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PRESENTED
FOR
REGISTRATION

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KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
AMBER ACRES NORTH PHASE III,
COSD, HOMEOWNERS' ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 31 day of MARCH, 1989, between AMBER ASSOCIATES, a North Carolina General Partnership, (hereinafter "Declarant") and AMBER ACRES NORTH, PHASE III, COSD, HOMEOWNERS' ASSOCIATION, INC., (hereinafter "Association") and all parties hereafter acquiring any of the described property.

W I T N E S S E T H:

WHEREAS, Declarant, AMBER ASSOCIATES, a North Carolina General Partnership, is the owner of all lots within a subdivision in the County of Wake, State of North Carolina, known as Amber Acres North, Phase III, COSD; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in Wake County; and for the continued maintenance and operation of such recreational and common area.

NOW THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which

shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

ARTICLE I

PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. The property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Wake, North Carolina, and is more particularly described as being all of that property in Exhibits "A" and "B". The Declarant hereby subjects the heretofore described property, to this Declaration and the jurisdiction of the Association. The Declarant reserves the right to subject additional real estate described in Exhibit B to these Declarations. Provided, however, that no additional properties may be subjected to these Declarations without the consent of the Wake County Subdivision Administration office or its successor agency.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Amber Acres North, Phase III, COSD, Homeowners' Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Open Space" shall mean all real property dedicated to the common use and enjoyment of the owners, including, but not limited to, the real property conveyed to the association, and real property leased to the

association. "Common Open Space" shall be maintained for forestry, pasture, agricultural or active and passive recreational uses. The Common Open Space shall include private roads within the properties. Common Open Space may be designated on all recorded plats of the subdivision for convenience as either N.P.C.O.S. (Non-Permanent Common Open Space), or P.C.O.S. (Permanent Common Open Space). As additional plats of the adjoining tracts are recorded, the Declarant will dedicate additional land as part of the Common Open Space. All Common Open Space shall be subject to easements for utilities including sewer and water, easements for ingress and egress, and easements for any encroachments arising from the initial improvements.

Section 5. "Non-Permanent Common Open Space" shall consist of those areas shown on recorded plats of Amber Acres North, the ownership of which shall be retained by the Declarant and on which no residential units shall be built so long as the property is subject to the provisions of Section 1-1-37(c)(9) of the Wake County Ordinance. Non-Permanent Common Open Space may include passive recreational lands, such as natural areas, land used for agriculture, pasture or forestry, lands reserved for the operation of water and waste water systems, and all lands retained for future dedication either as Permanent Common Open Space or for water or sewer system usage. The Declarant reserves the right to control the use of all Non-Permanent Common Open Space, including the right to lease or to convey them to the association, and the right to convey them to other persons, partnerships, or corporations, subject to this declaration.

Section 6. "Permanent Common Open Space" shall consist of those areas designated on recorded plats of Amber Acres North, as P.C.O.S. Such areas shall be dedicated in perpetuity to the common use and enjoyment of the owners until such time that the P.C.O.S. tract and all its facilities, dwelling units and structures therein are owned by one individual, partnership or corporation. The Declarant will convey all Permanent Common Open Space shown on the various

plats of the subdivision to the association. The Permanent Common Open Space shall include all active recreational facilities including swimming pools, athletic fields, clubhouses, tennis courts, pavilions, stables, barns, maintenance buildings and associated off-street parking. The association shall be responsible for maintaining such facilities. The Permanent Common Open Space will also include all private roads within Amber Acres North, Phase III, COSD. The association shall be responsible for the repair, maintenance and repaving as set forth in this declaration.

Section 7. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Open Space.

Section 8. "Declarant" shall mean and refer to Amber Associates, a North Carolina General Partnership, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 9. "Common Expense" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of the common area and administration, maintenance, repair, or replacement of the Common Open Space;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the ByLaws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the ByLaws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against common areas.
- (f) Expenses agreed by the members to be common expenses of the Association.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Open Space and over the common open spaces for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for use of any recreational facility situated upon the Common Open Space;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the non-permanent Common Open Space to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members.

