

Upon recording return to:  
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WAKE COUNTY, NC 494  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
10/06/2006 AT 14:57:23

BOOK:012207 PAGE:00928 - 00992

DECLARATION OF PROTECTIVE COVENANTS

FOR

WESTPORT AT TWIN LAKES

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Westport at Twin Lakes HOA  
HOA management company:  
PPM, Inc.  
P.O. Box 99657 Raleigh, NC 27624  
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DECLARATION OF PROTECTIVE COVENANTS

FOR

WESTPORT AT TWIN LAKES

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DECLARATION OF PROTECTIVE COVENANTS

FOR

WESTPORT AT TWIN LAKES

**THIS DECLARATION** is made on the date hereinafter set forth by **SANDLER AT TWIN LAKES, L.L.C.**, a Virginia limited liability company (hereinafter sometimes referred to as "Master Declarant"), and **KB HOME RALEIGH-DURHAM LLC**, a Delaware limited liability company (hereinafter sometimes referred to as "Declarant");

**WITNESSETH**

WHEREAS, Master Declarant executed the Master Declaration (as those terms are defined herein); and

WHEREAS, Article II, Section 2(a) of the Master Declaration provides that during the Declarant Control Period (as that term is defined in the Master Declaration) Master Declarant may annex Additional Property (as that term is defined in the Master Declaration) to the provisions of the Master Declaration and the jurisdiction of the Master Association (as that term is defined herein) by filing for record a Supplemental Declaration (as that term is referred to in the Master Declaration); and

WHEREAS, Master Declarant and Declarant, in the aggregate, are the owners of the real property described in Exhibit "A" attached hereto and desire to subject such property to the provisions of the Master Declaration, and such property is a portion of the property that may be subjected to the Master Declaration by the Master Declarant; and

WHEREAS, Article II, Section 7 of the Master Declaration provides that any Person may subject a portion of the property subject to the Master Declaration to additional covenants, conditions, assessments, charges, restrictions and easements set forth in a Sub-Association Declaration (as that term is defined in the Master Declaration); provided, however, that during the Declarant Control Period, no Person other than Master Declarant may subject any such property to a Sub-Association Declaration unless Master Declarant consents in writing thereto by executing such Sub-Association Declaration;

WHEREAS, Master Declarant and Declarant desire to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration, to be and constitute a Sub-Association Declaration as contemplated in the Master 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;

NOW, THEREFORE, Master Declarant and Declarant hereby declare that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of the Master Declaration and 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 Westport at Twin Lakes Homeowners 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 Westport at Twin Lakes Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns. The Association is a "Sub-Association" as that term is defined in the Master Declaration.

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 Westport at Twin Lakes Homeowners 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. The Common Property is "Sub-Association Common Property" as that term is defined in the Master Declaration.

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, including, without limitation, as may be delineated in part by the rules and regulations and architectural guidelines adopted thereby. Such

determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant and approved by the Master Declarant.

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. The term "Declarant" shall also refer to the Master Declarant, if and to the extent that Master Declarant exercises rights of Declarant as provided in Section 1.10 hereof.

1.9 "Master Association" means Twin Lakes Master Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

1.10 "Master Declarant" means **SANDLER AT TWIN LAKES, L.L.C.**, a Virginia limited liability company and its successors-in-title and assigns; provided that in a recorded instrument, such successor-in-title or assignee is designated as the Master Declarant hereunder by the holder of all of the rights of Master Declarant hereunder; and, provided, further, upon the effective date of the designation of a successor Master Declarant, all rights of the former Master Declarant in and to such status as Master Declarant hereunder shall cease, it being understood that there shall be only one holder of the rights of Master Declarant hereunder at any one point in time. If: (a) the contract to purchase Units between Master Declarant and Declarant is terminated by Declarant and/or Declarant no longer has rights to acquire additional Units in the Community thereunder, or (b) Declarant no longer owns any Units in the Community, then and thereafter, Master Declarant may, but shall not be obligated to, exercise all rights of Declarant under this Declaration, the Articles of Incorporation, and Bylaws, including but not limited to, the right to annex additional property, and appoint the members of the Board and the ACC, by recording in the Wake County Registry one or more Supplementary Declarations declaring itself to be Declarant with respect to the Unit(s) described in such Supplementary Declaration(s); provided, however, thereafter, KB Home Raleigh-Durham LLC shall retain such easement rights, as described in Section 10.7 hereof, to maintain and carry on, upon such portion of the Community as reasonably necessary, such facilities and activities as may be required or convenient for construction, marketing and sales activities related to its property within the Community. Conversely, upon the acquisition by Declarant of all of the Units in the Community as described on the recorded subdivision plat(s) for the Community pursuant to the contract to purchase Units between Master Declarant and Declarant, Master Declarant's right to exercise rights of Declarant contained herein shall automatically terminate, and Declarant may unilaterally file a document in the Wake County Registry, evidencing the termination of Master Declarant's right to exercise rights of Declarant as provided herein.

