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Prepared By: Michael S. Yopp, Attorney at Law, P.A.
MAIL To: Churchill Associates, 10931 Strickland Road, Suite 111, Raleigh, NC 27615

DECLARATION OF PRIVATE ACCESS EASEMENT

This DECLARATION OF PRIVATE ACCESS EASEMENT (the or this "Declaration") is made as of the last date set forth in the notary acknowledgment below by Churchill Associates, a North Carolina general partnership (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described as all of Lot 1, Lot 2 and Lot 3 as shown on plat entitled "Minor Limited Subdivision Survey for: Churchill Associates, May 22, 2019, New Light Township, Wake County, N.C." prepared by Puckett Surveyors, PLLC, and recorded in Book of Maps 2020, Page 1027, Wake County Registry, North Carolina (hereinafter referred to as the "Plat"), and all of the real property shown on the Plat is hereinafter referred to as the "Property".

WHEREAS, Declarant desires to subject the Property to a private access easement as shown on the Plat and as such easement is hereinafter described for the benefit of future Lot Owners, as the term is hereinafter defined, who will be subject to and use such private access easement; and

WHEREAS, it is the desire of Declarant that said private access easement be maintained in a safe and usable condition by the Lot Owners and, accordingly, it is the desire of Declarant to establish a method for the maintenance and repair of said private access easement and the apportionment of the costs and expenses of maintenance and repair of the private access easement among existing and future Lot Owners; and

WHEREAS, it is the intention that this Declaration constitute a covenant running with the land, binding upon each successive Lot Owner of all or any portion of the Property;

NOW THEREFORE, the Declarant declares that the Property hereafter is and shall be held, used, transferred, sold, conveyed and occupied subject to the terms, conditions and provisions of the covenants, conditions, restrictions, easements, and charges which shall should run with, burden and bind the Property, all as hereinafter set forth.

1. All recitals are material terms of this Declaration and are incorporated herein by this reference.
2. The term "Lot" shall mean and refer to any improved or unimproved numbered parcel of land within the Property which is shown on the Plat (or any other subsequent recorded plat of any part of the Property) and labeled thereon as a "Lot."
3. The term "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated within the Property. Notwithstanding any applicable theory of any lien or mortgage law, "Owner" or "Lot Owner" shall not mean or refer to any mortgagee or trust beneficiary unless and until such mortgagee or trust beneficiary has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
4. The term "Private Access Easement" shall mean that easement and easement area shown on the Plat as being thirty (30) feet in width and running from the right of way of New Light Road along, across and over the westerly lines of Lot 1 and Lot 2 and terminating at a point in the northwestern property line of Lot 3 all as shown on the Plat, and labeled on the Plat as "ZEST LANE NEW 30' PRIVATE ACCESS EASEMENT". The purpose of the Private Access Easement is to provide for the ingress, egress and regress of pedestrian and vehicular access and traffic from and to New Light Road to and from Lot 2 and Lot 3. The Private Access Easement benefits Lots 2 and 3. The Private Access Easement may also be referred to as "Zest Lane". The Property, and accordingly each Lot, shall be subject to the Private Access Easement and this Declaration. Each Lot Owners shall have the right of, and shall enjoy, ingress, egress and regress of pedestrian and vehicular access, passage and traffic over and across the Private Access Easement from and to New Light Road to and from each Lot Owner's respective Lot. This Declaration does not dedicate the Private Access Easement to the general public.
5. This Declaration, and covenants, restrictions, easements and charges contained herein, shall run with the Property and shall be binding upon Property, and any and all Lot Owners, their heirs, personal representatives, successors and assigns. This Declaration does not restrict the use and development of any Lot except as stated herein.
6. No Lot Owner shall block or gate the Private Access Easement. No Lot Owner shall impede, limit or restrict access to or passage along and within the Private Access Easement. No Lot Owner shall deposit, leave or place any debris, trash or rubbish within the Private Access Easement.
7. Maintenance Costs and Expenses. Except in the case of damage to the Private Access Easement or any part thereof by a particular Lot Owner, the cost and expense of maintaining and repairing the Private Access Easement shall be charged to and divided equally among only Lot 2 and Lot 3, and the Lot Owners thereof. In the event of subdivision of any of Lot 2 or Lot 3, the Lot Owners of such subdivided Lots shall be charged and liable for their then pro rata share of the cost and expenses of maintaining and repairing the Private Access Easement

