

Prepared by and return to:  
Rod O'Donoghue, Jr. (Vault Box 6)  
1100 Navaho Drive, Suite 106  
Raleigh, NC 27609

Wake County, NC 547  
Laura M Riddick, Register Of Deeds  
Presented & Recorded 08/03/2000 14:46:13  
Book : 008650 Page : 02247 - 02253

STATE OF NORTH CAROLINA

DECLARATION OF PRIVATE EASEMENTS

WAKE COUNTY

THIS DECLARATION OF PRIVATE EASEMENTS (the "Declaration") is made this 31<sup>st</sup> day of October, 2000, by PS/SE BALLENTINE FARMS, LLC, a Virginia limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of a certain tract or parcel of real estate (the "Property") located in or near the Town of Fuquay-Varina, Middle Creek Township, Wake County, North Carolina as shown on a plat (the "Plat") entitled "Survey of: Ballentine Subdivision, Phase 1C" prepared by Mauldin-Watkins Surveying, P.A. and recorded in Book of Maps 2000, Pages 1276 and 1277, Wake County Registry, N.C., which is incorporated by reference; and

WHEREAS, the Declarant wishes to declare certain private rights, privileges and easements over the Property, all of which are subject to the terms and conditions of this Declaration.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Declarant declares, creates and establishes as follows:

1. Definitions. In addition to other terms which are defined in this Declaration, the following words or terms are defined for the purposes of this Declaration:

(a) "**Association**": The "Association" shall mean the Ballentine Homeowners Association, Inc., a North Carolina not-for-profit corporation.

(b) "**Buffer Area**": "Buffer Area" means those portions of the Property designated for streetscape buffer and labeled as "10' Streetfront Buffer" along McLaurin Lane on the Plat.

(c) "**Easement Area**": "Easement Area" means the portions of the Property labeled "15' Pedestrian & Equestrian Emst." on the Plat.

(d) "**Lot**": "Lot" means each of the portions of the Property intended for use as a detached single family residence as shown on the Plat, and any future subdivision or recombinations of such Lots.

(e) "**Member**": "Member" shall mean the members of the Association, from time to time, including the Owners of Lots at the time of this Declaration.

(f) "Owner": "Owner" shall mean the fee simple owner of a Lot within the Property, including the Declarant at the time of this Declaration.

(g) "Stable": "Stable" shall mean the stable for boarding of horses and riding facility operated by Nancy Ballentine Edwards located on Sunset Lake Road, Wake County, N.C.

2. Equestrian Easement. Subject to the terms, covenants and conditions of this Declaration, the Declarant hereby declares, creates and establishes for the use and benefit of the Stable a private, personal, non-exclusive, temporary easement over the Easement Area for the riding of horses (the "Equestrian Easement"). This Equestrian Easement is subject to the following terms and conditions:

(a) The Equestrian Easement shall not be effective unless and until Nancy Ballentine Edwards and the Stable execute and record a written agreement with the Declarant or the Association setting forth the exact names of the Stable and its owners and confirming and agreeing to be bound by the terms and conditions of the Equestrian Easement;

(b) Unless terminated sooner, the Equestrian Easement shall exist and continue for the period of time that Nancy Ballentine Edwards owns and actively manages the operation of the Stable or for a period of time ending April 30, 2020, whichever first occurs;

(c) The Equestrian Easement shall be for the use between the hours of 9:00 A.M. and sunset by students and boarders of horses at the Stable substantially as the business of the Stable currently exists, but shall not be used by those who merely pay a fee to ride trails, including those in the Easement Area;

(d) Nancy Ballentine Edwards and the Stable, jointly and severally, shall be responsible for all reasonable costs and expenses incurred by either the Declarant or the Association for repair and maintenance associated with the Equestrian Easement, including but not limited to erosion control measures and removal of manure;

(e) Commencing upon the effectiveness of the Equestrian Easement, Nancy Ballentine Edwards, the Stable and its owners, jointly and severally, shall indemnify, defend and save the Declarant, the Association and each Owner of a Lot harmless from and against any and all loss, cost, damages, expenses, liabilities, claims, demands and causes of actions and any expenses incidental to the defense thereof incurred by the Declarant, the Association, and/or each Owner of a Lot (including reasonable attorneys' fees and expenses) which in any manner, directly or indirectly, arises, grows out of or occurs in connection with the use of the Equestrian Easement;