1.11 "Master Declaration" means that certain Master Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for Twin Lakes, recorded in Book 11629, Page 1597, *et seq.*, in the Office of the Wake County, North Carolina Register of Deeds, as may be supplemented and amended from time to time.

1.12 "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.

1.13 "Mortgagee" means the holder of a Mortgage.

1.14 "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 or the Owner of such property. For purposes of this Section, the term "occupying" shall refer to its ordinary and usual meaning of engaging in the act of taking or entering upon possession of property and use of the same.

1.15 "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.

1.16 "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.

1.17 "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.

1.18 "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.

1.19 "Unit" shall mean 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 dwelling site. Where the dwelling on a Unit is attached by a party wall to one or more other dwellings, the boundary between Units shall be a line running along the center of the party wall separating the Units. The ownership of each Unit shall include the exclusive right to use and possession of any and all portions of the heating and air conditioning units which are appurtenant to and serve each Unit (including, but not limited to, compressors, conduits, wires and pipes) and any porch, deck, patio, steps, wall, roof, foundation, sunroom or any similar appurtenance as may be attached to a Unit when such Unit is initially constructed. The ownership of each Unit shall include, and there shall automatically pass with the title to each 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.

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 Master 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 Master 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. Notwithstanding anything herein to the contrary, during the Declarant Control Period (as that term is defined in the Master Declaration) annexation of property pursuant to this Section shall be consented to by Master Declarant, which consent shall not be unreasonably withheld or delayed.

2.3 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. Notwithstanding anything herein to the contrary, during the Declarant Control Period (as that term is defined in the Master Declaration) annexation of property pursuant to this Section shall be consented to by Master Declarant, which consent shall not be unreasonably withheld or delayed.

2.4 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, Master 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. Any such withdrawal shall be accomplished by the filing for record an amendment to this Declaration describing the property removed and shall be effective upon filing for record in the public records of the county where the Community is located, unless a later effective date is provided therein. Such amendment shall be executed by the Declarant and the Owner(s) of the property being removed and shall not require the vote or consent of any other Person. Notwithstanding anything herein to the contrary, during the Declarant Control Period (as that term is defined in the Master Declaration) withdrawal of property pursuant to this Section shall be consented to by Master Declarant, which consent shall not be unreasonably withheld or delayed.

### 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. Subject to the provisions of Section 3.21 of the Bylaws, 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 Membership in Master Association . Every Owner, by acceptance of a deed to a Unit, acknowledges that the Unit is subject to the Master Declaration. Such Owner is automatically a member of the Master Association.

3.4 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.

#### 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 any 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) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. Each such assessment, together with late charges, interest, costs, reasonable attorney's fees actually incurred and any Incidental Fee (as defined below), shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Unit, and his or her grantee 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 its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

All sums assessed against any Unit pursuant to this Declaration, together with late charges, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, costs, reasonable attorney's fees actually incurred and any Incidental Fee, 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 office of the register of deeds of the county where 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 lien, (ii) liens for real estate taxes and other governmental assessments and charges against the Unit; and (iii) liens placed against a Unit by the Master Association to secure

payment of delinquent assessments and other charges pursuant to the Master Declaration. This Section does not affect the priority of mechanics' or materialmen's liens.

All other Persons acquiring liens or encumbrances on any Unit after this Declaration shall have been recorded in such records, shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

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 contribution to reserves in accordance with a reserve budget separately prepared. The Board shall cause the budget and 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 of 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. There shall be no requirement that a quorum be present at the meeting. 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 a meeting by at least seventy-five percent (75%) of the Total Association Vote. Notwithstanding anything herein to the contrary, the amount of the annual assessment levied hereunder for the calendar year 2006 shall not exceed an average of One Hundred and no/ Dollars (\$100.00) per month per Unit, which amount shall be in addition to any amounts assessed pursuant to 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, the budget last ratified shall be continued until a new budget is ratified. Any surplus funds of the Association remaining after payment of or provision for the operating expenses of the Association, the funding of a reasonable operating expense surplus, and any prepayment of reserves may or may not be refunded or credited to the Owners in the discretion of the Board, but may 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 paid at a uniform rate per Unit 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, of assessments for delinquent accounts; provided however, (a) notwithstanding any provision in this Declaration to the contrary, assessments to pay a judgment against the Association may be made only against the Units in the Community at the time the judgment was entered; and (b) if any common expense is caused by the negligence or misconduct of any Owner or Occupant, the Association may assess the expenses exclusively against that Owner or Occupant's Unit. Unless otherwise provided by the Board, assessments shall be paid in annual installments. The Board may charge each Owner a service, collection, consulting or administration fee (an "Incidental Fee") in an amount to be determined by the Board in connection with the assessment and collection of the assessments provided for in this Declaration. 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 improvements to the Common Property 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 and 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 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 such lien is extinguished as a result of foreclosure of such first Mortgage); 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 to the extent allowed under North Carolina law.

