



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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NORTH CAROLINA **AMENDMENT TO DECLARATION OF COVENANTS,
RESTRICTIONS AND EASEMENTS FOR ASHTON HALL**
DURHAM COUNTY **(Declaration recorded in Book 5802, Page 835)**

THIS AMENDMENT TO DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR ASHTON HALL (hereinafter referred to as the "Declaration") made and entered into the 26th day of SEPTEMBER, 2011, by Hearthstone Multi-Asset Entity B, LP, a California limited partnership (hereinafter referred to as the "Declarant") and Ashton Hall Homeowners Association, Inc., a North Carolina non-profit corporation (hereinafter referred to as the "Association");

WHEREAS, Declarant has previously executed and recorded the Declaration of Covenants, Restrictions and Easements for Ashton Hall, the same having been recorded in Book 5802, Page 826, **Durham County** Registry, as amended; and,

WHEREAS, said Declaration provides in Article X that " This Declaration may also be amended unilaterally by Declarant if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith..."; and,

WHEREAS, the City of Durham has amended and adopted a stormwater ordinance to require the execution of a Stormwater Agreement and Covenant and to require reference in the Declaration to the obligations of the Association to maintain the Stormwater Facility Replacement Fund and the payment of permit fees; and

Whereas, the Declaration imposes a duty on the Association to maintain the common area and to .

NOW, THEREFORE, the Declarant does hereby amend the Declaration as follows:

1. Article I is amended to add three new definitions as follows:

"City" shall mean and refer to the City of Durham, North Carolina, a municipal corporation.

"Code" shall mean and refer to the Code of Ordinances of the City of Durham and the Durham

City-County Unified Development Ordinance, as amended from time to time.

“Stormwater Agreement” shall mean and refer to each Stormwater Facility Agreement And Covenants (Residential Version) recorded with or after this Declaration, any Stormwater Facility Agreement and Covenants entered into and recorded in the Durham County Registry pertaining to future storm water improvements, and any other document of whatever name serving the same purpose, entered into by and among the Declarant, the Association, and the City, or any combination of any of them, concerning the maintenance of storm water drainage Facilities within the Properties and recorded in the Registry. See Article XII below.

2. Article V is amended to add a new Section 10 as follows:

Section 10. Assessments for Stormwater Facilities. It is the intent of Declarant that the Association be responsible for maintaining each and every storm water drainage Facility (as defined in the Stormwater Agreements applicable to the Subdivision) within the Subdivision. As more fully set forth in Article XII hereof and in the Stormwater Agreement, the annual budget of the Association shall contain two (2) separate line items for the Facility/ies. The first (“inspection and maintenance fund”) shall be for routine, expected Facility expenditures, e.g., annual inspections, maintenance, routine repairs, and reporting to the City. The second (the “Major Reconstruction Fund”) shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in a separate account and separated from all other monies of the Master Association, and funds can only be withdrawn from the account in strict compliance with the Stormwater Agreement and this Declaration.

3. The Declaration is amended to add a new Article XII as follows:

ARTICLE XII

OBLIGATIONS REGARDING STORMWATER FACILITIES

The Property may include one or more stormwater management facilities (hereafter “Facility/ies”) that is/are the perpetual responsibility of the Association. Such Facilities are the subject of an agreement (the “Stormwater Agreement”) between Declarant, the Association, and the City that is binding on the Association. The Stormwater Agreement is recorded in Book 6744, Page 303, Durham County Registry and is incorporated herein by reference. As of the date of recording of this Declaration, the property subject to the aforementioned Stormwater Agreement is the “Property” referred to in this Article. If additional property is subjected to this Declaration, and if such additional property contains one or more Facilities, the Declarant, the Association and the City shall enter into, and Declarant shall record in the Registry, one or more additional Stormwater Agreements applicable to such Facilities.

The Facility/ies must be maintained in accordance with City Requirements, which include all ordinances, policies, standards, and maintenance protocols and in accordance with the recorded Stormwater Agreement. In particular the City’s current “Owner’s Maintenance Guide for Stormwater BMPs Constructed in the City of Durham” (available at the time of recording this document at www.durhamnc.gov/departments/works/pdf/draft_owners_maint_guide.pdf) and the operation and

maintenance manual prepared specifically for the Facility/ies contain requirements that apply to the Facilities.