(f) Nancy Ballentine Edwards and the Stable shall maintain at all times insurance against claims for personal injury and property damage in a amount not less than \$1,000,000.00 with respect to any one injury, \$3,000,000.00 with respect to injuries in any one accident, and \$500,000.00 with respect to property damage. The insurance coverage amounts shall be reviewed and increased every five (5) years at the request of the Association as necessary to provide adequate coverage against insured perils. All such policies shall name the Declarant

and the Association as additional insureds. Within ten (10) days of a request, Nancy Ballentine Edwards and the Stable shall provide the Declarant and/or the Association with a copy of such policy and evidence that the premium has been paid and that such policy is in full force and effect. Such policies shall contain a provision that they cannot be cancelled without 30 days written notice to the Declarant and/or the Association;

(g) Declarant reserves to itself and the Association the right to grant other easements over the Easement Area as well as the rights to erect signs, monuments and trail markers, to construct roads, trails and paths, to landscape the Easement Area, to improve, maintain and repair the Easement Area and improvements thereon, and to adopt rules and regulations and take any other actions which do not unreasonably interfere with the Equestrian Easement; and

(h) The Declarant and/or the Association shall have the right to prohibit the use of the Equestrian Easement during any period that Nancy Ballentine Edwards or the Stable are in breach of any term or condition of the Equestrian Easement. In addition, in the event Nancy Ballentine Edwards or the Stable are in breach of any term or condition of this Equestrian Easement and such breach is not cured within 90 days after written notice of such breach is sent to the Stable, then in addition to any other right or remedy available, the Declarant and/or the Association may terminate the Equestrian Easement.

3. Pedestrian Easement. Subject to the terms, covenants and conditions of this Declaration, the Declarant hereby declares, creates and establishes for the use and benefit of the Association and its Members, their tenants, family members, occupants, guests and invitees, a private, non-exclusive, permanent, appurtenant easement over the Easement Area for walking, jogging, running and other pedestrian uses (the "Pedestrian Easement"). Declarant reserves to itself and the Association the right to grant other easements over the Easement Area as well as the rights to erect signs, monuments and trail markers, to construct roads, trails and paths, to landscape the Easement Area, to improve, maintain and repair the Easement Area and improvements thereon and to adopt rules and regulations and take any other actions which do not unreasonably interfere with the Pedestrian Easement.

4. Streetscape Easement. Subject to the terms, covenants and conditions of this Declaration, the Declarant hereby reserves, declares, creates and establishes for itself and the Association a private, non-exclusive, permanent, appurtenant easement over the Buffer Area for purposes of installing, maintaining, repairing, replacing and removing fences, monuments, markers, signs, landscaping, utilities and irrigation systems.

5. No Obstructions. No action will be taken and no improvement shall be constructed, erected or maintained by an Owner so as to obstruct, limit, restrict, impede or interfere in an unreasonable manner with the use and enjoyment of the easements granted by this Declaration and such easements shall be kept open and unobstructed. This restriction shall not apply to driveways, sidewalk or similar structures as approved by the Association.

6. Maintenance. The Association shall perform such construction, reconstruction, replacement, removal, repair and maintenance as, from time to time, is reasonably necessary or prudent to maintain the easements granted by this Declaration in a first class manner in good and safe working condition serving the purposes and performing the functions for which

they are intended and in compliance with applicable laws and regulations. Except as provided with respect to the Equestrian Easement and as hereinafter provided, the Association shall pay all costs it incurs in connection with such construction, reconstruction, replacement, removal, repair and maintenance. Notwithstanding the foregoing, in the event any work is necessitated by the act, negligence or omission of any person or entity, the Association shall have all rights and remedies at law or in equity against such person or entity.

7. Anti-Merger Clause. In the event title to the Lots is now vested or hereafter vests in one owner, the rights, privileges and easements herein shall not merge by operation of law or terminate but shall remain in full force and effect.

8. Public Dedication. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any portion of the Property to or for any public use or purposes whatsoever. The Association may close or block pedestrian, equestrian and/or vehicle traffic on the Buffer Area and/or the Easement Area or any portion thereof for the time reasonably necessary to avoid the possibility of dedicating the same for public use.

9. Headings. The headings herein are for convenience and reference only and in no way define and limit the scope and content of this Declaration or in any way effect its provisions.

10. No Waiver. The failure of any party in any one or more instances to insist upon compliance with any provision or covenant herein or to exercise any right or privilege herein shall not constitute or be construed as a waiver of such or any similar provision, covenant, right or privilege including the right to cure a breach or default, but the same shall continue and remain in full force and affect, as if no such forbearance had occurred.