4.7 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. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof 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 (not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of any installment unpaid). 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 (the "Delinquency Notice"). The Delinquency Notice shall state: (i) the outstanding balance due as of the date of the Delinquency Notice; (ii) that the member has fifteen (15) days from the mailing of the Delinquency Notice (the "Grace Period") to pay the outstanding balance without being required to pay attorneys fees and court costs; (iii) the name of and contact information for a representative of the Association whom the member can contact to discuss a payment schedule for the outstanding balance; provided however, the Association shall not be required to permit payment of the outstanding balance in installments; and (iv) that if the outstanding balance is not paid within the Grace Period, the Association intends to seek payment of attorneys' fees and court costs. The Delinquency Notice must be sent by first class mail to the Unit of such member and, if different, to the mailing address of the member in the Association's records. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all sums assessed against the Unit (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 office of the register of deeds of the county in which the Unit is located in the manner provided by law. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, any Incidental Fee, all costs of collection, and, if the Owner has been provided with a Delinquency Notice and failed to pay the outstanding balance set forth therein within fifteen (15) days from the mailing of the Delinquency Notice, court costs and reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. Notwithstanding anything to the contrary in this Declaration, if a member does not contest the collection of the unpaid assessments and enforcement of a lien after the expiration of the Grace Period, then reasonable attorneys fees collected by the Association in connection with such debt shall not exceed One Thousand Two Hundred and No/100 dollars (\$1,200.00) not including costs or expenses incurred; provided however, such limitation shall not apply to judicial foreclosures or to proceedings authorized under Section 116(d) or Section 120 of Article 3 of Chapter 47F of the North Carolina General Statutes. The collection of the unpaid assessments and enforcement of the lien shall be deemed uncontested as long as the member does not dispute, contest or raise any objection, defense, offset or counterclaim as to the amount or validity of the unpaid assessments and lien asserted or the Association's right to collect the debt and enforce the lien.

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. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes or in any other manner permitted by applicable law; provided however, (i) the Association may not foreclose the lien under Article 2A of Chapter 45 of the North Carolina General Statutes if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys fees incurred by the Association solely associated with fines imposed by the Association (such lien may be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes); and (ii) any lien securing debt consisting solely of Incidental Fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. 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, to the extent permitted by this Declaration and applicable law, the right and power to bring all actions against him or her, 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 North Carolina General Statutes; or in any other manner permitted by applicable law. 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.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Unit. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or order or directive of any municipal or other governmental authority, 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 and attorney's fees, then to late charges, then interest and then to delinquent assessments.

**4.8 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 Master Declarant or Declarant, as the case may be, to an Owner who is neither a builder acquiring such Unit in the

ordinary course of business, nor Declarant or a successor Declarant, as the case may be. A Unit shall be occupied for residential purposes when it has been improved with a dwelling and is occupied. Any Unit which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Unit is approved for use as a model home and is not occupied for residential purposes.

4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant shall 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. Notwithstanding anything to the contrary herein, the Declarant's obligations hereunder may be satisfied in the form of cash or in contributions of services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"), or by a combination of these. 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.

4.10 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; provided, however, no late fees or interest on any such new assessment shall be levied retroactively. Nothing herein shall be construed so as to prevent the Association from charging late fees or interest on all or any installment of such new assessment which are not paid when due after the date an Owner receives notice of said new assessment.

4.11 Estoppel Letter. The Association shall, within ten (10) days after receiving a written request therefore, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit shall be binding upon the Association as of the date of issuance.

4.12 Initiation Fee. Upon the first sale of each and every Unit after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee in the amount of Five Hundred and No/100 Dollars (\$500.00) (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 for the benefit of the Association, shall be placed in a specially designated reserve account and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors.

4.13 Master Association Assessments. In addition to this Declaration each Unit is subject to the Master Declaration. Each Unit shall be subject to assessment by the Master Association pursuant to the Master Declaration.

## 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 street medians and islands located in the Community, if and to the extent the same are not maintained on an ongoing basis by a governmental entity or the Master Association; (b) landscaping within the Community as provided in Section 5.6 hereof; (c) any irrigation system servicing the Community, if and to the extent the same is not maintained on an ongoing basis the Master Association; (d) the exterior portions of all Units as provided in Section 5.8 hereof; (e) all private streets, roads, alleys or drives in the Community whether or not such private streets, roads, alleys or drives are on Common Property, a Unit or privately owned property, to the extent the same are not maintained on an ongoing basis by the Master Association or a governmental entity; (f) all water and sanitary sewer pipes or facilities that serve more than one (1) Unit, if any, if and to the extent the same are not maintained on an ongoing basis by a governmental entity or the Master Association; and (g) all walking trails in the Community, if any, if and to the extent the same are not maintained on an ongoing basis by a governmental entity or the Master 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, 5.6 and 5.8, 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; keeping improvements and exterior lighting in good repair and working order (except to the extent maintained by the Association pursuant to Section 5.8 hereof); complying with all governmental health and police requirements; repairing and painting (or other appropriate external care) of improvements located on a Unit (except to the extent maintained by the Association pursuant to Section 5.8 hereof) and maintenance of any pipe(s), wire(s) and conduit(s) which serve only the Unit, whether said pipe(s), wire(s) or conduit(s) are located within or outside of a Unit's boundaries. 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 said Owner shall diligently pursue until completion. If any Owner does not comply with the provisions hereof or in an emergency situation, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject, shall, to the extent permitted by applicable law, become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

