

Please index in Grantor index under "Lake Castleberry" and under "The Point at Lake Castleberry"

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Prepared by & return to:
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF RECREATIONAL COVENANT AND EASEMENT

THIS **DECLARATION OF RECREATIONAL COVENANT AND EASEMENT** ("**Declaration**") is made as of the date of its recordation in the office of the Register of Deeds for Wake County by **LAKE CASTLEBERRY OWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation ("**Association**").

RECITALS

The Association is the owner of that certain real property described on Exhibit A to this Declaration ("**Common Area Recreational Property**") and certain recreational improvements constructed thereon, including, without limitation, a pool, clubhouse and parking facilities (collectively, the "**Recreational Facilities**"), which real property and improvements constitutes a portion of the residential planned community located in Wake and Chatham Counties, North Carolina, known as Lake Castleberry (the "**Lake Castleberry Property**"). The Lake Castleberry Property is subject to that certain Declaration of Covenants, Conditions and Restrictions for Lake Castleberry in Book 16576, Page 1281 of the Register of Deeds for Wake County, North Carolina and in Book 1887, Page 269 of the Register of Deeds for Chatham County, North Carolina (as amended and supplemented from time to time, the "**Lake Castleberry Declaration**"), which declaration establishes membership within the Association for each owner of a lot within the Lake Castleberry Property and establishes the rights of such members and certain authorized users to use the common areas within the Lake Castleberry Property, including, without limitation, the Common Area Recreational Property and the Recreational Facilities. As set forth in the Lake Castleberry Declaration, the Association is Submitted electronically by K&L Gates LLP in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Wake County Register of Deeds.

responsible for operating and maintaining the common area property within the Lake Castleberry Property, including, without limitation, the Common Area Recreational Property and the Recreational Facilities.

By that certain Declaration of Recreational Covenant and Easement recorded in Book 17643, Page 2259 of the Register of Deeds for Wake County, North Carolina, Declarant established easements to use the Recreational Facilities benefiting thirty-six (36) of the residential lots within The Point (as defined below) as more particularly described therein.

Upon due resolution of its board of directors, the Association has determined it is in the best interest of its membership to establish easements to use the Recreational Facilities benefiting the remaining eleven (11) residential lots within The Point at Lake Castleberry residential subdivision ("**The Point**"), which community is proximate to the Lake Castleberry Property.

By this Declaration, Association intends to grant a Recreational Easement (as described below) benefiting the remaining eleven (11) residential lots within The Point as described on Exhibit B of this Declaration (each such lot as described on Exhibit B as shown on a recorded subdivision map from time to time shall be referred to herein as a "**Point at Lake Castleberry Lot**") and to establish the obligation of the owner of each Point at Lake Castleberry Lot upon its election to use the Recreational Facilities to pay such user fees for the Recreational Easement and to comply with rules and regulations attendant thereto as the Association may establish from time to time in accordance with this Declaration.

Article I **Declaration of Intent and Binding Effect**

Association hereby incorporates the foregoing Recitals by reference, and, subject to the terms and provisions hereof, hereby establishes and grants to each owner of a Point at Lake Castleberry Lot and its grantees and successors in title, for the benefit of each said owner of a Point at Lake Castleberry Lot as well as for the benefit of its respective Authorized Users (as defined below), and as an appurtenance to and for the benefit of each Point at Lake Castleberry Lot, a non-exclusive easement, right and privilege to go on, over and upon the Common Area Recreational Property to use the Recreational Facilities in accordance with the terms and conditions of this Declaration and the rules and regulations promulgated by the Association from time to time ("**Recreational Easement**").

Association, as the owner of the Common Area Recreational Property, hereby declares that the Common Area Recreational Property shall hereafter be held, sold, and conveyed subject to the covenants, conditions, restrictions, and easements contained herein, which shall run with the title to the Common Area Recreational Property and each Point at Lake Castleberry Lot. This Declaration shall be binding upon all persons having any right, title, or interest in any portion of the Common Area Recreational Property, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of the owners of each Point at Lake Castleberry Lot, except as otherwise expressly provided or limited herein.

