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DECLARATION OF PROTECTIVE COVENANTS

FOR

LEXINGTON PARK, ARLINGTON PARK AND WASHINGTON SQUARE

AT AMBERLY

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DECLARATION OF PROTECTIVE COVENANTS  
FOR  
LEXINGTON PARK, ARLINGTON PARK AND WASHINGTON SQUARE  
AT AMBERLY  
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DECLARATION OF PROTECTIVE COVENANTS  
FOR  
LEXINGTON PARK, ARLINGTON PARK AND WASHINGTON SQUARE  
AT AMBERLY

**THIS DECLARATION** is made on the date hereinafter set forth by **KB HOME RALEIGH-DURHAM LLC**, a Delaware limited liability company (hereinafter sometimes called "Declarant");

**WITNESSETH**

**WHEREAS**, Sandler at Amberly, LLC, a Virginia limited liability company, as Master Declarant (as that term is defined herein), executed that certain Master Declaration of Covenants, Conditions, and Restrictions for Amberly, recorded in Book 10748, Page 347, *et seq.*, in the Office of the Wake County, North Carolina Register of Deeds (as the same may be supplemented and/or amended from time to time "Master Declaration"), subjecting the real property described on Exhibit "A" attached thereto (said real property hereinafter the "Master Community") to the terms and provisions thereof; and

**WHEREAS**, Article IV of the Master Declaration, entitled "Parcels", provides for a scheme by which a Parcel (as that term is defined in the Master Declaration) of the Master Community may be subjected to a Parcel Declaration (as that term is defined in the Master Declaration) with the written approval of the Board of Directors of the Master Association (as that term is defined below) and the Master Declarant; and

**WHEREAS**, Declarant is the owner (or has the written consent of the owner) of the real property described in Exhibit "A" attached hereto and by this reference incorporated herein, which real property is also described on Exhibit "A" attached to the Master Declaration and subject to the terms and provisions thereof; and

**WHEREAS**, Declarant (and the owner, if Declarant is not the owner) desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration and to be and constitute a Parcel Declaration under the Master Declaration; and

**WHEREAS**, the Board of Directors of the Master Association and the Master Declarant have given their approval and written consent to this Declaration, respectively, as provided in Article IV of the Master Declaration;

**NOW, THEREFORE**, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article 1  
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 "Articles of Incorporation" means the Articles of Incorporation of Amberly Community Association, Inc., filed with the North Carolina Secretary of State and incorporated herein by this reference as may be amended from time to time.

1.2 "Association" means Amberly Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.3 "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Non-Profit Corporation Law of the State of North Carolina.

1.4 "Bylaws" means the Bylaws of Amberly Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.5 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant and as otherwise may be established under the Master Declaration.

1.8 "Declarant" means **KB HOME RALEIGH-DURHAM LLC**, a Delaware limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument executed by the Declarant and the successor Declarant, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Declarant, all rights of the former Declarant in and to such status as Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Declarant hereunder at any one point in time.

1.9 "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site, which dwellings will not be attached by one or more party walls to another dwelling, as shown on the recorded subdivision plat(s) for the Community. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property.

1.10 "Master Association" means Amberly Master Property Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.11 "Master Bylaws" means the Bylaws of the Master Association as may be amended from time to time.

1.12 "Master Declarant" means the declarant under the Master Declaration as that term is defined therein, being Sandler at Amberly, LLC, a Virginia limited liability company and its designated successor, successor-in-title or assign.

1.13 "Master Declaration" means that certain Master Declaration of Covenants, Conditions, and Restrictions for Amberly, recorded in Book 10748, Page 347, *et seq.*, in the Office of the Wake County, North Carolina Register of Deeds, as may be supplemented and amended from time to time, which document subjects the real property described in Exhibit "A" thereto and any Additional Property annexed thereto, including the Neighborhood Property, to the provisions of that Declaration, which property shall be held, sold, transferred, conveyed, used, occupied and encumbered subject to the covenants, conditions, restrictions and easements, therein set forth.

1.14 "Mortgage" means any and all instruments used for the purpose of encumbering or conveying title to real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.15 "Mortgagee" means the holder of a Mortgage.

1.16 "Neighborhood" means each separately developed and denominated area within the Community, whether or not governed by a Neighborhood Association (as defined below), in which the Owners of Units may have common interests other than those common to all members of the Association. Separate Neighborhood status shall be designated on Exhibit "A" hereof or

in one or more Supplementary Declarations describing the property which shall constitute all or part of such Neighborhood. By way of illustration and not limitation, a townhouse development, cluster home development or single-family detached housing development might each be designated as a separate Neighborhood. Declarant shall have the right to designate separate Neighborhood status and change the Neighborhood status of any previously designated Neighborhood for any property in the Community. A Neighborhood may (but is not required to) have a separate incorporated mandatory membership Neighborhood Association.

1.17 "Neighborhood Assessment" means assessments levied on all Units in a Neighborhood to fund the estimated expenses expected to be incurred by the Association for the primary benefit of Units within such Neighborhood, as more particularly described in Section 4.4 hereof.

1.18 "Neighborhood Association" means any homeowners association or other mandatory membership owners association, if any, having concurrent jurisdiction with the Association over any Neighborhood, but does not include the Master Association.

1.19 "Neighborhood Declaration" means any declaration of protective covenants or similar instrument recorded in the Wake County, North Carolina Public Registry which subjects all or a portion of the land within such Neighborhood to covenants, restrictions, and easements in addition to those contained in this Declaration, if any, but does not include the Master Declaration.

1.20 "Occupant" means any Person occupying all or any portion of a Unit or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.21 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Unit within the Community but does not include any Mortgagee.

1.22 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under North Carolina law.

1.23 "Stormwater Maintenance Plan" means that certain Stormwater Pollution Prevention Plan, entered into by and between Declarant and the Town of Cary, North Carolina, dated May 2005, prepared by Withers + Ravenel, Inc., and attached hereto as Exhibit "D" and by this reference incorporated herein, for the maintenance of the stormwater control devices for the Community.

1.24 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.25 "Total Association Vote" means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

1.26 "Townhome Unit" shall mean any plot of land within the Community and a Neighborhood designated as a "Townhome Neighborhood," whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site for a townhome which will be attached by one or more party walls to another townhome. Where the dwelling on a Townhome Unit is attached by a party wall to one or more other dwellings, the boundary between Townhome Units shall be a line running along the center of the party wall separating the Townhome Units. The ownership of each Townhome Unit shall include, and there shall automatically pass with the title to each Townhome Unit as an appurtenance thereto, whether or not separately described, membership in the Association and all of the rights and interest of an Owner in the Common Property, as herein provided.

1.27 "Unit" shall mean a separate portion of the Community which may be independently owned and conveyed, including, without limitation a Lot or a Townhome Unit. Open space, entry features and similar property owned in fee simple by the Association or a Neighborhood Association shall cease to be a Unit upon conveyance to the Association or a Neighborhood Association, respectively.

Article 2  
Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public records of the county where the Community is located a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's Development Plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B".

However, inclusion of property on Declarant's development plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial development plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Additional Covenants, Restrictions and Easements. The Declarant may subject any portion of the property submitted to this Declaration initially or by Supplementary Declaration to additional covenants, restrictions and easements and/or modify the applicability of the covenants, restrictions and easements contained in this Declaration as to such property.

2.4 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Units, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public records of the county where the Community is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

2.5 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

### Article 3

#### Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Unit subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event

shall more than one (1) office be held for each Unit owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.

3.2 Voting. Members shall be entitled to one (1) vote for each Unit owned. When more than one (1) Person holds an ownership interest in a Unit, the vote for such Unit shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Unit shall be suspended in the event more than one (1) Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Unit, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Unit each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

3.4 Voting - Master Association. Voting with regard to the Master Association shall be carried out as is provided in the Master Declaration and the Master Bylaws. The Board of Directors of the Association may, without a vote of the Association, appoint the Association Delegate(s) (as that term is defined in the Master Declaration) as provided in the Master Declaration and Master Bylaws.