5.3 Conveyance of Common Property to Association; No Implied Rights. The Declarant, the Master 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 hereof, maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or Declarant has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the reconveyance by the Association to Declarant of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, if the Common Property or portion thereof is: (i) found by Declarant to have been conveyed in error, (ii) needed by Declarant to make adjustments in property boundary lines, or (iii) reasonably determined by Declarant to be needed by 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 on behalf of the Association any such conveyance to the Association and reconvey any such property on behalf of the Association and to execute on behalf of the Association any and all documents, including, without limitation, deeds and transfer tax declaration forms, necessary or convenient to effectuate and document any such conveyance to or reconveyance from the Association and all acts of such attorney in fact are hereby ratified.

The power and agency hereby granted are coupled with an interest and are irrevocable. Neither the Declarant or the Master Declarant shall 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. The Declarant, the Master 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 Master Declarant 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, the Master Declarant, or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the real estate records of the County where the property is located.

5.4 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.

5.5 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.

5.6 Landscaping Maintenance. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Community, including parks, open space and medians and islands, if any, if and to the extent such are not maintained on an ongoing basis by a governmental entity or the Master Association. In addition to the foregoing, the Association shall maintain and keep in good repair the landscaping improvements located on the exterior portions of the Units, if any. 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.

5.7 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.

5.8 Unit Maintenance. As provided in Section 5.1 above, the Association shall maintain and keep in good repair the exterior portions of all Units. Maintenance by the Association of exterior portions of 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 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 Units; (ii) HVAC or similar equipment located outside the 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 Unit; (v) lighting fixtures pertaining to a particular 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) Unit whether located within or outside of the 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 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 Unit pursuant to this Section shall be charged back to the 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. 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, 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 owns any property in the Community or has the right to 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. Notwithstanding anything herein to the contrary, during Declarant Control Period (as that term is defined in the Master Declaration) any new home construction within the Community shall be subject to prior written approval of Master Declarant under the Master Declaration, as applicable; provided, however, Declarant may submit its standard plans to Master Declarant for approval thereunder, which approval will not be unreasonably withheld, and thereafter no further approval shall be required for Declarant to construct improvements on Units consistent with the approved standard plans.

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 12.5 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; provided, however, even if the requirements of this subsection are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations, or in violation of the Master Declaration. 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. Nothing contained herein shall be construed as relieving a Unit Owner from obtaining any permits necessary and required by any City, County or other authority having jurisdiction over the building, construction, installation, repair or replacement of improvements within the Community.

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) prevent 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 nor 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.

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. 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, except that the following may be erected upon a Unit: (a) for-sale signs and security signs consistent with the Community-Wide Standard; (b) any signs required by legal proceedings; and (c) not more than two (2) signs expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, but only if: (i) any such sign has a maximum area of six (6) square feet and a maximum height of four (4) feet above ground level, and (ii) any such sign is displayed no sooner than sixty (60) days prior to such election and is removed within

seven (7) days after such election. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. 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 No/100 Dollars (\$100.00) 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 of 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 property within the Community shall be used, in whole or in part, for the storage of any property or thing 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 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 exterior speakers, horns, whistles, bells, or other sound devices, 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 permitted, located, used or placed on any Unit, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board. 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 Antennae. 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 (a) antennas 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) antennas 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) antennas that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless such installation (i) imposes unreasonable delay or prevents the use of the antennae; (ii) unreasonably increases the cost of installation; or (iii) an acceptable quality signal cannot otherwise be obtained.

7.10 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.

7.11 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 Unit. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant.

7.12 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 affected 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.

7.13 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.

7.14 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.

7.15 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.

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

7.17 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.

7.18 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.

7.19 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.

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

7.21 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant, the Master Declarant, the Master Association 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.

7.22 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.

7.23 Wetlands, Lakes, Ponds and Streams. All lakes, ponds, 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 storm water retention and detention ponds, 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 storm water retention and detention ponds, 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 pond or stream as may exist in the Community without the prior written consent of the Board of Directors.