Article II
Recreational Easement

2.1. Right to Use.

Each person who holds record title to a Point at Lake Castleberry Lot (as identified in the recorded deed of conveyance), other than a person holding title merely as security for performance of an obligation (*i.e.*, pursuant to a deed of trust or similar instrument) may exercise its rights under the Recreational Easement upon payment to the Association of the User Fee (as defined in Section 3.2 below) and shall retain its rights under such Recreational Easement so long as such person continues to hold title to such Point at Lake Castleberry Lot and pays the annual User Fee (each an "**Easement Holder**"). However, there shall be only one Recreational Easement for each Point at Lake Castleberry Lot. Thus, if a Point at Lake Castleberry Lot has more than one Easement Holder, all co-Easement Holders of such Point at Lake Castleberry Lot are jointly and severally responsible for the obligations of the Recreational Easement and share the privileges of such Recreational Easement, subject to reasonable regulation by the Association's board of directors ("**Board**"). If an Easement Holder is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Easement Holder designates from time to time in a writing to the Association's Secretary, except that only the Authorized Users (as defined below) of the Point at Lake Castleberry Lot shall be entitled to use the Recreational Facilities.

2.2. Activation of Recreational Easement.

Upon payment of any User Fee required under Section 3.2 and execution of a use agreement in such form as the Association may require consistent with this Declaration, the Association shall activate a Recreational Easement in the name of the Easement Holder of the Point at Lake Castleberry Lot, entitling the Authorized Users (as defined below) to use and enjoy the Recreational Facilities generally available for use by members of the Association in accordance with the Lake Castleberry Declaration, subject to such guest, user and service fees and such rules, regulations, and operating policies as the Association may establish from time to time. In the use agreement required by this Section, the Easement Holder shall identify each Easement Holder of the Point at Lake Castleberry Lot and provide such information regarding the Easement Holder and Authorized Users (as defined below) as the Association deems reasonably necessary to control use and access to the Recreational Facilities and facilitate operations. In addition, the Easement Holder shall acknowledge, on behalf of the Easement Holder and all Authorized Users, the matters set forth in Article V of this Declaration.

2.3. Exercise of Recreational Easement Privileges.

(a) The "**Authorized Users**" of a Recreational Easement issued pursuant to this Declaration shall be as follows:

(i) in the case of an Easement Holder or co-Easement Holders who are natural persons, one person 18 years of age or older who is an Easement Holder, his or her

spouse, if married, or if unmarried, one "**Significant Other**" as defined below, and in either case, the unmarried children of such Easement Holder and spouse or Significant Other who are 24 years of age or under and who are living with the Easement Holder, attending school on a full-time basis, or serving in the United States Armed Services; or

(ii) in the case of an Easement Holder which is a legal entity, one person 18 years of age or older whom an officer of such entity designates in writing to the Association ("**Designee**"), his or her spouse, if married, or if unmarried, one "**Significant Other**" as defined below, and in either case, the unmarried children of such Designee and spouse or Significant Other who are 24 years of age or under and who are living with the Designee, attending school on a full-time basis, or serving in the United States Armed Services; or

(iii) if an Easement Holder leases the Easement Holder's Point at Lake Castleberry Lot and completes and returns to the Association a copy of the lease and an assignment of privileges in such form as the Association may specify assigning the use privileges of such Recreational Easement to the tenant under such lease ("**Tenant**"), then upon approval by the Association, the Tenant, his or her spouse, if married, or if unmarried, one "**Significant Other**" as defined below, and in either case, the unmarried children of such Tenant and spouse or Significant Other who are 24 years of age or under and who are living with the Tenant in the Point at Lake Castleberry Lot, attending school on a full-time basis, or serving in the United States Armed Services.

A "**Significant Other**" is an individual who resides with an unmarried Easement Holder, unmarried Designee, or unmarried Tenant and whom the Easement Holder, Designee, or Tenant has designated as a "**Significant Other**" by written notice to the Association. Such designation may be changed no more than once in any calendar year upon payment of such change fees as the Association may establish.

(b) All privileges of the Recreational Easement shall be limited to operating hours and subject to such policies and rules, including such disciplinary procedures and sanctions, as the Association may establish and modify from time to time.

(c) Nothing herein shall obligate Association to offer or maintain food and beverage service nor shall anything herein dictate the level of service or hours of operation of any food and beverage service provided.

2.4. No Ownership or Membership Interest. No Easement Holder, by virtue of ownership of a Point at Lake Castleberry Lot or by virtue of holding a Recreational Easement in the Association, acquires any ownership or beneficial interest or other vested interest whatsoever in the Common Area Recreational Property or the Lake Castleberry Property, but only the privilege of using and enjoying the Recreational Facilities in accordance with this Declaration and the Association's policies and rules, which are subject to change from time to time. No Easement Holder, by virtue of ownership of a Point at Lake Castleberry Lot or by virtue of holding a Recreational Easement in the Association, shall be a member of the Association or have any rights under the Lake Castleberry Declaration.