#### Article 4 Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Units, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of a Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) general assessments; (b) special assessments; (c) specific assessments; (d) Neighborhood assessments, if applicable; and (e) Master Declaration assessments, established pursuant to the Master Declaration, if any. All sums assessed against any Unit pursuant to this Declaration, together with late charges (in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due), interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), costs and reasonable attorney's fees actually incurred, as provided herein, when remaining unpaid for thirty (30) days or longer, shall be secured by a lien

on such Unit in favor of the Association, when the Association files a claim of lien in the public records of the county in which the Unit is located in the manner provided by law. Such lien shall be superior to all other liens and encumbrances on such Unit, except for: (i) liens and encumbrances recorded before the docketing of the claim of liens; (ii) liens for real estate taxes and other governmental assessments and charges against the Unit; and (iii) liens placed against a Parcel by the Master Association to secure payment of delinquent assessments and other charges pursuant to the Master Declaration. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Unit at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Unit and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of such Owner's Unit. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget, the assessment to be levied against each Unit for the year (or portion thereof in the case of the initial budget) and a notice of the meeting to consider ratification of the budget (which notice shall include a statement that the budget may be ratified without a quorum being present) to be provided to each member no more than thirty (30) days after the adoption of the budget. The date for the meeting of the members to consider ratification of the budget shall be not less than ten (10) days nor more than sixty (60) days after mailing of the budget and notice. The meeting shall be held at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The budget is ratified and the assessment shall become effective unless disapproved at the meeting by at least seventy-five (75%) percent of the Total Association Vote. Notwithstanding anything to the contrary herein, the part of the Association budget attributable to Master Declaration assessments may be disapproved only as provided for in the Master Declaration. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget last ratified shall be continued until a new budget is ratified; provided, however, that any increase in the assessments levied by the Master Association, or otherwise pursuant to the Master Declaration, shall automatically go into effect. Any surplus funds of the Association remaining after payment of or provision for the common expenses, the funding of a reasonable operating expense surplus, and any prepayment of reserves shall not be refunded or credited to the Owners but shall be Association funds for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws. General assessments shall be levied equally on all

similarly situated Units and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the general assessment shall be paid in one annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

4.6 Neighborhood Assessments. The Association may levy assessments against the property in a particular Neighborhood to fund actual and estimated expenses incurred by the Association for the primary benefit of property within such Neighborhood, including without limitation, maintenance required to be performed by the Association with respect to property within such Neighborhood. Neighborhood assessments shall be levied as specifically budgeted from time to time by the Board of Directors pursuant to this Declaration. In addition, the Board shall levy a Neighborhood assessment upon the request of the Owners holding two-thirds (2/3) of the Total Association Vote applicable to Units within a Neighborhood.

4.7 Master Declaration Assessment. The Master Declaration assessment shall be allocated equally among all similarly situated Units. Notwithstanding the above, the Master Declaration assessment charged to the Association shall be a line item in the Association budget to be collected from Unit Owners in the same manner as general assessments pursuant to this Article 4 and shall be paid to the Master Association or the Master Declarant, as the case may be.

This assessment obligation shall be enforceable by the Master Association or the Master Declarant, as the case may be, against the Association and the Owners of Units as provided in the Master Declaration. The Association shall pay to the Master Association or the Master Declarant, as the case may be, its share of the Master Declaration assessment as provided in the Master Declaration. Notwithstanding anything herein to the contrary, nothing herein shall prohibit the Association from levying as a specific assessment pursuant to Section 4.5 hereof any amounts charged to the Association pursuant to the Master Declaration which charges have been allocated to one (1) or more Units hereunder or are occasioned by the conduct of less than all of those entitled to occupy all of the Units, or by the Occupant(s), licensees or invitees of any such Unit(s), nor shall anything herein prevent the Association from levying as a Neighborhood assessment pursuant to Section 4.6 hereof any amounts charged to the Association pursuant to the Master Declaration which charges are incurred for the primary benefit of property within such Neighborhood.

4.8 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Unit authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the property pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation or relieve such property or the then Owner from liability for any assessment authorized hereunder become due after such sale and transfer.

4.9 Remedies of the Association. Any sums (including assessments or installments thereof) assessed against any Unit pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and a claim of lien, as herein provided, may be filed in the public records of the county in which the Unit is located in the manner provided by law. Such lien shall include the late charge (in the amount of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment not paid when due), interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), all late charges from the date

first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. If any sum assessed against any Unit pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Unit at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same. If any such sums are not paid within thirty (30) days after the due date, the Association may also, after notice and an opportunity to be heard, suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property maintained by the Association, and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect any lien on such property in favor of the Association.

4.10 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Unit on the first to occur of the date that the Unit is first occupied for residential purposes; or is conveyed by the Declarant to an Owner who is not a builder acquiring such Unit in the ordinary course of business or a successor Declarant. A Unit shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before such conveyance, the date of such occupancy.

4.11 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant, as applicable); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan. Notwithstanding anything to the contrary herein, the Declarant and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant, or its affiliate, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant, or its affiliate, as the case may be, cannot agree as to the value of any contribution, the Declarant, or its affiliate, as the case may be, shall supply the Association

with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant, or its affiliate, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant, or its affiliate, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

4.12 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.13 Estoppel Letter. The Association shall, within ten (10) days after receiving a written request for the total amount of unpaid assessments and other charges against a specified Unit, and for a reasonable charge, as established by the Board, certify to the amount of such unpaid assessments and other charges. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Unit shall be binding upon the Association.

4.14 Capitalization of Association – Townhome Units. Upon the first sale of each and every Townhome Unit after it has been improved with a residence for which a certificate of occupancy has been issued, a fee in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) or such higher amount as the Board of Directors may establish from time to time shall be collected from the purchaser at the closing of such sale and paid to the Association. The aggregate fund established by such fee shall be maintained in a segregated account, and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures associated with the Association's obligations with regard to the Townhome Units or the Neighborhood(s) of Townhome Units, if any, located within the Community, or to acquire additional equipment or services deemed necessary or desirable by the Board for such Townhome Units or Neighborhood(s), as the case may be.

## Article 5

### Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features whether or not such entry features are on a Unit, privately owned property or public right-of-way, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features, if and to the extent the same are not maintained on an ongoing basis by the Master Association or a Neighborhood Association; (b) all Community green space and open space, if and to the extent the same are not maintained on an ongoing basis the Master Association or a Neighborhood

Association; (c) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent the same are not maintained on an ongoing basis by a government body, the Master Association or a Neighborhood Association and otherwise in accordance with the Stormwater Maintenance Plan; (d) all street medians and islands located in the Community, if and to the extent the same are not maintained on an ongoing basis by a government body, the Master Association or a Neighborhood Association; (e) pedestrian paths or walking trails located in the Community, if any, if and to the extent the same are not maintained on an ongoing basis by a government body, the Master Association or a Neighborhood Association; (f) landscaping within the Community as provided in Section 5.7 hereof, if and to the extent the same are not maintained on an ongoing basis the Master Association or a Neighborhood Association; (g) any irrigation system servicing the Community, if and to the extent the same are not maintained on an ongoing basis the Master Association or a Neighborhood Association; (h) the exterior portions of all Townhome Units as provided in Section 5.9 hereof, if and to the extent the same are not maintained on an ongoing basis by a Neighborhood Association; and (i) all water and sanitary sewer pipes or facilities that serve more than one (1) Townhome Unit, if any, if and to the extent the same are not maintained on an ongoing basis by a governmental entity, the Master Association or a Neighborhood Association. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or outside the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

**5.2 Owner's Responsibility.** Except for maintenance performed on a Unit by the Association pursuant to Sections 5.1, 5.7 and 5.9, if any, all maintenance of the Unit and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Unit in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repairing and painting (or other appropriate external care) of improvements located on a Unit. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such

maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement and all costs thereof shall be assessed against the Owner and the Unit as a specific assessment. In the event that the Owner of a Unit obtains approval to construct a fence on a portion of his or her Unit in accordance with the provisions of Article 6 hereof, the Association, if then obligated to maintain landscaping upon such Unit, shall no longer be obligated to maintain landscaping on the enclosed portions of the Unit and such landscaping shall be the sole responsibility of the Owner.