7.24 Pedestrian Walking Trails. Except as herein provided, the pedestrian walking trails within the community, if any, 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 walking trails in the Community. Provided, however, this provision shall not prohibit the use of a walking trail 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 walking trails, if any. The Board may, without the approval of the Owners, grant rights to the public and/or the Town of Cary, North Carolina to use and/or maintain the walking trails in the Community, if any. This provision shall not apply to concrete sidewalks located along the public streets within the Community.

7.25 Neuse River Buffer The Community may contain a neuse river buffer area as shown on the recorded subdivision plat for the Community (the "Buffer Area"). The Buffer Area shall be left in its undisturbed, natural state and no land-disturbing activity, placement of impervious surfaces, removal of vegetation, encroachment, construction, or erection of any structure shall occur thereon unless performed by Declarant, Master Declarant, the Master Association or the Association in accordance with all applicable local, state and federal rules, regulations, laws and ordinances. The Association, the Master Association, Master Declarant 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 Buffer Area. Without limiting the generality of the foregoing, all Owners, the Declarant, the Master Declarant, the Master Association and the Association shall abide by all local, state and federal rules, regulations, laws and ordinances concerning the Buffer Area, including, but not limited to, those rules contained in the North Carolina Administrative Code at 15 N.C.A.C. §§ 2B.0233 through .0242.

7.26 Site Distance Triangle The Community contains site distance triangles as shown on the recorded subdivision plat for the Community (the "Site Distance Triangles"). Nothing can be planted, built, installed or constructed, including grading, landscaping, fencing, etc. that will obstruct or restrict visibility along the adjacent roadway within the area defined by the sight distance line and the road right of way.

7.27 Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to Units, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all Units shall be maintained with heating operating and at a minimum of fifty (50°) degrees Fahrenheit during the months of October, November, December, January, February, March, and April. Owners shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If during the months specified above the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Board of this failure of the equipment and of the time needed to repair the equipment and shall take reasonable steps to keep the Unit heated sufficiently to prevent the breakage of water pipes. The Board may fine any Owner or Occupant for violation hereof, in addition to any other remedies of the Association.

Article 8  
Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain all insurance required by Chapter 47F of the North Carolina General Statutes or any other applicable law. Without limiting the generality of the foregoing, the Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article 5 hereof and blanket insurance for all Units; provided however, the Association's insurance shall not include the Unit Owner's personal property (which shall be the sole responsibility of the Unit Owner) (a "Property Insurance Policy"). This insurance shall cover all risks, loss or damage commonly insured against including, without limitation, fire or other hazards, including extended coverage, vandalism and malicious mischief 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. Alternatively, the Board may purchase "all risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Property (a "Liability Policy"). The Liability Policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

The Property Insurance Policy and the Liability Policy shall provide that (a) each Owner is an insured Person under the policy to the extent of the Owner's insurable interest, (b) the insurer waives its rights to subrogate under the policy against any Owner or member of the Owner's household, and (c) no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy. If a Property Insurance Policy or a Liability Policy is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid United States mail to all Owners.

The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through Declarant or its affiliates and to reimburse the Person so providing or arranging the insurance coverage for the cost thereof, and Declarant or its affiliates shall be authorized, but not obligated, to purchase such insurance coverage for the benefit of the Association and the Owners upon Declarant or its affiliate, as the case may be, and the Association agreeing upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant or its affiliate, as the case may be, in obtaining such coverage.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the

face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective parties which may be benefited by such insurance, as their interests may appear. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company authorized to do business in North Carolina.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto, but insurance proceeds for the loss are payable to any insurance trustee designated for that purpose or otherwise to the Association and not to any Mortgagee.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement, if these are reasonably available, and all insurance policies shall be reviewed annually by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Community is located.

(e) In addition to the requirements regarding the Property Insurance Policy and the Liability Policy set forth above, the Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, subjected to nonrenewal, invalidated or suspended on account of any defect or the conduct of any director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a

reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration;

(vi) that no policy may be canceled, subjected to nonrenewal, or substantially modified without at least ten (10) days' prior written notice to the Association; and

(vii) that each Owner is an insured Person under the policy to the extent of the Owner's insurable interest.

In addition to other insurance coverage required by this Section, the Board shall obtain workers compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law, and, if available at reasonable cost, as determined in the sole discretion of the Board, a fidelity bond or employees dishonesty coverage covering directors, officers, employees and other Persons handling or responsible for the Association's funds. The amount of fidelity or employees dishonesty coverage, if obtained, shall be determined in the directors' best business judgment. Such coverage, if obtained, shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation and shall not be subject to cancellation, nonrenewal or substantial modification without at least ten (10) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

## 8.2 Damage and Destruction.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or 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 necessary to comply with applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, (i) the Community is terminated, (ii) repair or reconstruction would be illegal under any state or local health or safety statute or ordinance, or (iii) within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote, Declarant and the Owner or Owners of any damaged Unit or Units otherwise agree. 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. No

Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

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 Association's members, levy a special assessment against the Owners of Units who would be responsible for such loss in the absence of insurance or otherwise to the Owners of all Units. Additional assessments may be made in like manner 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 in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the insurance proceeds attributable to the damaged Common Property shall be used to restore it to its natural state and it shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition. The remainder of the insurance proceeds, if any, shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all Units.