Article III
Obligation to Pay User Fees

3.1. Covenant to Pay. Each Easement Holder, upon activating its Recreational Easement, covenants and agrees to pay to the Association the User Fee required under Section 3.2, subject to the terms of this Declaration.

3.2. User Fee.

(a) Each owner of record title to a Point at Lake Castleberry Lot shall have the right to activate its Recreational Easement upon payment to the Association of a non-refundable, annual user fee in the amount of \$600.00 ("User Fee"). On the second anniversary of the recordation date of this Declaration and on each subsequent anniversary, the User Fee shall automatically increase by up to 3% of the User Fee then in effect as determined by the Board. If an Easement Holder of a Point at Lake Castleberry Lot elects to activate its Recreational Easement after the second anniversary of recordation date of this Declaration, it shall be required to pay the amount of the User Fee then in effect. Once activated, an Easement Holder of a Point at Lake Castleberry Lot must pay its User Fee on an annual basis in accordance with payment dates established by the Association. Annual User Fees shall not be pro-rated. Once activated, an Easement Holder's rights under the Recreational Easement may lapse if the User Fee is not paid annually. In such event, such Easement Holder must pay the User Fee then in effect to re-activate its right to exercise the Recreational Easement.

(b) The User Fee provided for in this Section 3.2 shall be paid directly to the Association. In the event an Easement Holder of a Point at Lake Castleberry Lot is not current in the payment of its User Fee, its right to exercise the Recreational Easement shall be suspended until payment of the User Fee is made.

(c) Any change in ownership of a Point at Lake Castleberry Lot resulting in any portion of the ownership interest coming to rest in the hands of a person or entity that did not hold an ownership interest on the date the Recreational Easement was activated shall constitute a change in ownership requiring payment of another User Fee pursuant to subsection (a) above.

Each Easement Holder transferring his or her ownership interest in a Point at Lake Castleberry Lot shall be responsible for informing the subsequent Easement Holder in writing of this obligation prior to entering into a contract for the sale of the Point at Lake Castleberry Lot or otherwise transferring any interest in the Point at Lake Castleberry Lot.

3.3. Independent Covenant. In order for an Easement Holder of a Point at Lake Castleberry Lot to exercise its rights under the Recreational Easement, it must pay a User Fee to the Association. Upon activation of the Recreational Easement, the obligation to pay the User Fee shall be mandatory for each year in which the Easement Holder desires to exercise its rights under the Recreational Easement and shall be a separate and independent covenant on the part of the Easement Holder(s) of each Point at Lake Castleberry Lot. Upon payment, no Easement Holder may exempt himself or herself from liability for the paid User Fee by non-use of the Recreational Facilities, abandonment of his Point at Lake Castleberry Lot, or any other means.

No diminution or abatement of the User Fee or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Article IV
Administration and Obligations of Association

4.1. Administration.

(a) Board of Directors. The Association is governed by a board of directors as provided in its Articles of Incorporation, its bylaws, and the Lake Castleberry Declaration. Until the expiration of the period of Declarant control as set forth in the Lake Castleberry Declaration, the Declarant (as such term is defined in the Lake Castleberry Declaration) has the right to appoint the members of the Board and the officers of the Association. Thereafter, the members of the Association shall have the right to elect the Board as provided in the Association's bylaws and the Lake Castleberry Declaration.

(b) Membership. The members of the Association are limited to the lot owners within the Lake Castleberry Property. The owners of Point at Lake Castleberry Lots shall not be members of the Association.

(c) Voting. The owners of Point at Lake Castleberry Lots shall have no right to vote on matters in the Association.

4.2. Maintenance and Operation. The Association is responsible for management, operation, and control of the Common Area Recreational Property and shall maintain it in accordance with the Lake Castleberry Declaration, subject to such reasonable operating hours and seasonal closings as the Association may reasonably establish and subject to the right of the Association to temporarily close the facilities to host private functions or as may be reasonably necessary to perform maintenance or repairs.

The Association may enter into leases, licenses, and management or operating agreements with respect to the Common Area Recreational Property, for payment or no payment, as the Board deems appropriate. The Association may permit use of the Recreational Facilities by persons other than members of the Association and Authorized Users and may charge guest and other user fees, in such amount as the Board may establish, for such use.