No such dedication or transfer shall be effective unless an instrument agreement to such dedication or transfer signed by two-thirds (2/3rds) of each class of members has been recorded and approved by the Wake County Subdivision Administration office or its successor agency.

(d) The right of the Association to limit the number of guests of Members;

(e) the right of the Association, in accordance with its Articles and ByLaws, to borrow money for the purpose of improving the Common Open Space and facilities and in aid thereof to mortgage said property, and the

rights of such mortgagees in said Properties shall be subordinate to the rights of the homeowners hereunder;

(f) the right of the Association to adopt, publish and enforce rules and regulations as provided in Article IX.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the ByLaws, his right of enjoyment to the Common Open Space and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Open Space. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Open Space to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except utility and storm drainage easements.

Section 4. Parking Rights. The Association may regulate the parking of boats, trailers and other such items on the Common Open Space.

Section 5. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas and satellite dishes on individual Lots.

ARTICLE IV

COMMON OPEN SPACE DEVELOPMENT PROVISIONS

Section 1. Each section or phase of the property shall be developed in accordance with the plan that complies with the applicable zoning regulations. A maximum of thirty percent (30%) of the areas of the properties shall be included within lots and associated off-street parking for such lots.

Section 2. The remaining seventy percent (70%) of the area of the properties may include public and private roads; utility areas, recreational

facilities, such as playing fields, golf courses and tennis courts; community buildings, such as clubhouses; and open space areas set aside for passive recreation or for forestry, pasture or agriculture. Off-street parking for persons using such facilities may also be included within the seventy percent (70%) area.

Section 3. Each recorded plat or phase of the properties shall show that for each twenty (20) residential dwelling units, at least one (1) acre has been reserved for the Permanent Common Open Space; that for each forty (40) residential units at least one (1) acre of the Permanent Common Open Space has been preserved for active and passive recreation for residents and guests only.

Section 4. The areas dedicated to such uses on each separate phase or section of the subdivision shall be added to the areas so dedicated on the prior plans in order that the entire subdivision may at all times remain in compliance with the governing percentages of land area dedicated to individual lots and to Common Open Space.

Section 5. The Declarant may retain ownership of certain Non-Permanent Common Open Spaces to be designated on recorded plats as "reserved by the owner." Declarant may lease such properties to the Association.

Section 6. The ownership of utility easements and facilities, including wells, water towers, treatment and disposal plants and dispersion areas, are reserved at this time for possible conveyance to a public utility company or companies, to a municipality, or to the Association.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

Class B. The Declarant shall be a Class B member and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total vote outstanding in the Class A membership equals the total vote outstanding in the Class B membership; or
- (b) on December 31, 1992; or
- (c) upon the surrender of all Class B membership by the holder thereof or cancellation by the Association.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and

reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Lot.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the improvement and maintenance of the Common Open Space, including the maintenance, repair and reconstruction of private streets, driveways, walks and parking areas situated on the Common Open Space, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance or for the use and enjoyment of the Common Open Space, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Open Space, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, roofs, paving, and any other major expense for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Sixty and No/100 Dollars (\$360.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to five percent (5%) of the previous year's assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Open Space, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written Notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis. Provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, may be a lesser amount as fixed by the Board of

Directors of the Association, but shall not be less than twenty-five percent (25%) of the regular assessments for other Lots.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Open Space. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the assessment on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Open Space or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the owner for said deficiency.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Working Capital Fund. At the time of closing of the sale of each unit a sum equal to at least two (2) months assessment for each unit shall be collected and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of

three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property other than the property described in Exhibit B attached hereto shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held for more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat. Provided, however, that all annexations of additional properties to the original development described in Article I hereof must contain a minimum of ten (10) acres, be contiguous to the property described in Article I hereof or property previously annexed, and be first approved by the Planning Board of the County of Wake. Provided further,

that no annexation of additional property shall have the effect of placing the original or new development in violation of the Wake County Zoning Ordinance.

Section 2. Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation, after approval by the Wake County Subdivision Administration Office or its successor agency, duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the County of Wake if required by its ordinances.

Section 3. Prior to the conveyance of the first lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Common Open Space within the lands annexed free and clear of all encumbrances and liens except utility, storm drainage and greenway easements.