(and in such event all of the provisions of this paragraph shall also apply to them). Nothing contained herein shall be deemed or construed to permit the subdivision of any Lot. The maintenance and repairs of and to the Private Access Easement shall be limited to the following, unless consent for additional work is agreed upon by a majority of Lot Owners that are responsible for the cost and expense of maintaining and repairing the Private Access Easement as stated above: Normal and Reasonable road improvement, repair and maintenance work to adequately maintain the Private Access Easement and related drainage facilities to permit all weather access. "Normal and Reasonable road improvement, repair and maintenance work" shall include, but not be limited to, filling of holes and depressions, smoothing of rises or ridges, repairing cracks, repairing and resurfacing the roadbed, repairing and maintaining drainage structures, removing debris (*e.g.*, fallen trees) and other work necessary or proper to maintain, preserve and maintain the Private Access Easement for all weather road purposes and uses. The Lot Owners of Lots 2 and 3 (or a majority of them in the event of any subdivision) shall agree to the commencement of maintenance and repair work and to the selection of a contractor (who shall be properly licensed and insured) to perform such maintenance and repairs to the Private Access Easement, and such Lot Owners, in anticipation of the need for funds, may provide for the collection and prepayment of reasonable amounts for maintenance and repairs.

In the event that any Lot Owner fails to pay the equal pro rata share of costs and expenses of maintaining and repairing the Private Access Easement as hereinabove provided (the "Non-Paying Lot Owner"), then any Lot Owner that has paid the costs and expenses of maintaining and repairing the Private Access Easement (the "Paying Lot Owner") shall be entitled, without further notice, to institute a legal action for collection of funds advanced on behalf of the Non-Paying Lot Owner in a court of competent jurisdiction in Wake County, North Carolina, and shall be entitled to recover in such action, in addition to the funds advanced, interest thereon on at highest amount permitted by law until paid in full, and all costs and expenses incurred in bringing such action and the reasonable attorney's fees expended by the Paying Lot Owner in the prosecution of such action.

8. Each Lot Owner shall maintain his respective Lot, and such activities thereupon, in such a manner so as not to damage, harm, deface, impede, erode, wash-out or otherwise impair the Private Access Easement or any part thereof.

9. Any damage to the Private Access Easement caused by any Lot Owner resulting from the actions or omissions of the Lot Owner, or the Lot Owner's guests, invitees, occupants, tenants, contractors, suppliers, employees or vendors, shall be repaired by such Lot Owner, at such Lot Owner's sole cost and expense, and the Private Access Easement shall be restored to the condition that it existed prior to the damage.

10. Each Lot Owner shall indemnify, hold harmless and defend every other Lot Owner from and against any and all damage, loss, liability, claims, suits, demands and causes of action which may be or are asserted or claimed against a Lot Owner based upon any circumstance, thing or event arising out of or related to such Lot Owner's, or such Lot Owner's guests, invitees, occupants, tenants, contractors, suppliers, employees or vendors, use, passage, existence, presence or activity of or upon the Private Access Easement or any

part thereof, and including the attorney's fees, costs and expenses incurred by the indemnified party(ies).

11. Each Lot Owner within the Property shall, at all times, keep the Private Access Easement free from mechanics' lien claims or similar liens arising on account of or out of any act of, or on behalf of, such Lot Owner.

12. Each Lot Owner within the Property, by acceptance of a deed therefor, whether or not it shall be expressed in said deed or by exercise of any act of ownership, is deemed to have accepted and shall be bound by this Declaration and the covenants, conditions, restrictions and easements herein contained.

13. The Declarant or any Lot Owner may enforce the covenants, conditions, restrictions and easements contained in this Declaration, including the rights thereto. Enforcement of this Declaration, and the provisions herein contained, may be by an appropriate civil proceeding against any Lot Owner or person or persons violating or attempting to violate any covenant, conditions or restriction, either to restrain violation or to recover damages, or both; and failure by the Declarant or any Lot Owner to enforce any covenant, conditions or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

14. The benefits and burdens of this Declaration, including the Private Access Easement, shall inure to the benefit of and be binding upon the Property, the Lot Owners and their heirs, personal representatives, successors and assigns.

15. As used herein the singular number shall include the plural and the masculine gender shall include the feminine and neuter genders, and vice versa, all as the context may require. If any provision of this Declaration is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all provisions herein shall be deemed to be severable each from each other without qualification. This Declaration and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of North Carolina without regard to principles of conflict of laws.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed the day and year set forth in the notary acknowledgment below.

CHURCHILL ASSOCIATES, a North Carolina general partnership

By:


Robert Wayne Bailey, Managing Partner

[NOTARY ACKNOWLEDGMENT FOLLOWS]

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Robert Wayne Bailey, Managing Partner of Churchill Associates, a North Carolina general partnership, personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose(s) stated therein in the capacity(ies) indicated.

Witness my hand and official stamp or seal, this 14th day of JULY, 2020.



[Affix Seal/Stamp]

NOTARY PUBLIC

Notary Public Name Printed: MICHAEL S. YOPP

My Commission Expires: 10-08-2023