5.3 Conveyance of Common Property to Association; No Implied Rights. The Declarant or the owner of the property with the approval of Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Section 5.1, maintained by the Association for the benefit of its members. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. So long as a Declarant owns any property primarily for development and/or sale in the Community or a Declarant has the right unilaterally to annex additional property to the Declaration, such Declarant may, upon written notice to the Association, require the reconveyance by the Association to such Declarant of any Common Property or any portion thereof, improved or unimproved, at no charge to such Declarant, without a vote of the Owners/members of the Association, if the Common Property or portion thereof is: (i) found by such Declarant to have been conveyed in error, (ii) needed by such Declarant to make adjustments in property boundary lines, or (iii) reasonably determined by such Declarant to be needed by such Declarant due to changes in the overall scheme of development for the Community. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept/make on behalf of the Association any such conveyance and reconveyances and to execute on behalf of the Association any and all documents, including deeds, or other forms, necessary or convenient to effectuate and document any such conveyances and reconveyances, and all acts of such attorney-in-fact are hereby ratified. The Declarant or the owner of the property with the approval of Declarant, may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant or such owner may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant, or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the public records of the county where the Community is located.

5.4 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Units located within the Community.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.6 Liability. Owners, Occupants and their guests shall use the Common Property and open space maintained by the Association at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

5.7 Landscaping Maintenance. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the Common Property landscaping improvements located on the exterior portions of the Community, including parks, open space, medians and islands, if any, if and to the extent such are not maintained on an ongoing basis by a government body, the Master Association or a Neighborhood Association as may be provided in the Supplementary Declaration designating said Neighborhood. In addition to the foregoing, the Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Townhome Units in a Townhome Neighborhood in the Community, if and to the extent the same is not maintained on an ongoing basis by a Neighborhood Association as may be provided in the Supplementary Declaration designating said Neighborhood. All costs of maintenance of such landscaping performed by the Association on behalf of a particular Neighborhood under this Article shall be a Neighborhood expense of said Neighborhood assessed to Owners of Units in said Neighborhood under Section 4.6 hereof. The Board of Directors in its sole discretion may leave portions of the Community as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time or may, with the consent of the Declarant, change the level of yard maintenance performed or for

example maintain front yards only. Any common irrigation system installed by the Declarant or the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Unit shall not include any right, title or interest in such irrigation system, if any. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants in certain areas of the Community at the expense of the Owner. In the event that the Owner of a Unit obtains approval to construct a fence on a portion of his or her Unit in accordance with the provisions of Article 6 hereof, the Association, if then obligated to maintain landscaping upon such Unit, shall no longer be obligated to maintain landscaping on the enclosed portions of the Unit and such landscaping shall be the sole responsibility of the Owner; provided, however, nothing herein shall excuse or otherwise reduce the obligation of an Owner to pay the full amount of assessments allocated against such Owner's Unit pursuant to Article 4 hereof. .

5.8 Party Walls. Each wall or fence whether built as part of the original construction of a Unit or added pursuant to Article 6 hereof, if any, which shall serve and separate any two (2) adjoining Units shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

5.9 Townhome Unit Maintenance. As provided in Section 5.1 above, if and to the extent the same are not maintained on an ongoing basis by a Neighborhood Association, the Association shall maintain and keep in good repair the exterior portions of all Townhome Units in the Community. Maintenance by the Association of exterior portions of Townhome Units shall include the following: (a) exterior surfaces of garage doors, if any; (b) all roofs, downspouts and gutters; (c) all exterior building surfaces with the exception of hardware and glass; provided, however, the Association shall not be responsible for waterproofing foundations either above or below grade; and (d) all driveways and walkways serving a Townhome Unit. The Association shall not be responsible for maintaining and keeping in good repair the following: (i) steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not) and patio surfaces and landscaping within the patios, planters and courtyards, if any, of the Townhome Units; (ii) HVAC or similar equipment located outside the Townhome Units; (iii) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system; (iv) hose bibs contained in exterior walls of a Townhome Unit; (v) lighting fixtures pertaining to a particular Townhome Unit and being located outside an entryway or in a garage; (vi) window screens, window frames and glass; (vii) foundations and footings, including waterproofing; and (viii) pipes which serve only one (1) Townhome Unit whether located within or outside of the Townhome Unit's boundaries. The Board of Directors may

promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as Townhome Units have equal rights to maintenance. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or Persons to perform maintenance hereunder on behalf of the Association. All costs of maintenance performed on a Townhome Unit pursuant to this Section shall be charged back to the Townhome Unit(s) that benefit(s) therefrom as an assessment pursuant to Article 4 hereof.

Article 6  
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration; provided, however, in addition to approval hereunder, any and all of the foregoing shall be subject to prior written approval by the Master Declarant or the Master Association, as applicable, as provided in the Master Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Unit without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Unit shall be subject to approval. No approval shall be required to repaint the exterior doors and shutters of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant, affiliates of the Declarant, nor to improvements to the Common Property by or on behalf of the Association. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Unit has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Architectural Control Committee. The Architectural Control Committee ("ACC") of the Association shall consist of three (3) members. Until Declarant's rights are terminated in accordance with Section 11.5 of this Declaration, the Declarant shall have the right to appoint the members of the ACC. Prior to the termination of the rights of Declarant hereunder, the ACC may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to an advisory ACC while retaining control over all other building and construction in the Community. For example and without limitation, the ACC may relinquish control over modifications of existing structures to an advisory ACC while retaining all authority to review and approve new home construction. Any right, power or authority of the ACC which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ACC shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder.

Upon the termination of all rights of Declarant hereunder, the Board of Directors shall appoint an ACC, which shall have all such jurisdiction over architectural control within the Community under this Article.

6.3 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the ACC. Such plans and specifications shall be of sufficient detail to allow the ACC to make its review and, to the extent required by the ACC, shall show the nature, kind, shape, height, materials and location of the proposed improvement. The ACC may adopt written design and development guidelines and application and review procedures (the "Architectural Guidelines"). The ACC shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the Architectural Guidelines. The ACC shall make the Architectural Guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the ACC fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the ACC, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The ACC and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the ACC for reconsideration.

6.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the ACC assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither the ACC, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against the ACC, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and

causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver. The approval of the ACC of any proposals plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.6 Variances. Notwithstanding anything to the contrary contained herein, the ACC shall be authorized to grant individual variances from any of the provisions of this Declaration and the Architectural Guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) estop the ACC from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ACC, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the ACC and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Unit as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the ACC from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the ACC, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this Article. In addition to any other remedies available to the ACC, in the event of noncompliance with this Article, the ACC may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the ACC shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

6.8 No Approval Under Master Declaration. Approval granted pursuant to this Article 6 shall not be or constitute approval as may be required pursuant to the Master Declaration.

Article 7  
Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

7.2 Residential Use. Each Unit shall be used for single-family residential purposes exclusively. For the purposes of this restriction a "single-family" means a group of individuals related by blood, marriage, adoption, or guardianship, or not more than six (6) persons not so related, living together as a single housekeeping unit. Leasing of a Unit for single-family residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Unit, except that the Owner or Occupant in residence at the Unit may conduct business activities within the dwelling so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Unit; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

7.3 Leasing. Units may be leased for single-family residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate the Occupants to comply with the foregoing.

7.4 Signs. No sign of any kind shall be erected or displayed within the Community without the prior written approval under Article 6 hereof. Notwithstanding the foregoing, the Board, any builder approved by Declarant and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Unit. The provisions of this Section shall not apply to any Mortgagee in possession due to

foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. Notwithstanding anything provided herein to the contrary, no sign shall be displayed on or from within any structure on a Unit. The Board may impose a fine of One-Hundred and Fifty and No/100 Dollars (\$150.00) per day for display of any sign in violation of this provision which is not removed within twenty-four hours after written demand is delivered to the Owner at that Unit.

7.5 Vehicles; Parking. Vehicles shall be parked only in appropriate parking areas serving the Unit or other designated areas, if any. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and if and only if, the Occupants of a Unit have more vehicles than the number of garage parking spaces, those excess vehicles which are an Occupant's primary means of transportation on a regular basis may be parked on the driveway on the Unit. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Commercial vehicles may not be visibly parked or stored on any Common Property or any Unit. Construction, service, and delivery vehicles are exempt from this provision while providing service or making a delivery to a Unit or the Common Property. Commercial vehicles are defined as any type of vehicle used for a specific business or commercial purpose; bearing any indicia of commercial use, including but not limited to, writings, logos, or signage of a business or commercial nature; equipped with external racks, ladders, or tool boxes; or having visible work equipment stored in or on the vehicle. It is the Unit owners responsibility to see that their guests and tenants obey the vehicle parking rules and restrictions.