ARTICLE IX

INSURANCE

Section 1. Insurance coverage on the Property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the common area shall be purchased by the Association for the benefit of all the Association and the Owners.

(b) Coverage. All buildings and improvements and all personal property included in the Common Open Spaces and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as

determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard coverage endorsement, and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land.

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the ByLaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Open Space and facilities held for the Association.

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

ARTICLE X

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Common Open Spaces. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary offices of the Declarant and/or the model used by Declarant) shall be

used except for residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 5. Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any lot having an area of the main structure, exclusive of open porches and decks, of less than five hundred (500) square feet for a one-story dwelling, nor less than five hundred (500) square feet for a dwelling of more than one-story. All yard and setback requirements shall comply with Section 1-1-37(c)(9)(b)(3) of the Wake County Zoning Ordinance.

ARTICLE XI

EASEMENTS

Section 1. All of the Properties, including Lots and Common Open Space, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Open Space conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress and regress across all Common Open Spaces, now or hereafter

owned by the Association, for the purpose of construction of improvements within the Properties.

Section 2. All Lots shall be subject to easements for the encroachments constructed on adjacent Lots by Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

Section 3. An easement is hereby established over the Common Open Space and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 4. If any dwelling is located closer than five (5) feet from its lot line, the owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the owner shall restore the adjoining lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Membership in the Association as defined hereinabove shall be mandatory for each original purchaser and each successive purchaser of a dwelling unit or lot.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed

by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot owners. Amendments shall not become effective until approved by the Subdivision Administration Office of the County of Wake or its successor agency.

Section 4. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same

manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF AMBER ACRES NORTH, PHASE III COSD, HOMEOWNERS'
ASSOCIATION, INC.

AMBER ACRES NORTH, PHASE III,
COSD, HOMEOWNERS ASSOCIATION, INC.

ATTEST:

By: _____
President

Secretary

Section 5. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer or management by Declarant to the Association.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: 1) Annexation of additional properties; 2) Dedication of Common Open Space; and 3) Amendment of this Declaration or Covenants, Conditions and Restrictions.

Section 7. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and

records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

ARTICLE XIII

ELECTRICAL SERVICE

Declarant reserves the right to subject the above-described Property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the Owner of each Lot within said Property.

ARTICLE XIV

In no case shall the County be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowners' association or occupants.

IN WITNESS WHEREOF, the undersigned, being the partners of Declarant herein, have hereunto set their hands and seals this 31 day of March, 1989.

AMBER ASSOCIATES, a North Carolina General Partnership

By: W. Thurston Debnam, Jr. (SEAL)
W. Thurston Debnam, Jr., Partner

AMBER ACRES NORTH, PHASE III, COSD, HOMEOWNERS' ASSOCIATION

By: W. Thurston Debnam, Jr. (SEAL)
President



ATTEST: Earl W. Hibbert
Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that W. Thurston Debnam, Jr., a Partner of Amber Associates personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 31 day of MARCH, 1988.



Cecilia J. Chastain
Notary Public

My Commission Expires: 04/21/92

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that CARL W. HIGBERT personally came before me this day and acknowledged that he is _____ Secretary of AMBER ACRES NORTH, PHASE III, COSD, HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its _____ Secretary.

Witness my hand and official stamp, this 31 day of MARCH, 1988.



Cecilia J. Chastain
Notary Public

My Commission expires: 04/21/92

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate

of Cecilia J. Chastain

Notar(y)(ies) Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By Kenneth C. Wilkins
Asst./Deputy Register of Deeds