Nothing in the remaining articles of this Declaration filed by Declarant as part of this Declaration or any subsequent modifications of this Declaration may reduce the Association's or Lot Owners' obligations with regard to the Facility/ies. Such additional covenants may increase the obligations or provide for additional enforcement options.

The Stormwater Facility/ies and their location are as follows:

- i. one (1) wet detention pond (WP#12) with a design storm surface area of 37,233 square feet, design storm storage volume of 32,931 cubic feet and hydraulic depth of 1.44 feet;
- ii. one (1) wet detention pond (WP#13) with a design storm surface area of 20,179 square feet, design storm storage volume of 13,503 cubic feet and hydraulic depth of 1.15 feet;
- iii. one (1) wet detention pond (WP# 14) with a design storm surface area of 36,029 square feet, design storm storage volume of 32,844 cubic feet and hydraulic depth of 1.58 feet;
- iv. one (1) 10-ft level spreader (LS#12) with an engineered filter strip of 30 feet wide immediately downstream of it. The level spreader is downstream of wet pond #12;
- v. one (1) 10-ft level spreader (LS# 14) with a 50 foot riparian buffer downstream of it. The level spreader is downstream of wet pond #14.

In addition to the above obligations, the Association's obligations with regard to the Facilities are:

Section 1. Inspections/Reports to the City. In accordance with City Requirements, the Association shall cause the Facility/ies to be inspected (i) annually, (ii) after events that cause visual damage to the Facility, and (iii) upon notification from the City to inspect. The inspection shall be performed by a registered North Carolina Professional Engineer or a North Carolina Registered Landscape Architect certified by the City who shall document those things mandated by City Requirements. The inspection shall occur annually during the month in which the Facility/ies as-built certification was accepted by the City, which month may be determined through contact with the City of Durham Department of Public Works, Stormwater Division. The inspection shall be reported to the City as further described below.

Section 2. Repair and Reconstruction. The Association shall repair and/or reconstruct the Facility/ies as it determines is necessary, and at a minimum, as set forth in City Requirements or as directed by the City to allow the Facility/ies to function for its intended purpose, and to its designed capacity. The Association shall provide written reports regarding major repair or reconstruction to the City in accordance with City Requirements.

Section 3. Stormwater Budget Line Items and Funding. The dues of the Association shall include amounts for upkeep and reconstruction of the Facilities which shall be included in dues charged to Lots or members from the point that Lots or members are charged dues for other common purposes. The Association shall maintain two (2) separate line items in its budget for the Facility/ies. The first, the "Inspection and Maintenance Fund," shall be for routine inspection and maintenance expenditures and shall be used for annual inspections, maintenance, minor repairs. The funds for this purpose may be maintained as [part of the Association's general account. The second fund, the "Major Reconstruction

Fund”, shall be a separate, increasing reserve fund that will build over time and provide money for major repairs to and eventual reconstruction of the Facility/ies. The Major Reconstruction Fund shall be maintained in an account that is a separate account from the Association’s general account as described below. At a minimum, the Association shall annually, earmark \$11,123 [WP#12: \$2,863; WP#13: \$2,804; WP#14: \$2,860; LS#12: \$1,298; LS#14: \$1298] annually from its collected dues for the Inspection and Maintenance Fund and \$2,372 [WP#12: \$687; WP#13: \$667; WP#14: \$686; LS#12: \$166; LS#14: \$166] for the Major Reconstruction Fund. These minimum amounts shall be increased annually by 3% per year over the prior year’s amount. The Association may set a higher amount in its discretion, or if directed by Durham Director of Public Works after an examination of the Facility/ies. The Association shall set dues at a sufficient amount to fund each of the two line items in addition to the Association’s other obligations. The Association may compel payment of dues through all remedies provided in this Declaration or otherwise available under law.