7.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Unit, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Unit unless approved in accordance with the provisions of Article 6 hereof.

7.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Unit. No Unit shall be used for the storage of anything that will cause such Unit to appear to be in an unclean or

untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance or nuisance to any Person using any property within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be located, used, placed, installed or maintained upon any Unit, or any portion thereof. Any noise that can be heard inside a neighboring house with the windows and doors closed will be considered too loud and in violation of this provision.

7.8 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.9 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Unit, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install the following on a Unit: (a) antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennae designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennae that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.10 Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Unit without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or the Association or any approved builder in connection with construction approved under Article 6 hereof.

7.11 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstruction or debris shall be placed in these areas. Owners shall not obstruct or alter the drainage flows within the Community after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction; provided, however, such rocks shall not be buried in the buildable area of a lot. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant.

7.14 Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Unit(s) with the consent of the Owner of the effected Unit(s) and to approve the revision and re-recording of any plat of any Unit(s) owned by any builder or developer, including, but not limited to, changing any Unit to Common Property or creating a public or private street over any Unit or property that was formerly a Unit, without the consent of any Person, other than the Owner(s) of such property.

7.15 Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

7.16 Fences. Except as herein provided, no fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Unit without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants. In the event that the Owner of a Unit obtains approval to construct a fence on a portion of his or her Unit in accordance with the provisions of Article 6 hereof, the Association, if then obligated to maintain landscaping upon

such Unit, shall no longer be obligated to maintain landscaping on the enclosed portions of the Unit and such landscaping shall be the sole responsibility of the Owner.

7.17 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of the Declarant.

7.18 Air-Conditioning Units. No window air-conditioning units may be installed.

7.19 Lighting. Exterior lighting on any Unit visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Unit; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.20 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Unit. Exterior sculpture, fountains, flags or similar items must be approved under and pursuant to Article 6 hereof.

7.21 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant or the ACC, as the case may be, in accordance with the provisions of Article 6 hereof.

7.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Unit without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.23 Gardens, Play Equipment and Garden Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on any Unit without the prior written approval in accordance with the provisions of Article 6 hereof.

7.24 Mailboxes. All mailboxes serving Units shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.25 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Unit.

7.26 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant or the Association on any Unit, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.27 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Unit must be white, off-white or neutral in color, or, in the event of wooden blinds or shutters, natural or lightly stained wood.

7.28 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Unit, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant, an approved builder and those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant or an approved builder from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.29 Natural Buffer Areas. A Unit or Common Property may contain a natural or enhanced buffer area as shown on the applicable recorded subdivision plat(s) for the Community. Except with prior written approval pursuant to Article 6 hereof, all such areas shall be left in their undisturbed, natural state and no improvements may be constructed, erected, placed or allowed to remain thereon except utility lines and easements and pedestrian and vehicular access ways (including streets and roads); provided, however, Declarant and the Association and the Owner of any Unit adjacent to such areas (with the prior written consent of the Architectural Control Committee) may mow, plant trees, flowers and shrubs in such areas, subject to further provisions of this paragraph.

7.30 Stream Buffer. Land-disturbing activities shall not be conducted within any stream buffer area within the Community, as shown on any recorded subdivision plat, except with prior written approval under Article 6 hereof and compliance with North Carolina law.

7.31 Wetlands, Lake and Streams. All ponds, lakes, streams, wetlands and storm water retention or detention ponds within the Community shall be aesthetic amenities used for storm water drainage only; no other use thereof, including, without limitation, fishing, boating, swimming, ice skating, playing, or use of personal floatation devices, and other recreation, shall be permitted without the written consent of the Board of Directors. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the wetlands, lakes, ponds or streams within the Community. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any wetlands, lakes, ponds or streams within the Community. Applicable governmental agencies, the Declarant and the Association shall have the sole right to control the water level of any body of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and

around any wetlands, lakes, ponds and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any lake, pond or stream within the Community and shall not be permitted to withdraw water from any lake, pond or stream as may exist in the Community without the prior written consent of the Board of Directors.

7.32 Pedestrian Paths. Except as herein provided, the pedestrian paths within the community shall be used as foot paths only. Unless otherwise determined by the Board of Directors, bicycles, roller blades, skate boards, go-carts, minibikes, scooters or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall not be permitted on the paths in the Community. Provided, however, this provision shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device, and further provided that the Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the paths. This provision shall not apply to concrete sidewalks located along the public streets within the Community.

## Article 8 Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association shall obtain the insurance coverage necessary to satisfy the requirements of the North Carolina Planned Community Act, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements, whether or not located on the Common Property, which the Association is obligated to maintain; provided, however, nothing contained herein shall be construed as obligating the Association to obtain insurance for any portion of any individual Unit(s), which insurance is the responsibility of the individual Unit Owner(s) as provided in Section 8.2 hereof. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall cover the maximum funds that will be in the custody of the Association or its management agent at any time while the policy is in force, or any lesser amount of fidelity coverage allowable under the applicable Fannie Mae guidelines. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2 Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Units and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on all structures located on such Owner's Unit and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

8.3 Damage and Destruction -- Insured by Association. Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, a proposal not to repair or reconstruct such property is approved by at least eighty percent (80%) of the Total Association Vote and the Declarant. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a special assessment against the Owner of each Unit. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

8.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Unit shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Unit and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

Article 9  
Mortgagee Provisions

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Unit number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Unit of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Article 10  
Easements

10.1 General. Each Unit shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the public records of the county where the Community is located.

10.2 Easements for Use and Enjoyment. Every Owner of a Unit shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Unit in and to the Common Property which shall be appurtenant to and shall pass with the title to each Unit, subject to the following:

(a) the right of the Association to charge reasonable admission and other fees for the use of any Community recreational facilities, if any, to limit the number of Persons who may use any Community recreational facilities, if any, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by authorized users and their guests and invitees;

(b) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Common Property for any period during which any past due assessment against any Unit of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(c) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least eighty percent (80%) of the Units (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Unit or other property located within the Community.);

(d) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;

(e) the right of the Association to convey or transfer all or any portion of the Common Property upon the approval of the Owners of at least eighty percent (80%) of the Units (other than Declarant) and the Declarant;

(f) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association;

(g) all rights, easements, obligations and other such encumbrances established by the Master Declaration and Master Bylaws or otherwise by the Master Association pursuant thereto; and

(h) all encumbrances and other matters shown by the public records affecting title to the Common Property.

### 10.3 Easements for Utilities.

(a) Association and Declarant. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, 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 or the Association might decide to have installed to serve the Community. Declarant, the Association or the designee of either, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

(b) Townhome Unit Owner. Declarant hereby establishes for the benefit of each Townhome Unit a nonexclusive easement for access to and installation, maintenance, repair, replacement and use of all pipes, wires, cables, conduits, utility lines, flues and ducts serving such Townhome Unit and situated in, on or under any other Townhome Unit or the Common Property. The Board of Directors, without a vote of the Owners, shall have the right, power and authority to grant permits, licenses, utility easements, and other easements, permits or licenses necessary or desirable for the proper maintenance or operation of the Community or any portion thereof, including, without limitation a Neighborhood, under, through, or over the Townhome Units and/or the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Community or a Neighborhood. In the event that any Owner desires access to another Townhome Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner(s) of such other Townhome Unit(s) at least two (2) days in advance of the date that access is needed and attempt to agree on a convenient date and time for access by the Owner and the Owner's contractors. Access in emergency situations shall be granted immediately upon request. Any Owner of a Townhome Unit to which access is needed under this Section shall not unreasonably withhold, condition or delay such access. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Townhome Units, reasonable steps shall be taken to protect such Townhome Units and the property of the Owners and Occupants thereof, and damage shall be repaired by the Person causing the damage at its sole expense.