8.3 Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total costs of repair, unless the insurance policy provided that the deductible will apply to each Unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to Article 4 of this Declaration

## 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 plat(s) 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; and

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

10.3 Easements for Utilities. 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 and the Association or the designee of either of them, 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.

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, and all policemen, firemen, ambulance personnel and similar emergency personnel, 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 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 other 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.

10.7 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 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 development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant 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 may use residences, offices or other buildings owned or leased by Declarant 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 written consent of Declarant until the rights of Declarant hereunder have terminated as herein provided.

10.8 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.

10.9 Easements for Encroachment and Overhang. There is hereby reserved to the Declarant for the benefit of each Unit a reciprocal appurtenant easement for encroachment and overhang between adjacent Units and between a 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 Units.

10.10 Unit Owner - Easement for Utilities. Declarant hereby establishes for the benefit of each 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 Unit and situated in, on or under any other Unit or the Common Property. The Board of Directors, and 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 under, through, or over the Units and/or the Common Property as may be reasonably necessary to or desirable for the ongoing operation of the Community. In the event that any Owner desires access to another Unit to install, maintain, repair or replace any utility pipe, wire, cable, conduit, utility line, flue or duct, the Owner shall contact the Owner of such other 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 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 Units, reasonable steps shall be taken to protect such 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.

10.11 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.

10.12 Easement for Private Streets, Roads, Alleys and Drives. Declarant hereby grants, conveys, declares, creates, imposes and establishes a perpetual, non-exclusive right-of-way easement for vehicular and pedestrian access, ingress and egress over and across the private streets, roads, alleys and drives within the Community whether or not such private streets, roads, alleys and drives are on a Unit or privately owned property. At such time as one or more subdivision plats for the property submitted to this Declaration are recorded in the real estate records of the Office of the Register of Deeds of Wake County, North Carolina, any reference to private streets, roads, alleys and drives shall then and thereafter mean a reference to the private streets, roads, alleys and drives as actually constructed and depicted on the recorded subdivision plat. The right-of-way easement herein granted shall permit joint usage of such easement by (a) the Owners and Occupants, (b) the legal representatives, successors and assigns of the Owners, and (c) invitees and licensees of the Owners and Occupants. Declarant hereby expressly reserves for itself, its successors and assigns, all rights and privileges incident to the ownership of the fee simple estate of any right-of-way easement area which are not inconsistent with the rights and privileges herein granted, including, without limitation, the right to maintain one or more proprietary signs on the easement area and the right to grant additional non-exclusive easements to third parties, over, under and across the easement area. Declarant hereby reserves for the benefit of Declarant and grants to the Association as Common Property, the perpetual nonexclusive right and easement upon, over and across those utility easement areas and private streets, roads, alleys and drives for the installation, maintenance, and use of such streets, roads, alleys and drives, traffic directional signs located adjacent to said streets, roads and drives, grading for proper drainage of said streets, roads, alleys and drives, and related activities and improvements.

#### Article 11

##### Rights of Master Declarant

Master Declarant has contracted to sell to Declarant certain the Units shown on Exhibit "A", attached hereto. However, Master Declarant and Declarant also acknowledge the following: (i) the requirements of the Town of Cary may necessitate subjecting Units owned by Master Declarant to the Declaration prior to their conveyance to Declarant; (ii) if, for any reason, Declarant does not purchase all of the Units in the Community, Master Declarant may need the ability to deal with those Units as if it were the Declarant under the Declaration; (iii) Master Declarant, in developing the Community into Units to sell to Declarant, and in developing other portions of Twin Lakes, may need certain rights to access and perform work in portions of the Common Property conveyed to the Association and may need to reserve easements over, under and through the Common Property; and (iv) certain portions of Twin Lakes will be developed by

Master Declarant as single-family residential lots that are not part of the Community, and easements may need to be reserved over, under and through the Units and the Common Property for utilities and over the private streets within the Community for vehicular access to and from Lake Grove Boulevard. Accordingly, Master Declarant agrees to comply with the following obligations, and the following rights and easements hereby are granted to, or reserved by, Master Declarant, its successors and assigns, and, as specified herein, the future owners of other portions of Twin Lakes, and are in addition to all other rights granted to or reserved by Master Declarant in this Declaration. Nothing in this Article shall provide the Master Declarant, or any party, to violate the provisions of the Code of Ordinances of the Town of Cary (the "Code").

11.1 Agreement to Subject Units to the Declaration. Master Declarant agrees to subject the property which is intended to be part of the Community to the Declaration to the extent necessary to satisfy the requirements of the Town of Cary.

