fencing-type barrier or material of any kind shall be placed, erected, allowed or maintained upon any portion of the community, including any and all lots, without the prior written consent of Declarant or the designated Architectural Committee. The Declarant and/or the Architectural Committee may issue guidelines detailing acceptable fence styles or specifications and approval of fencing may be withheld arbitrarily. All fences have to meet a minimum building setback line, except

when approved otherwise by the Declarant or Architectural Committee. The lot owners shall maintain all approved fencing in a good aesthetically appearing condition.

Section 12. No metal structures or buildings shall be permitted, including but not limited to metal carports, canopies or garages. All accessory buildings must conform to the same architectural style as the residence located on the same lot and be approved by Declarant. No detached garage shall at any time be used for human habitation, either temporarily or permanently. All playground equipment and playhouses shall be placed to the rear of the main dwelling structure. No underground storage tanks are allowed. All fuel or propane tanks must be placed above ground level and the same will be screened on three sides by a lattice type material to prevent view from the main road. Architectural Committee approval is required for the construction of a pool. No aboveground pools are permissible. Pools may only be located in the back yard of the lot with back yard being defined as the rear corners of the house. Pools shall be fenced for safety purposes. Pools require a valid building permit and are governed under the jurisdiction of Nash County. All pools must be code compliant.

Section 13. Garbage, Clothesline, Woodpiles and Maintenance. All lots, whether occupied or unoccupied, shall be well-maintained, mowed and cut and no unattractive growth or accumulation of rubbish, debris, woodpiles, or building materials shall be permitted. Should any lot owner fail to maintain the lot in a neat and clean fashion, then Declarant, Architectural Committee or Association shall have the lot cleaned up and the lot owner shall be responsible for the costs incurred. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage containers and other similar items and firewood shall be located or screened so as to be concealed from view of neighboring lots, streets, or passing vehicles; provided garbage containers may remain on the curbside for up to twelve (12) hours on days of scheduled curbside pick up. No lot shall have a clothesline or similar obstruction used for the drying of clothing. All lot owners shall upkeep and maintain the grass, vegetation and landscaping for each lot, whether the lot is occupied or unoccupied, to and including any easement areas.

## ARTICLE VII WATER & SEWER SERVICES

Section 1. Water & Sewer Service. All lot owners shall be required to use water service supplied by Nash County for all household uses. Sewer services shall be provided by individual septic systems properly permitted on each lot. All lot owners shall be subject to monthly charges as approved by Nash County or other public authorities for water.

## ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property by the Association shall require the assent two-thirds (2/3) of the members at a meeting duly called for these purposes, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section 2. The Declarant, without the consent of or notice to individual lot owners and members of the Association, may annex additional properties, which are part of the original 31.0 and 10.4 acre parcels of land for use in the development of Whitley Crossing as described in Deed Book 3143, Page 901, and as partially shown in Plat Book 43, Page 188, Nash County Registry, and develop additional phases to the subdivision.

## ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at a law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the 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. The Court may award attorney's fees, plus any costs, to the prevailing party in any subsequent civil action. Any action filed to enforce these covenants shall be filed in the District or Superior Court of Nash County, North Carolina. In no event shall Declarant be responsible for enforcing these covenants after written notice to delegate enforcement is provided to the Homeowners' Association by Declarant or its assigns.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. During the Declarant Control Period (defined as the period of time beginning on the date this Declaration is recorded and ending upon the transfer of at least ninety percent (90%) of the lots conveyed to lot owners for residential occupancy) only Declarant may amend this Declaration, which amendment can be made without the approval of any Owner, or the Association, provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's lot or the common areas and provided the amendment does not adversely affect title to any lot. After the Declarant Control Period, 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 they shall be automatically extended for successive period of ten (10) years each. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75) percent of the Lot Owners, and thereafter by an instrument signed by not less than sixty-five (65) percent of the Lot Owners. Any amendment must be recorded. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

(a) Reasonably assure itself that the Owners of the required number of Lots have executed the amendment. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its name by its duly authorized member/manager of the Company as of the day and year first above written.

ACE Needham, LLC

Alexander P. Ivey (SEAL)  
Alexander P. Ivey, Member/Manager

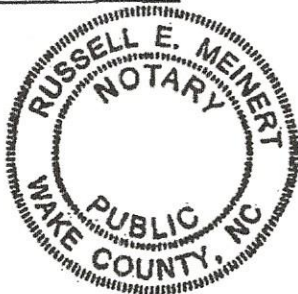
STATE OF NORTH CAROLINA  
WAKE COUNTY

I, Russell E. Meinert a Notary Public of Wake County, State of North Carolina, certify that Alexander P. Ivey, personally came before me this day and acknowledged that he is a member/manager of ACE Needham, LLC, a North Carolina Limited Liability Company and that by authority duly given and as the act of said entity, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and official stamp or seal, this the 1st day of October, 2021.

Russell E. Meinert  
NOTARY PUBLIC

My commission expires: 11-09-2023



26.00  
Planning  
14