4.3. Compliance and Enforcement. Every Easement Holder of a Point at Lake Castleberry Lot and Authorized User must comply with this Declaration and such rules as the Association may adopt from time to time to regulate use and conduct on the Common Area Recreational Property and the Recreational Facilities. Each Easement Holder shall be responsible for ensuring compliance by the Easement Holder's Authorized Users and guests, and may be sanctioned for their violations and for any damage to the Common Area Recreational Property or Recreational Facilities that any of them may cause. The Association shall have all

rights and remedies at law or in equity to enforce this Declaration. In addition, the Board may impose sanctions for violations of this Declaration and the rules, including without limitation:

(a) imposing reasonable monetary fines. If an Authorized User or guest violates the Declaration or rules and a fine is imposed, the fine may, but need not, first be charged to the violator; however, if the fine is not paid by the violator within the time period set by the Board, the sponsoring Easement Holder of the Point at Lake Castleberry Lot shall pay the fine upon notice from the Board;

(b) suspending any Easement Holder's right to use the Recreational Facilities (A) for any period during which the Easement Holder's account remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation. Suspension of a Easement Holder's right shall suspend the use privileges of all Authorized Users and guests of such Easement Holder;

(c) expelling any person from the Common Area Recreational Property or confiscating its personal property in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(d) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

In any action to enforce this Declaration or rules, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Article V **Notices and Disclosures**

5.1. Safety and Security. Each Easement Holder, Authorized User, and guest shall be responsible for their own personal safety and the security of their property while using the Recreational Facilities. The Association may, but shall not be obligated to, maintain or support certain activities designed to promote or enhance the level of safety or security that each person provides for himself or herself and his or her property. However the Association shall not have any liability for any loss or injury by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any security or safety systems or measures will be effective in all circumstances. The Association and its Board are not insurers or guarantors of security or safety and each Easement Holder and Authorized User assumes all risks of personal injury and loss or damage to property resulting from acts of third parties.

5.2. Assumption of Risk. Each Easement Holder and each Authorized User, by use of the Recreational Facilities, assumes all risks associated with the use of the Recreational Facilities and agrees to release the Association from and indemnify it against any and all losses, expenses, liens, claims, demands, and causes of action of every kind and character for death, personal injury, property damage or any other liability, damages, fines, or penalties, including costs, attorneys' fees and settlements, whether or not based on the acts or omissions of the Association resulting from, arising out of or in any way connected with the use of the Recreational Facilities by the Easement Holder, Authorized Users of the Easement Holder's Recreational Easement, and guests, or if an Easement Holder is a legal entity, by its approved Designee(s), their Authorized Users, and guests, except to the extent that the same are the direct result of the gross negligence or willful misconduct of the Association or its employees. As used in this paragraph, "Association" shall include the Association and its members, and the heirs, successors, assigns, officers, directors and employees of the Association and its members, and all persons, corporations, limited liability companies, partnerships, and other entities with which it has in the past, is or may in the future become affiliated.

5.3. No Liability for Personal Property. Each Easement Holder and each Authorized User, by use of the Recreational Facilities:

(a) assumes sole responsibility for its personal property and acknowledges that the Association shall not be responsible for any loss or damage to any personal property which any such person may use or store on the Common Area Recreational Property, whether in lockers or elsewhere; and

(b) acknowledges and understands that he or she shall be liable for any property damage or personal injury occurring on the Common Area Recreational Property as a result of such person's actions, or at any activity or function which the Association operates, organizes, arranges, or sponsors, whether or not on the Common Area Recreational Property, which Easement Holder or its Designee(s), or their respective Authorized Users or guests, may cause. If Easement Holder or Authorized User arranges or sponsors any activity or function on the Association premises, Easement Holder shall be responsible for any such damage or injury even if Easement Holder did not cause such damage or injury.

5.4. No Guarantee of Adequate Capacity. The Recreational Facilities are available for use on a first come, first served basis. Usage patterns for facilities such as the Recreational Facilities can vary greatly from one facility to another and from one season to another depending upon a variety of factors, including distance from residences, season, availability of other amenities, and other circumstances. No representation or warranty is made or authorized by the Association, or any of its agents that the Recreational Facilities are of a size or capacity to accommodate all persons who may be authorized and desire to use them at any one time. If capacity is exceeded at any time, the Association reserves the right to turn away Easement Holders, Authorized Users, and their guests. In such event, the Association shall not have any duty to provide alternative facilities or for any cost incurred by the Easement Holder, Authorized User, or guest in securing alternative facilities.