Section 4. Assessments/Liens. In addition to payment of dues, each Lot shall be subject to assessments by the Association for the purpose of fulfilling the Association’s obligations under this Article and under the Stormwater Agreement. Such assessments shall be collected in the manner set forth in the Declaration. As allowed under NCGS §47F, or successor statutes, or, for condominiums, as allowed under NCGS 47C, or successor statutes, all assessment remaining unpaid for 30 days or longer shall constitute a lien on the Lot. Such lien and costs of collection may be filed and foreclosed on by the Association. In addition, the Association’s rights may, in the discretion of the City, be exercised by the City, as a third party beneficiary of the recorded Stormwater Agreement and/or as Attorney in Fact for the Association, as provided in Section 7 of the recorded Stormwater Agreement.

Section 5. Stormwater Expenditures Receive Highest Priority. Notwithstanding any contrary provisions of the Declaration of which this Article is a part, to the extent not prohibited by law, the inspection, maintenance, repair, and replacement/reconstruction of the Facility/ies shall receive the highest priority (excluding taxes and assessments and other statutorily required expenditures) of all Association expenditures.

Section 6. Separate Account for Major Reconstruction Fund. Engineer’s Report. The Association shall maintain the Major Reconstruction Fund for the Facility/ies in an account separate from the Association’s general account. The Association shall use the Fund only for major repairs and reconstruction of the Facility/ies. No withdrawal shall be made from this fund unless the withdrawal is approved by two Association officials who shall execute any documents allowing such withdrawal. Prior to withdrawing funds from this account, the Association shall (i) obtain a written report from an engineer approved in accordance with City Requirements regarding repairs or reconstruction needed and approximate cost of such repair or reconstruction; and (ii) submit such report to the Director of the City’s Department of Public Works, and notify the Director of the repairs or reconstruction to be undertaken on the Facility, the proposed date, and the amount to be withdrawn from the Major Reconstruction Fund. In the event of an emergency, withdrawal and expenditure of funds may be made after telephone notification to the Stormwater Services Division of the Department.

Section 7. Annual Reports to City. The Association shall provide to the City annual reports in substance and form as set forth in City Requirements. This annual report shall be signed by an officer of the Association, who shall attest as to the accuracy of the information in such report. If prepared by a professional management company hired to manage the Association’s affairs, the report shall so indicate. The Officer’s signature and attestation shall be notarized. At a minimum each report shall include:

- i. the annual Facilities inspections report described in section (1) above;
- ii. a bank or account statement showing the existence of the separate Major Reconstruction Fund described in Section (6) above and the balance in such fund as of the time of submission of the report;
- iii. a description of repairs exceeding normal maintenance that have been performed on the Facility/ies in the past year, and the cost of such repairs;
- iv. the amount of Association dues being set aside for the current year for each of the two stormwater funds — the Inspection and Maintenance Fund and the Major Reconstruction Fund.

Section 8. Facility/ies to Remain with Association's Lot Owners' Liability. To the extent not prohibited by law, the Facility/ies shall remain the property of the Association and may not be conveyed by the Association. In the event the Association ceases to exist or is unable to perform its obligations under this Agreement, all Lot Owners as defined in the Stormwater Agreement referenced above, excluding the Lots owned by the Association, shall be jointly and severally liable to fulfill the Association's obligations under this Agreement. Such Lot Owners shall have the right of contribution from other owners with each Lot's pro rata share being calculated as Lot Owner's proportional obligations are otherwise defined in this Declaration. The City may also exercise the rights described in Section 7 of the recorded Stormwater Agreement and other remedies provided by law.

Section 9. City Rights; Liens Against Owners. In addition to rights granted to the City by ordinance or otherwise, the City shall have the following rights, generally summarized below, and more explicitly set forth in the Stormwater Agreement referenced above:

- a. Direct the Association in matters regarding the inspection, maintenance, repair, and br reconstruction of the Facility/ies;
- b. If the Association does not perform the work required by ordinance, by this Declaration, and by the Stormwater Agreement referenced above, do such work itself, upon 30 days' written notice to the Association.
- c. Access the Facility/ies for inspection, maintenance, and repair, crossing as necessary the lot(s) on which the Facility/ies are located and all other private and public easements that exist within the Property subject to this Declaration.
- d. Require reimbursement by the Association of the City's costs in inspecting, maintaining, repairing, or reconstructing the Facility/ies, as provided in the Stormwater Agreement referenced above.
- e. Enforce any debts owed by the Association as described in the Stormwater Agreement referenced above against Lot Owners if such debts are not fully paid by the Association. The debt may be allocated to Lot Owners as provided in the other sections of this Declaration, and may be made a lien on each owner's property, may be added to each owner's utility bills, and may result in foreclosure, as provided in Section 7 of the Stormwater Agreement referenced above.