11.2 Agreement to Convey Common Property. Until such time as all portions of the Community owned by Master Declarant and intended to be Common Property have been conveyed to the Association, Master Declarant agrees to convey to the Association such portions of the Common Property in a manner that will comply with the requirements of the Code for development of the Community. All such conveyances may be made by Special Warranty Deed.

11.3 Master Declarant's Assessments; Master Declarant as Declarant. Until such time, if ever, that Master Declarant becomes a Declarant under the Declaration, Master Declarant and all Units owned by Master Declarant, are exempt from all assessments under this Declaration, and Master Declarant shall have no votes in the Association, except with respect to any Units owned by Master Declarant. Master Declarant may become a Declarant under the Declaration with respect to the Units it owns as provided in Section 1.10 hereof.

11.4. Master Declarant's Right to Exchange Common Property. In connection with its development of the Community, and subject to approval of the Town of Cary, if required, Master Declarant shall have the right to exchange property of like kind and utility for Common Property, and Declarant shall consent to and, during the period that Declarant has the authority to appoint and remove directors and officers of the Association, cause the Association to consent to and execute all documents necessary to effect any such exchange.

11.5 Master Declarant's Easements. Master Declarant, its agents and contractors, shall have all of the rights and easements of Declarant under the Declaration with respect to easements over, under and through the Common Property as are reasonably necessary for the on-going development of the Properties (as that term is defined in the Master Declaration). Master Declarant shall have the following additional non-exclusive rights and easements over, under and through the Common Property. For purposes of this Section, the term "Master Declarant" also includes any successor developer of any part or all of the Twin Lakes Community as provided in Section 1.10 hereof.

(a) The right to grant perpetual utility easements on, over, under, across and through the Common Property as may be reasonably necessary for development of the Community and/or other portions of Twin Lakes, and the Association shall, upon request,

execute any such easement to permit recording of same. For purposes of this Article, "utility" or "utilities" include, without limitation, water, sanitary sewer, storm water management, electricity, telephone, natural gas, cable television, greenway easements, and buffers required by Town of Cary ordinances or other governmental laws, ordinances and regulations. Such easements may be granted by written instrument or plat, and may be publicly-dedicated or private easements. Insofar as reasonably practicable, and except for any portions thereof that by necessity must be at or above the surface of the ground, all utilities installed, used and maintained pursuant to such easements shall be underground. Unless specifically excluded therefrom, the grants of all such easements by Master Declarant are deemed to include a right of ingress, egress and regress over and upon all portions of Common Property as reasonably required to facilitate the exercise of such easements.

(b) The right to install, use and maintain in or on Common Property such utilities as may reasonably be required for development of the Community and/or other portions of Twin Lakes.

(c) The right to install, use and maintain in or on Common Property signs, landscaping (including, without limitation, grass, plants, lighting, and irrigation), fencing and other decorative features in connection with development of the Community.

(d) The right to construct, improve, repair, replace and maintain any and all private streets, driveways and alleys that constitute any part of the Common Property, in accordance with any requirements of the Town of Cary and/or in accordance with any contractual obligations of Master Declarant to any person or legal entity.

(e) A non-exclusive right of pedestrian and vehicular ingress, egress and regress over and upon the Community for the purposes of exercising the rights and easements reserved by or granted to Master Declarant under this Declaration, provided, however, that, with respect to vehicular ingress, egress and regress, to the extent reasonably practicable, Master Declarant shall use only those portions of the Common Property designed or designated for use by vehicles, such as private streets, driveways and alleys.

(f) A nonexclusive right and easement at all times to enter upon any portion of a Unit reserved or designated as a Common Property easement, and any other portion of the Unit to the extent necessary to gain access and maintain improvements and facilities within the Common Property easement and/or to exercise its rights as Declarant under the Master Declaration or this Declaration, and no such entry shall be deemed a trespass. To the extent practicable, the Master Declarant shall give reasonable oral notice to the Owner or Occupant of such Unit. The easement rights herein shall not authorize any Person to enter any portion of a Unit within the outer perimeter of the dwelling structure. Rights exercised pursuant to this easement shall be exercised with a minimum of interference to the quiet enjoyment of affected Units, reasonable steps shall be taken to protect such 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.

(g) The easements reserved in this Section shall exist and continue through the later of the end of the Declarant Control Period as defined in the Master Declaration, or the time when

Master Declarant has completed all of its obligations to the Town of Cary or any owner of any Unit subdivided out of the real property described on Exhibits "A" and "B" to the Master Declaration. Master Declarant also may terminate any part or all of said easement rights by recording in the Wake County Registry an easement termination document executed by Master Declarant.

11.6 Amendments of this Article 11. The provisions of this Article may not be amended or terminated without the written consent of Master Declarant.