11. Remedies. Except as provided herein with respect to termination of the Equestrian Easement, no breach of any term of this Declaration will entitle any party to cancel, rescind, or otherwise terminate this Declaration, but this limitation shall not affect, in any manner, any other right or remedy otherwise available for such breach. It is acknowledged that irreparable harm will result by reason of the breach of any term of this Declaration. In the event of a breach or threatened breach of any term of this Declaration, any party shall have the right to obtain specific performance or to enjoin such breach or threatened breach in addition to the right to collect damages.

12. Applicable Law. This Declaration shall be governed by North Carolina law without regard to principles of conflict of laws.

13. Assignments and Delegation. Each Owner may delegate the right to share its easement rights hereunder to its tenants, occupants, family member, guests and invitees.

14. Severability. If any term, covenant, or condition of this Declaration or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid, or unenforceable, the remainder of this Declaration or the application of such term, covenant or condition to any person or circumstance other than that as to which it shall be invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this

Declaration shall be valid and enforceable to the full extent permitted by law.

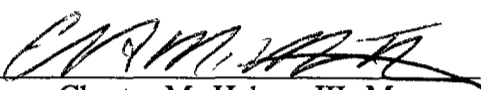
IN WITNESS WHEREOF, the Declarant has duly executed this Declaration under seal the day and year first above written.

**DECLARANT:**

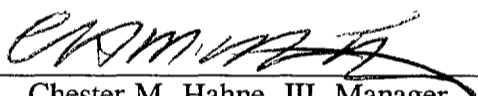
**PS/SE BALLENTINE FARMS, LLC,**  
a Virginia limited liability company (SEAL)

By: **PRESTON STREET HOLDINGS, LLC,**  
a Virginia limited liability company, (SEAL)  
**MANAGER**

By: **CHICKEE, LLC,**  
a Virginia limited liability company, (SEAL)  
**MANAGER**

By:  (SEAL)  
Chester M. Hahne, III, Manager

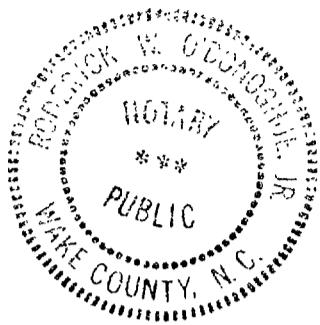
By: **CHICKEE, LLC,**  
a Virginia limited liability company, (SEAL)  
**MANAGER**

By:  (SEAL)  
Chester M. Hahne, III, Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, certify that **CHESTER M. HAHNE, III**, Manager of CHICKEE, LLC, a Virginia limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing General Warranty Deed for an on behalf of said limited liability company as its Manager, which limited liability company is Manager of PRESTON STREET HOLDINGS, LLC, a Virginia limited liability company, which itself is Manager of **PS/SE BALLENTINE FARMS, LLC**, a Virginia limited liability company, the Grantor in this Deed.



(SEAL-STAMP)

Witness my hand and official seal, this the 31<sup>st</sup> day of July, 2000.

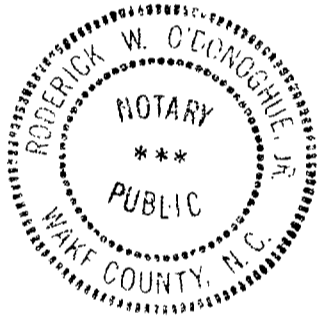
[Signature]  
Notary Public

My Commission expires: 7-11-2001

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, certify that **CHESTER M. HAHNE, III**, Manager of CHICKEE, LLC, a Virginia limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing General Warranty Deed for an on behalf of said limited liability company as its Manager, which limited liability company is Manager of **PS/SE BALLENTINE FARMS, LLC**, a Virginia limited liability company, the Grantor in this Deed.



(SEAL-STAMP)

Witness my hand and official seal, this the 31<sup>st</sup> day of July, 2000.

[Signature]  
Notary Public

My Commission expires: 7-11-2001

Laura M Riddick  
Register of Deeds  
Wake County, NC



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**Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds**

**North Carolina - Wake County**

The foregoing certificate \_\_\_ of Roderick W. O'Donoghue Jr

\_\_\_\_ Notary(ies) Public 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.

Laura M. Riddick, Register of Deeds

By: Wendy Parrish  
Assistant/Deputy Register of Deeds

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