5.5. Susceptibility to Storm Damage; Closure. The Common Area Recreational Property is located in a region that is subject to hurricanes, tropical storms, high winds, and periodic flooding. Any of these natural occurrences could result in substantial damage to the Common Area Recreational Property and destruction of the Recreational Facilities, which could make all or portions of the Common Area Recreational Property temporarily or permanently unavailable for use. The Association shall not have any obligation to secure alternative facilities for use by Easement Holders. No warranty or representation is made by the Association, or any agent of any of them that the Recreational Facilities can be rebuilt in accordance with the original plans if destroyed.

Article VI
General

6.1. Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail, or delivered by reliable courier or overnight delivery service with tracking capability, to the addresses specified below, unless the Association or owner of a Point at Lake Castleberry Lot has specified, by written notice in accordance with this Section, a different address for delivery of notices, in which case the notice shall be addressed to such different address:

(a) if to the Association:

Lake Castleberry Owners Association, Inc.
c/o Charleston Management Corporation
P.O. Box 97243
Raleigh, North Carolina 27624

(b) if to an Easement Holder, at the address of such Easement Holder's Point at Lake Castleberry Lot.

All such notices shall, for all purposes, be deemed delivered and received (i) upon personal delivery to the addressee, (ii) upon courier delivery to the address of the addressee, signed for by the addressee or another person residing or employed at such address; or (iii) on the third day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

6.2. Amendment. This Declaration may be amended only by an instrument signed by the Association and by The Point at Lake Castleberry Homeowners Association, Inc., which is the mandatory membership homeowners association having jurisdiction pursuant to other recorded covenants over the Point at Lake Castleberry Lots, as authorized by the board of directors of each such homeowner association. Any amendment shall take effect upon recording in the Office of the Register of Deeds of Wake County, North Carolina, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made

within one year of its recordation or such amendment shall be presumed to have been validly adopted.

6.3. Duration; Termination. This Declaration may be terminated only by an instrument recorded in the Office of the Register of Deeds of Wake County, North Carolina, signed by the Association and by the The Point at Lake Castleberry Homeowners Association, Inc., as authorized by the board of directors of each such homeowner association. Unless terminated as provided herein, this Declaration shall terminate upon the termination of the Lake Castleberry Declaration.

6.4. Transfer of Common Area Recreational Property. The transfer of title to the Common Area Recreational Property or any of the Recreational Facilities shall not affect the continued validity or enforceability of this Declaration, unless terminated in accordance with Section 6.3.

6.5. Construction; Severability. This Declaration shall be governed by and construed under North Carolina law. Invalidation of any provision of this Declaration, in whole or in part, by judgment or court order shall not affect other provisions.

6.6. Waiver. No failure of the Association or an Easement Holder to exercise any right or power under this Declaration or to insist upon strict compliance with this Declaration and no custom or practice at variance with the terms of this Declaration shall constitute a waiver of the right thereafter to demand exact compliance with the terms of this Declaration.

6.7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

IN WITNESS WHEREOF, the Association has executed this Declaration as of the date first above written.

ASSOCIATION:

LAKE CASTLEBERRY OWNERS ASSOCIATION, INC.,
a North Carolina nonprofit corporation

By: *Heather G. Gaster*
Name: Heather G Gaster
Title: President

WAKE County, North Carolina

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Heather G Gaster
(Print name of signatory in blank above)

Date: 10/2/2020

My Commission Expires: June 18, 2024

Elisabeth Warren
Notary Public
Print Name: Elisabeth Warren

[Affix Notary Stamp or Seal]

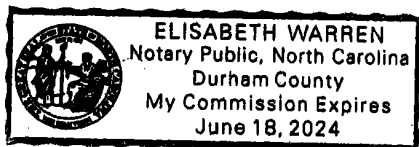


EXHIBIT A

Common Area Recreational Property

BEING ALL of that certain tract or parcel of land identified as “**RECREATION AREA (AMENITY SITE)**,” or otherwise referred to as “**REC/AMENITY AREA**” and containing 2.283 acres (Real Estate ID 0439845), as shown on that certain plat of survey recorded in Book of Maps 2016, Pages 1286 through 1294, inclusive, and Book of Maps 2018, Pages 861 through 863, inclusive, Wake County Registry, which plats are referenced for a more particular description.

EXHIBIT B

Point at Lake Castleberry Lots

BEING all those certain tracts or parcels of land located in the Town of Apex, White Oak Township, Wake County, North Carolina and being more particularly described as follows:

BEING those certain lots identified as Lots 1 through 11, inclusive, as shown on that certain Master Subdivision Plat for The Point at Lake Castleberry recorded in the Wake County Registry in Book of Maps 2020 at Pages 47 through 52.