10.4 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplementary Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.5 Easement for Association Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Units as may be reasonably necessary for the maintenance required hereunder, including, without limitation, an easement across any Unit

for access to the open space located in the Community in order to mow, landscape or otherwise maintain such open space. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Units, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.6 Easements for Maintenance and Repair of Units. Declarant hereby expressly reserves and creates reciprocal appurtenant easements between adjacent Units for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Unit. Such easements shall extend on a Lot a distance of not more than five (5) feet as measured from the dwelling structure located on the adjacent Lot to a line perpendicular to such structure at such point (but such easements shall not extend on, over or across any structures on a Lot), and such easements shall extend on a Townhome Unit a distance of five (5) feet as measured from any point on the common boundary between the Townhome Units. The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Owner of the Unit exercising the easement right shall be liable for the prompt repair of any damage to the Unit over which the easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Unit shall be restored to substantially the same condition as existed prior to the damage. Such easements shall be appurtenant to and run with title to each Unit for the benefit of the Owner of such Unit, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such Unit.

10.7 Easement for Drainage. There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby reserved to the Declarant and granted to the Association a blanket easement across all Units for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Unit within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Units will result from the construction of impervious surface within the Community. Neither the Declarant, the Association nor any builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

10.8 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any approved builder to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such approved builder's development, construction and sales activities related to

property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such approved builder, including, but not limited to: the right to place or authorize the placement of marketing and directional signs on Units or right-of-way at street intersections within the Community; the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Unit; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; 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, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Units, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Units (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any approved builder may use residences, offices or other buildings owned or leased by Declarant or such approved builder as model residences and sales offices and may also use Community recreational facilities, if any, as a sales office without charge. This Section shall not be amended without the Declarant's written consent until the Declarant's rights hereunder have terminated as herein provided.

10.9 Easement for Entry Features. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features for the Community, over and upon any portion of a Unit containing such entry features as may be more fully described on a recorded subdivision plat for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and the right to grade the land under and around the same.

10.10 Easements for Encroachment and Overhang – Townhome Units. There is hereby reserved to the Declarant for the benefit of each Townhome Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Townhome Units and between a Townhome Unit and adjacent Common Property due to the original construction or the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than two (2) feet, as measured from any point on such common boundary; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association, other than the Declarant in the original construction of the Townhome Units.

10.11 Easement to Master Association. The officers, agents, employees and independent contractors of the Master Association shall have a nonexclusive easement to enter upon any portion of the Community for the purpose of performing or satisfying the duties and obligations

of the Master Association as set forth in the Master Declaration, its Bylaws and rules and regulations.

**Article 11**  
**General Provisions**

11.1 **Enforcement.** Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Unit, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines and to assess the cost of recording and removing such notice against the Unit of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2 **Occupants Bound.** All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

11.3 **Self-Help.** In addition to any other remedies provided for herein, the Association, the Declarant, the ACC or their respective duly authorized agents shall have the power to enter upon any Unit or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

11.4 **Duration.** The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually, unless and until terminated by the

agreement of the Owners of at least eighty (80%) percent of the Units as provided in the North Carolina Planned Community Act.

11.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Unit in the Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

11.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Units subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner of such Unit consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Unit without the consent of the affected Owner. In addition to the above, this Declaration may be amended upon the affirmative vote or written agreement of the Owners to which at least sixty-seven (67%) percent of the Total Association Vote is allocated and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and North Carolina law were given.

11.7 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

11.8 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

11.9 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.

11.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

11.11 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Unit and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of North Carolina. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by Federal Express or other reputable private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

11.12 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11.13 No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

11.14 Indemnification. To the fullest extent allowed by the Non-Profit Corporation Law of the State of North Carolina, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including

settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

11.15 Variances. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

11.16 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

11.17 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE ACC DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ACC ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION,

THE BOARD OF DIRECTORS, AND THE ACC, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

11.18 Agreements. Subject to the prior approval of Declarant all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

11.19 Cumulative Effect; Conflict. Declarant, the Association and all Owners and Occupants shall comply with all provisions set forth in the Master Declaration regarding the use of property within the Master Community and the design standards and construction requirements related thereto, including, but not limited to, the use restrictions set forth in Article XIV of the Master Declaration and the design standards and construction requirements set forth in Article XIII of the Master Declaration, which provisions are incorporated herein by this reference and made a part hereof. The covenants, restrictions and provisions of this Declaration and the Bylaws shall be cumulative with those of the Master Declaration and Master Bylaws and the Association may, but shall not be required, to enforce the latter; provided, however, in the event of conflict between or among such covenants, restrictions and provisions of any articles of incorporation, bylaws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of the Association and the Declaration shall be subject and subordinate to those of the Master Association and Master Declaration, and the covenants, restrictions and provisions of the Master Association and Master Declaration shall control. In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law, then to the extent that the provisions of North Carolina law cannot be waived by agreement, North Carolina law shall control.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument, this 12<sup>th</sup> day of August, 2005.

DECLARANT: **KB HOME RALEIGH-DURHAM LLC,**  
a Delaware limited liability company

By: [Signature] (SEAL)  
Name: JAMES A. GASKINS  
Title: Director of Land Acquisition

NORTH CAROLINA

Wake COUNTY

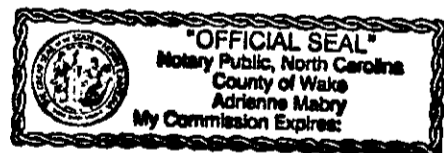
I, a Notary Public of the County and State aforesaid, certify that James A. Gaskins personally appeared before me this day and acknowledges that he is the Director of Land Acquisition of **KB HOME RALEIGH-DURHAM LLC**, a Delaware limited liability company, and that by authority of Acquisition/ Manager duly given and as the act of the company, the foregoing instrument was signed in its name by its Director of Land Acquisition.

Witness my hand and official stamp or seal, this 12<sup>th</sup> day of August, 2005.

[STAMP/SEAL]

[Signature]

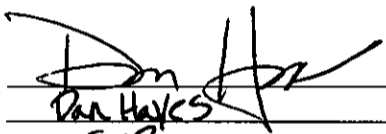
Notary Public



My Commission Expires: 12-11-2006

**IN WITNESS WHEREOF**, the undersigned owner of some or all of the tract or parcel of land described on Exhibit "A" attached hereto does hereby declare and consent, on behalf of such owner and such owner's heirs, successors, legal representatives, successors-in-title and assigns, that from and after the date hereof the property of owner described on Exhibit "A" attached hereto shall be owned, held, transferred, sold, conveyed, used, occupied, and encumbered subject to all of the terms, provisions, covenants, restrictions and easements contained in the Declaration. This 25<sup>th</sup> day of July, 2005.

**OWNER:** **SCC – CANYON II, LLC**, a Delaware limited liability company

By:  (SEAL)  
Name: Dan Hayes  
Title: EVP

NORTH CAROLINA  
\_\_\_\_\_ COUNTY

I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_ personally appeared before me this day and acknowledges that \_\_\_\_\_ is the \_\_\_\_\_ of **SCC – CANYON II, LLC**, a Delaware limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its \_\_\_\_\_.

Witness my hand and official stamp or seal, this \_\_\_ day of \_\_\_\_\_, 2005.

[STAMP/SEAL]

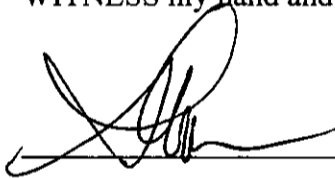
\_\_\_\_\_  
Notary Public

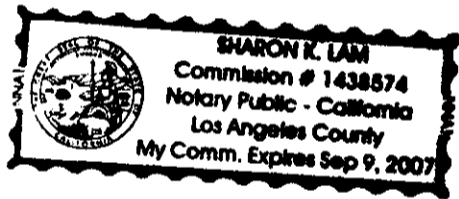
My Commission Expires: \_\_\_\_\_

State of California )  
County of Los Angeles ) ss.

On July 25, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared Dan Hayes, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the ~~person~~(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

 (Seal)



**CONSENT OF MASTER DECLARANT**

IN WITNESS WHEREOF, the Declarant under the Master Declaration hereby consents to the foregoing Declaration of Protective Covenants for Lexington Park, Arlington Park and Washington Square at Amberly and executes this instrument under seal, this 9 day of August, 2005.