Section 10. No Dissolution. To the extent not prohibited by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person who has been approved by the City and has executed a Stormwater Agreement with the City assuming the obligations of the Association. Under the Stormwater Agreement referenced above, individual Lots and Lot Owners continue to be liable for the Facility/ies in the event the Association is dissolved without a new Stormwater Agreement between the City and a responsible party that is assuming the Association's obligations.

Section 11. No Amendment. Without the prior written consent of the City, which may be given by the Durham City Manager, and notwithstanding any other provisions of this Declaration, the Association may not amend or delete this Article with the exception of supplementing its provisions in a more detailed manner to better describe members' or Lot Owners' obligations regarding each other.

Section 12. Stormwater Agreement Supersedes. The Stormwater Agreement referenced above supersedes any limiting provisions contained elsewhere in other Articles of this Declaration. However, such Articles may supplement the obligations of the Association as set forth in that Agreement, and/or the obligations of and remedies against individual Lot Owners or members bound by this Declaration.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.



HEARTHSTONE MULTI-ASSET ENTITY B, L.P.,
a California limited partnership

By: HHPII GP, LLC, a California limited liability company, General Partner

By: [Signature]
Hearthstone, Inc., a California corporation, Manager

By: [Signature]
Tracy T. Carver, Executive VP-General Counsel

STATE OF CALIFORNIA
COUNTY OF MARIN

I, the undersigned Notary Public, certify that the following person(s) personally appeared before me this day, and I have seen satisfactory evidence of the principals' identity, by (choose one) a current state or federal identification with the principals' photograph in the form of a driver's license, or I have personal knowledge of the identity of the principals, or a credible witness has sworn to the identity of the principals, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: TRACY T. CARVER

Date: 9/26/2011

[Signature]
Signature of Notary Public

Notary Name: ANGIE WONG

Printed or Typed Name

My commission expires: 5/17/2013

(Official Seal)



Ashton Hall Homeowners Association, Inc.

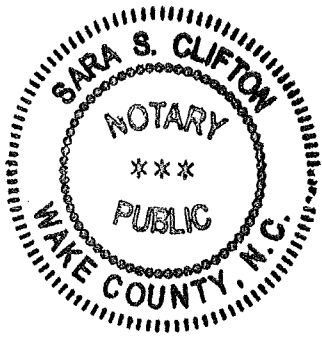
By: *Steven M. Mathison*
Name: Steven M. Mathison, President

STATE OF North Carolina
COUNTY OF Wake

I, the undersigned Notary Public, certify that Steven M. Mathison personally came before me this day and acknowledged that he is President of the Ashton Hall Homeowners Association, Inc., and that he/she, as such officer, being authorized to do so, voluntarily executed the foregoing on behalf of the corporation.

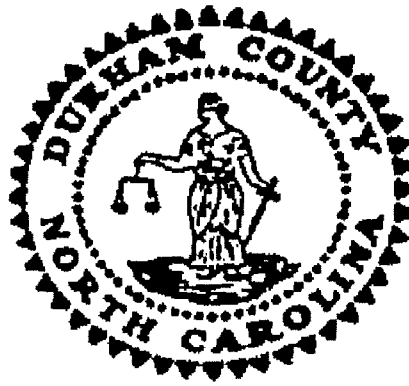
Witness my hand and official stamp or seal, this 26th day of September, 2011.

My Commission expires: 1/10/2015
Notary Public - *Carol S. Clifton* Sara S. Clifton



The foregoing Certificate(s) of is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____, REGISTER OF DEEDS FOR DURHAM COUNTY
By: _____, Deputy/Assistant - Register of Deeds
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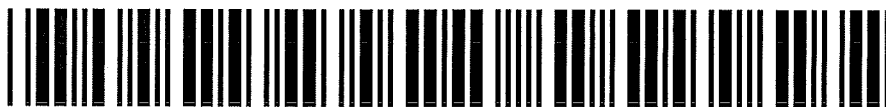


WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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