11.7 Compliance with Laws. Master Declarant's exercise of all rights and easements under this Article shall comply with all applicable governmental laws, ordinances and regulations.

## Article 12 General Provisions

12.1 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 plat(s) 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.

12.2 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.

12.3 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.

12.4 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. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other applicable law that would or could terminate this Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may at any time and from time to time, re-record in the land records of the county where any portion of the Community is located this Declaration or some memorandum or other notice hereof in order to continue this Declaration in full force and effect and/or to qualify this Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other applicable law.

12.5 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.

12.6 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. No provision of this Declaration or the Bylaws which reserves or grants special rights to the Master Association or Master Declarant shall be amended without the prior written consent of the Master Association or Master Declarant, as the case may be.

12.7 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.

12.8 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.

12.9 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.

12.10 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 or Master Declarant, by reason of the fact that Declarant or Master 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 or Master 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.

12.11 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.

12.12 Perpetuities. As provided in Section 47F-2-103(b) of the North Carolina Planned Community Act, the rule against perpetuities may not be applied to defeat any provision of this Declaration, the Bylaws, or the rules and regulations of the Association adopted pursuant thereto and Section 47F-3-102(1) of the North Carolina Planned Community Act.

12.13 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.

12.14 Indemnification. In accordance with, and to the full extent allowed by, the North Carolina Nonprofit Corporation Act, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director, officer or committee member of the Association against any and all expenses, including attorney's fees, imposed upon or reasonably incurred in connection with any action, suit or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the Person is proper under the circumstances. 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.

12.15 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.

12.16 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 of 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.

12.17 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, 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 DECLARANT, 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 DECLARANT, 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.

12.18 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.

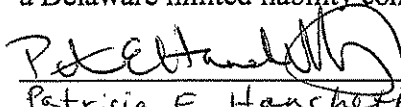
12.19 Cumulative Effect; Conflict. Declarant, the Association and all Owners and Occupants shall comply with all provisions set forth in the Master Declaration regarding the use of the Properties (as defined in the Master Declaration) and the design standards and construction requirements related thereto. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of the Master Declaration 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 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]

29<sup>th</sup> IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument, this  
day of September, 2006.

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

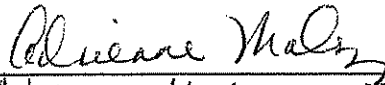
By:  (SEAL)  
Name: Patricia E. Hanchette  
Title: Division President

STATE OF NORTH CAROLINA

COUNTY OF Wake

I certify that the following person personally appeared before me this day, and  
acknowledged to me that he/she voluntarily signed the foregoing document for the purpose  
stated therein and in the capacity indicated: (name) Patricia E. Hanchette,  
(title) Division President of **KB HOME RALEIGH-DURHAM LLC**, a  
Delaware limited liability company.

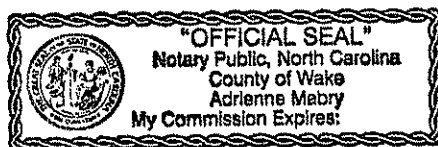
Date: September 29, 2006

  
Adrienne Mabry, Notary Public

(Official Seal)

My commission expires: 12-11-2006

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## CONSENT OF MASTER DECLARANT

IN WITNESS WHEREOF, the undersigned, as the owner of some or all of the tract or parcel of land described on Exhibit "A" attached hereto and the Declarant under the Master Declaration, does hereby (i) declare, 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 the undersigned 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 foregoing Declaration of Protective Covenants for Westport at Twin Lakes; (ii) consent to the foregoing Declaration of Protective Covenants for Westport at Twin Lakes; and (iii) execute this instrument under seal, this 28<sup>th</sup> day of September, 2006.

MASTER DECLARANT:

SANDLER AT TWIN LAKES, L.L.C., a  
Virginia limited liability company

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

STATE OF ~~NORTH CAROLINA~~ Virginia

City  
~~COUNTY OF~~ Va. Beach

I certify that the following person personally appeared before me this day, and acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: (name) Nathan D. Benson,  
(title) Manager of SANDLER AT TWIN LAKES, L.L.C., a  
Virginia limited liability company.

Date: 09-28-06

[Signature]  
Linda J. Todd, Notary Public

(Official Seal)

My commission expires: 07-31-10

## EXHIBIT "A"

### Property Description

ALL THAT TRACT OR PARCEL OF LAND lying and being in the Town of Cary, Wake County, North Carolina as more particularly shown and delineated on that certain Subdivision Plat for Westport @ Twin Lakes (Parcel A-Phase I) Lots 701-772 prepared by Withers & Ravenel, bearing the seal Jimmy E. Bass, North Carolina Professional Land Surveyor No. L-2710, recorded in Map Book 2005, Pages 2585, Wake County, North Carolina records, including without, limitation, those Lots designated as Lots 701-772, reference to said plat and the record thereof is hereby made for a more complete description.

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 Westport at Twin Lakes 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.