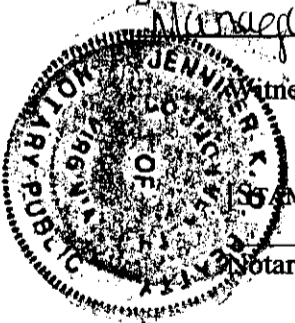
**MASTER DECLARANT:** **SANDLER AT AMBERLY, LLC**, a Virginia limited liability company

By: [Signature] (SEAL)  
Name: Nathan D. Benson  
Title: Manager

~~NORTH CAROLINA~~ Virginia  
VA Beach City  
~~COUNTY~~

I, a Notary Public of the County and State aforesaid, certify that Nathan D. Benson personally appeared before me this day and acknowledges that he is the Manager of **SANDLER AT AMBERLY, LLC**, a Virginia limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its Manager.

Witness my hand and official stamp or seal, this 9 day of August, 2005.



[Signature]  
Notary Public

My Commission Expires: 12/31/09

BK011556PG00629

**CONSENT OF BOARD OF DIRECTORS OF THE MASTER ASSOCIATION**

IN WITNESS WHEREOF, the undersigned, being all of the members of the Board of Directors of the Amberly Master Property Owners Association, Inc., the Master Association under the Master Declaration, hereby consents to the foregoing Declaration of Protective Covenants for Lexington Park, Arlington Park and Washington Square at Amberly and executes this instrument under seal, this 9<sup>th</sup> day of August, 2005.

**BOARD OF DIRECTORS:**

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

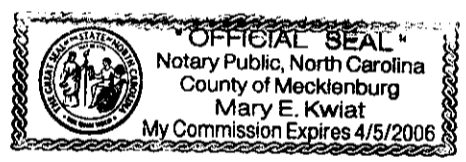
By: David L. Guy (SEAL)  
Name: DAVID L. GUY  
Director  
Vice President

NORTH CAROLINA  
Mecklenburg COUNTY

I, a Notary Public of the County and State aforesaid, certify that David L. Guy personally appeared before me this day and acknowledges that he is a director of **AMBERLY MASTER PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its director.

Witness my hand and official stamp or seal, this 9<sup>th</sup> day of August, 2005.

[STAMP/SEAL]  
Mary E Kwiat  
Notary Public



My Commission Expires: 4/5/06

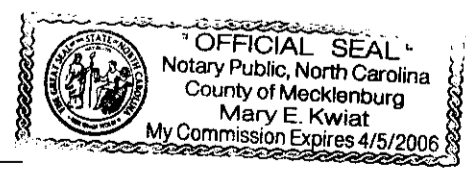
By: Thomas W. Scott (SEAL)  
Name: Thomas W. Scott  
Director  
Secretary / Treasurer

NORTH CAROLINA  
Mecklenburg COUNTY

I, a Notary Public of the County and State aforesaid, certify that Thomas W. Scott personally appeared before me this day and acknowledges that he is a director of **AMBERLY MASTER PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its director, Secretary / Treasurer.

Witness my hand and official stamp or seal, this 9<sup>th</sup> day of August, 2005.

[STAMP/SEAL]  
Mary E Kwiat  
Notary Public



My Commission Expires: 4/5/06

EXHIBIT "A"

Property Description

**Amberly – Phase 1**

Beginning at an existing iron pipe on the northern right of way of Yates Store Road (SR 1626) (60'R/W), said iron pipe being South 79°02'16" West 8,811.26 feet from NCGS survey monument "Tangent", said monument having N.C. grid coordinates (NAD 83) of N=755,947.730, E=2,036,930.742, thence from said beginning point with said right of way North 85°58'50" West 54.56 feet to a point, thence North 86°15'44" West 99.53 feet to a point, thence North 86°56'48" West 216.19 feet to a point, thence North 86°15'37" West 100.30 feet to a point, thence North 85°27'38" West 53.94 feet to a point, thence North 84°50'53" West 54.52 feet to a point, thence North 84°06'39" West 54.87 feet to a point, thence North 82°51'18" West 54.11 feet to a point, thence North 80°48'05" West 53.02 feet to a point, thence North 78°00'55" West 52.63 feet to a point, thence North 74°31'43" West 52.03 feet to a point, thence North 70°59'14" West 52.61 feet to a point, thence North 67°32'59" West 52.55 feet to a point, thence North 65°18'16" West 53.07 feet to a point, thence North 64°23'10" West 53.67 feet to a point, thence North 63°48'17" West 99.81 feet to a point, thence North 63°35'53" West 100.16 feet to a point, thence North 63°49'37" West 101.16 feet to a point, thence North 64°08'27" West 100.43 feet to a point, thence North 65°43'50" West 54.80 feet to a point, thence North 68°53'02" West 55.48 feet to a point, thence North 72°43'30" West 55.61 feet to a point, thence North 79°22'12" West 56.06 feet to a point, thence North 86°55'59" West 55.92 feet to a new iron pipe on the eastern right of way of the future right of way of Yates Store Road Extension, thence with said right of way along a curve to the left having a radius of 1,050.00 feet, an arc length of 1,100.82 feet, and a chord bearing and distance of North 27°00'52" East 1,051.09 feet to a new iron pipe, thence North 03°01'11" West 73.20 feet to a new iron pipe, thence leaving said right of way North 81°00'00" East 270.14 feet to a new iron pipe, thence South 88°03'42" East 87.09 feet to a new iron pipe, thence South 42°52'35" East 269.24 feet to a new iron pipe, thence South 85°07'21" East 160.28 feet to a new iron pipe, thence North 56°57'44" East 100.89 feet to a new iron pipe, thence South 88°18'44" East 444.68 feet to a new iron pipe, thence South 01°43'36" West 481.61 feet to an existing iron pipe, thence South 01°40'20" West 813.89 feet to the point and place of Beginning containing 38.995 acres more or less.

TOGETHER WITH

Beginning at a point on the centerline of Yates Store Road (SR 1626), said point being South 78°50'20" West 12,515.64 feet from NCGS monument "TANGENT", said monument having NC grid coordinates (NAD 83) of N=755,947.730, E=2,036,930.742, thence from said Beginning point leaving said centerline North 09°37'22" West 669.05 feet to an existing concrete monument, thence North 21°35'03" West 201.14 feet to a point, thence North 58°35'11" East 757.21 feet to an existing iron pipe, thence South 07°47'13" East 774.92 feet to an existing iron pipe, thence South 38°37'37" West 231.01 feet to an existing iron pipe, thence South 69°12'37" West 109.65 feet to an existing iron pipe, thence South 04°10'36" East 240.48 feet to a point on the centerline of Yates Store Road (SR 1626), thence with said centerline South 79°17'33" West 46.09 feet to a point, thence South 83°25'56" West 38.86 feet to a point, thence South 86°36'31" West 28.99 feet to a point, thence South 87°51'24" West 28.51 feet to a point, thence South 89°23'18" West 28.42 feet to a point, thence North 89°53'59" West 28.44 feet to a point, thence North 89°17'48" West 114.09 feet to a point, thence North 89°16'51" West 23.92 feet to the point and place of Beginning containing 13.561 Acres more or less.

TOGETHER WITH

Beginning at a point on the Proposed Yates Store Road (100' R/W), said point being South 78°49'45" West 12,177.06 feet from NCGS monument "TANGENT", said monument having NC grid coordinates (NAD 83) of N=755,947.730, E=2,036,930.742, thence from said Beginning point leaving said right of way North 04°10'36" West 191.17 feet to an existing iron pipe, thence North 69°12'37" East 109.65 feet to an existing iron pipe, thence

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North 38°37'37" East 231.01 feet to an existing iron pipe, thence North 07°47'13" West 774.92 feet to an existing iron pipe, thence South 58°35'11" West 738.65 feet to a point on the Wake County/Chatham County line, thence with said county line North 17°44'18" East 1,455.00 feet to a point, thence leaving said county line South 76°10'43" East 556.30 feet to a point, thence South 70°17'20" East 477.52 feet to a point, thence South 54°59'11" East 354.04 feet to a point, thence South 46°36'45" East 287.24 feet to a point, thence South 44°19'31" East 336.34 feet to a point on the Proposed Yates Store Road (100' R/W), thence with said right of way along a curve to the right having a radius of 950.00 feet, an arc length of 404.14 feet, and a chord bearing and distance of South 62°58'45" West 401.10 feet to a point, thence along a curve to the left having a radius of 1,150.00 feet, an arc length of 769.78 feet, and a chord bearing and distance of South 55°59'24" West 755.49 feet to a point, thence South 36°48'50" West 498.64 feet to a point, thence along a curve to the right having a radius of 672.70 feet, an arc length of 459.68 feet, and a chord bearing and distance of South 57°53'05" West 450.79 feet to the point and place of Beginning containing 47.679 Acres more or less.

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EXHIBIT "B"

Additional Property Which May Unilaterally  
Be Submitted To This Declaration by Declarant

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, adjacent to the real property described in the foregoing Exhibit "A" to the Declaration of Protective Covenants for Lexington Park, Arlington Park and Washington Square at Amberly or contiguous to other real property hereafter subjected to the Declaration. Adjacent property shall include property in the immediate vicinity of any property subjected to the Declaration even though separated by, without limitation, a public or private road, stream, pond or other body of water or a right-of-way of any kind.

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EXHIBIT "C"

BYLAWS

OF

AMBERLY COMMUNITY ASSOCIATION, INC.

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BYLAWS  
OF  
AMBERLY COMMUNITY ASSOCIATION, INC.

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BYLAWS  
OF  
AMBERLY COMMUNITY ASSOCIATION, INC.

Article 1  
Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Amberly Community Association, Inc. (hereinafter sometimes referred to as the "Association").

1.2 Membership. The Association shall have one class of membership, as is more fully set forth in that certain Declaration of Protective Covenants for Lexington Park, Arlington Park and Washington Square at Amberly (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article 2  
Association: Meetings, Quorum, Voting, Proxies

2.1 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

2.2 Annual Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least ten percent (10%) of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to

be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

2.5 Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Unit of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a director or officer. If an Owner wishes notice to be given at an address other than the Unit, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days nor more than sixty (60) days before the meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the North Carolina Nonprofit Corporation Act or other applicable law (the "Governing Law"), notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

2.6 Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, signed by the member, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. The quorum shall be reduced by fifty (50%) per cent at the next meeting as provided in the North Carolina Planned Community Act. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

2.9 Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the person

presiding over a meeting before the appointed time of each meeting. A Proxy is void if not dated. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of actual notice by the person presiding over a meeting of the revocation of the proxy or the of the death or judicially declared incompetence of the member; (b) receipt by the person presiding over a meeting of a subsequent appointment form signed by the member; or (c) the expiration of eleven (11) months from the date of the proxy appointment form.

2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least ten percent (10%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one (1) or more consents in writing setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed in writing shall be included in the minutes of meetings of members filed in the permanent records of the Association.

2.13 Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

### Article 3

#### Board of Directors: Number, Powers, Meetings

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are eighteen (18) years of age or

older. Except for directors appointed by the Declarant, each director must reside in the Community and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time with such Person's spouse or any co-Owner or Occupant of such Person's Unit.

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any director or directors of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of recording of the Declaration; (b) the date on which all of the Units planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of lots planned by Declarant for the Community shall initially be the number of Units shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Units planned for the Community shall be the actual number of Units shown on the recorded subdivision plat(s) for the Community regardless of any different number of Units shown from time to time on the land use plan.

3.3 Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and/or directors of the Association as provided above, the Board of Directors shall consist of from one (1) to three (3) directors as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of three (3) or five (5) directors, who shall be elected as provided below.

3.4 Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5 Election and Term of Office. After the Declarant's right to appoint directors or officers terminates, the Association shall call a special meeting (or take action under Section 2.12 or Section 2.13 in lieu of a meeting) and the members shall elect three (3) or five (5) directors, as determined by the Board, as follows: the initial term of two (2) directors (or three (3) directors in the event the total number of directors is five (5)) shall be fixed at two (2) years, and thereafter successors shall be elected to a term of two (2) years; the initial term of one (1) director (or two (2) directors in the event the total number of directors is five (5)) shall be fixed at one (1) year, and thereafter successors shall be elected to a term of two (2) years. Each Neighborhood shall elect at least one (1) director, with the remaining directors to be elected at large. At annual meetings thereafter, directors shall be elected as necessary to fill vacant seats on the Board. A quorum must be present at the meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidates receiving the most votes shall be elected. Notwithstanding anything herein to the contrary, directors shall be elected from the Community

hereunder so that in every year the Board shall be composed of at least one (1) director from each Neighborhood in the Community; provided, however, that in the event a qualified candidate for election to the Board from a particular Neighborhood cannot be located, the director shall be elected from the Community at large without regard to the particular Neighborhood in which that director lives.

3.6 Removal of Directors. At any annual, regular or special meeting of the Association at which a quorum is present, any director(s) elected by the members may be removed, with or without cause, by a majority of the members present and entitled to vote and a successor may then and there be elected to fill the vacancy thus created. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is removal of a director. A director whose removal by the members has been proposed shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the remaining directors.

3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term.

3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten (10) days after the election at such time and place as the directors may conveniently assemble.

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; or (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two (2) days before the day set for the meeting.

3.11 Waiver of Notice. The business transacted at any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present at the beginning of the

meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present at the beginning of the meeting shall constitute the decision of the Board of Directors.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

3.14 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

3.15 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.18 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by law, the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) keeping books with detailed accounts of the receipts and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and

(k) authorization of contracts on behalf of the Association.

3.19 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice. The Board of Directors shall not delegate any power or authority of the Board to the managing agent or any other Person.

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21 Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Written notice shall be delivered to the member by first-class or certified mail sent to the address of the member shown on the Association's records, specifying:

- (1) the nature of the violation, the fine to be imposed and the date, not less than fifteen (15) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine will take effect;
- (2) that the violator may, within ten (10) days from the date of the notice or, in the event of an unapproved sign, twenty-four (24) hours from the date of the notice, request a hearing regarding the fine imposed;
- (3) the name, address and telephone numbers of a person to contact to challenge the fine;
- (4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and
- (5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice or twenty-four (24) hours in the event of an unapproved sign, respectively.

(b) If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. Except for the display of unapproved signs, no fine shall be imposed prior to the date that is five (5) days after the date of the hearing.

#### Article 4 Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall also be directors.

4.2 Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association, the officers of the Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

4.3 Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board of directors.

4.4 Salaries. The officers shall receive no compensation.

4.5 Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall have the authority to prepare, execute, certify and record any amendment to the Declaration made on behalf of the Association. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.7 Vice President. The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

4.8 Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors; notify the members and directors of meetings as provided by these bylaws and North Carolina law; have custody of the seal of the Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

4.9 Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article 5  
Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Declaration are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Non-Profit Corporation Law of the State of North Carolina.

Article 6  
Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2 Parliamentary Rules. *Roberts Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration or these Bylaws.

6.3 Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

6.4 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Units subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Units subject to the Declaration; or (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Units subject to the Declaration. In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.

EXHIBIT "D"

Stormwater Maintenance Plan

AMBERLY PUD. A PORTION OF PARCELS MF-2 AND MF-2a  
STORMWATER INSPECTION AND MAINTENANCE  
CARY, NORTH CAROLINA

**1.0 INSPECTIONS AND MAINTENANCE PROCEDURES**

**1.1 Permanent Erosion Control Practices**

Stormwater collection and treatment systems will be constructed to store and treat stormwater runoff from the developed site. Once the stormwater collection and treatment systems are installed, the majority of stormwater runoff from the site will be diverted to one of seven ponds.

- Existing Pond will capture and treat stormwater runoff from an unspecified area in the central portion of Phase I.
- Pond East #1 will capture and treat stormwater runoff from 5.5 acres in the eastern portion of Phase I.
- Pond East #2 will capture and treat stormwater runoff from 15.5 acres in the western portion of Phase I.
- Pond West #1 will capture and treat stormwater runoff from 17.8 acres of Phase II.
- Pond West #2 (existing) will capture and treat stormwater runoff from 13.68 acres in the central portion of Phase III.
- Pond West #3 will capture and treat stormwater runoff from 13.0 acres in the northwest portion of Phase III.
- Pond West #4 will capture and treat stormwater runoff from 4.3 acres in the northeast portion of Phase III.

Level spreaders will treat stormwater collected by engineered collection systems near the protected buffers where needed to provide diffuse flow. Stormwater runoff from additional developed areas will exit residential portions of the site as diffuse flow through wooded or otherwise vegetated areas.

**1.2 Inspections**

The following inspections will be performed:

1. Visual inspections of all erosion and sedimentation control facilities will be performed at least once every six months.

**AMBERLY PUD. A PORTION OF PARCELS MF-2 AND MF-2a  
STORMWATER INSPECTION AND MAINTENANCE  
CARY, NORTH CAROLINA**

- X Filter basins will be inspected for depth of sediment.
- X Temporary and permanent seeding will be inspected for bare spots, washouts, and healthy growth.
- 2. Visual inspections of all stormwater runoff discharges will be performed at the same frequency as described above for the following characteristics:
  - Clarity
  - Suspended Solids
  - Other obvious indicators of stormwater pollution
  - Floating Solids
  - Oil Sheen

Inspections shall be recorded on the Monitoring Inspection Report attached. Records of all inspections shall be retained by the property management company for a minimum of five years.

Visible sedimentation found outside of the disturbed limits shall be recorded and a brief explanation kept with the records as to the measures taken to control future releases. Any measures taken to clean up the sediment that has left the disturbed limits shall also be recorded.

A rain gauge shall be maintained on the site and a record of the rainfall amounts and dates shall be kept all of the inspection records.

**1.3 Maintenance Procedures**

In order to ensure that the erosion and sedimentation control devices are working properly, the following maintenance procedures will be followed:

1. Built up sediment will be removed from the filter basins when it has reached one-half the depth of the basin.
2. Bare spots and washouts shall be re-seeded as appropriate to stabilize the soil.

**AMBERLY PUD. A PORTION OF PARCELS MF-2 AND MF-2a  
STORMWATER INSPECTION AND MAINTENANCE  
CARY, NORTH CAROLINA**

**1.0 INSPECTIONS AND MAINTENANCE PROCEDURES**

**1.1 Permanent Erosion Control Practices**

Stormwater collection and treatment systems will be constructed to store and treat stormwater runoff from the developed site. Once the stormwater collection and treatment systems are installed, the majority of stormwater runoff from the site will be diverted to one of seven ponds.

- Existing Pond will capture and treat stormwater runoff from an unspecified area in the central portion of Phase I.
- Pond East #1 will capture and treat stormwater runoff from 5.5 acres in the eastern portion of Phase I.
- Pond East #2 will capture and treat stormwater runoff from 15.5 acres in the western portion of Phase I.
- Pond West #1 will capture and treat stormwater runoff from 17.8 acres of Phase II.
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- Pond West #3 will capture and treat stormwater runoff from 13.0 acres in the northwest portion of Phase III.
- Pond West #4 will capture and treat stormwater runoff from 4.3 acres in the northeast portion of Phase III.

Level spreaders will treat stormwater collected by engineered collection systems near the protected buffers where needed to provide diffuse flow. Stormwater runoff from additional developed areas will exit residential portions of the site as diffuse flow through wooded or otherwise vegetated areas.

**1.2 Inspections**

The following inspections will be performed in accordance with General Permit NCG010000:

**AMBERLY PUD. A PORTION OF PARCELS MF-2 AND MF-2a  
STORMWATER INSPECTION AND MAINTENANCE  
CARY, NORTH CAROLINA**

1. Visual inspections of all erosion and sedimentation control facilities will be performed at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain per 24-hour period.
  - X Silt fences will be inspected for depth of sediment and tears. The inspector will also look to see that the fabric is securely attached to the fence post and that the fence posts are firmly in the ground.
  - X Filter basins will be inspected for depth of sediment.
  - X Temporary and permanent seeding will be inspected for bare spots, washouts, and healthy growth.
  - X The construction entrance will be inspected for sediment tracked onto the road and clean gravel. The inspector will also look to see that all traffic uses the construction entrance when leaving the site.
2. Visual inspections of all stormwater runoff discharges will be performed at the same frequency as described above for the following characteristics:
  - Clarity
  - Suspended Solids
  - Other obvious indicators of stormwater pollution
  - Floating Solids
  - Oil Sheen

Inspections shall be recorded on the Monitoring Inspection Report attached. Records of all inspections shall be kept at the site during the entire construction project. Following construction, the completed forms will be retained at KB Home's office for a minimum of five years.

Visible sedimentation found outside of the disturbed limits shall be recorded and a brief explanation kept with the records as to the measures taken to control future releases. Any measures taken to clean up the sediment that has left the disturbed limits shall also be recorded.

A rain gauge shall be maintained on the site and a record of the rainfall amounts and dates shall be kept all of the inspection records.

**1.3 Maintenance Procedures**

In order to ensure that the erosion and sedimentation control devices are working properly, the following maintenance procedures will be followed:

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**AMBERLY PUD. A PORTION OF PARCELS MF-2 AND MF-2α  
STORMWATER INSPECTION AND MAINTENANCE  
CARY, NORTH CAROLINA**

1. Built up sediment will be removed from the silt fences when it has reached one-third the height of the fence.
2. Built up sediment will be removed from the filter basins when it has reached one-half the depth of the basin.
3. Bare spots and washouts shall be re-seeded as appropriate to stabilize the soil.
4. Additional gravel will be placed on the construction entrance as needed to prevent sediment tracking off-site.
5. The culvert beneath the construction entrance will be cleared as needed to convey stormwater through the culvert.

STORMWATER INSPECTIONS FOR GENERAL PERMIT NCG010000 – LAND DISTURBING ACTIVITIES

PROJECT: \_\_\_\_\_  
 MONITORING FOR THE WEEK BEGINNING: \_\_\_\_\_

RAINFALL:

Date Of Rain	Amount (inches)	Initials

By this signature, I certify (in accordance with Part II Section B, 10 of the NCG010000 permit) that this report is accurate and complete to the best of my knowledge:

\_\_\_\_\_

(Signature of Permittee or Designee)

EROSION AND SEDIMENTATION CONTROL FACILITIES INSPECTED: (At least once [twice, if on 303(d) listed stream for construction related parameters\*] per seven calendar days Or within 24 hours of a rainfall of 0.5 inches per 24 hours)

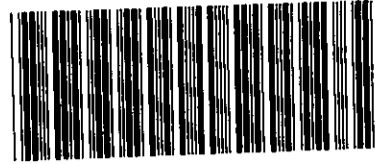
Facility Identification	Date of inspection	Operating Properly (Y/N)	Describe corrective actions taken (may need to attach additional information)

OBSERVATIONS OF RUNOFF AT STORMWATER DISCHARGE OUTFALLS: (At least once [twice, if on 303(d) listed stream for construction related parameters \*] per seven calendar days Or within 24 hours of a rainfall of 0.5 inches per 24 hours)

Stormwater Discharge Outfall Identification	Date	Clarity	Floating solids	Suspended Solids	Oil sheen	Other obvious indicators of stormwater pollution (list & describe)	Visible sediment leaving the site? (Y/N)	If yes, describe actions taken to prevent future releases (may need to attach additional information)	Describe measures taken to clean up sediment outside of the disturbed limits (may need to attach additional information)

Clarity: Choose the number which best describes the clarity of the discharge where 1 is clear and 10 is very cloudy  
 Floating Solids: Choose the number which best describes the amount of floating solids in the discharge where 1 is no solids and 10 the surface is covered in floating solids  
 Suspended Solids: Choose the number which best describes the amount of suspended solids in the discharge where 1 is no solids and 10 is extremely muddy  
 Oil Sheen: Is there an oil sheen in the stormwater discharge? Y or N

\* 303(d) listed streams for construction related parameters – The latest approved list may be obtained from the Division of Water Quality, or from the following website location:  
<http://h2o.emr.state.nc.us/sw/construction303d>



BOOK:011556 PAGE:00583 - 00653

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

North Carolina - Wake County

The foregoing certificate of Adrienne Marley  
Sharon K. Lamm  
Jennifer K. Beatty  
Mary E. Kwiat

\_\_\_\_\_ 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: Jane Morgan  
Assistant/Deputy Register of Deeds

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