Exhibit A

BEGINNING at an iron stake in the northern right-of-way line of Antigua Run, said point being the intersection of the northern right-of-way line of Antigua Run and the southeasternmost corner of Lot 190, Amber Acres North, as shown by map and survey recorded in Book of Maps 1985, Page 1453, Wake County Registry. Runs thence from said point of BEGINNING North 19 degrees 08 minutes 22 seconds West 504.83 feet to a point; runs thence with the northern line of Lot 64, North 70 degrees 51 minutes 38 seconds East 283.82 feet to a point; runs thence North 70 degrees 51 minutes 38 seconds East 50.00 feet to a point in the eastern right-of-way line of Amber Acres Lane; runs thence in an arc deflecting to the right having a radius of 830.13 feet, a distance of 50.55 feet (a chord bearing and distance of South 17 degrees 23 minutes 42 seconds East 50.54 feet). Runs thence North 53 degrees 12 minutes 01 seconds East 186.18 feet to a point; runs thence North 53 degrees 12 minutes 01 seconds East 75.00 feet to a point; runs thence South 79 degrees 32 minutes 59 seconds East 86.06 feet to a point; runs thence South 11 degrees 26 minutes 29 seconds East 67.66 feet to a point; runs thence South 42 degrees 39 minutes 47 seconds East 143.08 feet to a point; runs thence South 84 degrees 34 minutes 57 seconds East 143.08 feet to a point; runs thence North 53 degrees 29 minutes 52 seconds East 143.08 feet to a point; runs thence North 11 degrees 34 minutes 42 seconds East 143.08 feet to a point; runs thence South 80 degrees 37 minutes 07 seconds West 150.00 feet to a point; runs thence in an arc following the right-of-way of Windswept Lane, a chord bearing and distance of North 20 degrees 50 minutes 26 seconds West 19.87 feet to a point; runs thence North 57 degrees 42 minutes 01 seconds East 137.18 feet to a point; runs thence North 32 degrees 17 minutes 59 seconds West 74.84 feet to a point; runs thence North 43 degrees 25 minutes 39 seconds West 165.00 feet to a point; runs thence North 23 degrees 57 minutes 49 seconds East 95.19 feet to a point; runs thence North 06 degrees 51 minutes 51 seconds West 125.76 feet to a point; runs thence North 35 degrees 46 minutes 24 seconds West 125.76 feet to a point; runs thence North 70 degrees 06 minutes 29 seconds East 298.47 feet to a point; runs thence South 00 degrees 59 minutes 54 seconds East 70.18 feet to an iron stake; runs thence South 00 degrees 59 minutes 54 seconds East 153.98 feet to an iron stake; runs thence South 00 degrees 59 minutes 54 seconds East 128.60 feet to an existing concrete monument; runs thence South 84 degrees 48 minutes 40 seconds East 61.58 feet to an existing iron pipe; runs thence South 12 degrees 26 minutes 50 seconds East 272.84 feet to an iron pipe; runs thence South 59 degrees 35 minutes 24 seconds East 225.30 feet to an iron pipe; runs thence South 20 degrees 02 minutes 46 seconds West 244.99 feet to an iron pipe; runs thence South 52 degrees 48 minutes 23 seconds East 137.22 feet to an iron pipe; runs thence South 21 degrees 03 minutes 56 seconds East 229.60 feet to an existing iron pipe; runs thence South 07 degrees 56 minutes 30 seconds East 112.94 feet to an iron pipe; runs thence South 41 degrees 47 minutes 08 seconds East 119.31 feet to an iron pipe; runs thence South 16 degrees 21 minutes 52 seconds West 175.39 feet to a point; runs thence South 29 degrees 50 minutes 11 seconds East 164.06 feet to an iron pipe; runs thence South 89 degrees 40 minutes 11 seconds East 139.50 feet to an iron pipe; runs thence South 78 degrees 10 minutes 01 seconds East 300.10 feet to an iron pipe; runs thence South 19 degrees 47 minutes 06 seconds East 100.39 feet to an iron pipe; runs thence South 07 degrees 20 minutes 53 seconds West 133.88 feet to an iron pipe; runs thence South 27 degrees 11 minutes 39 seconds East 337.02 feet to an iron pipe; runs thence South 65 degrees 45 minutes 39 seconds East 142.22 feet to an iron pipe; runs thence South 23 degrees 48 minutes 07 seconds East 168.01 feet to an iron pipe; runs thence South 84 degrees 24 minutes 23 seconds West 1728.32 feet to an iron pipe; runs thence North 19 degrees 08 minutes 22 seconds West 469.20 feet to a point; runs thence North 19 degrees 08 minutes 22 seconds West 65.80 feet to a point; runs thence North 19 degrees 08 minutes 22

seconds West 525.06 feet to a point; runs thence North 19 degrees 08 minutes 22 seconds West 99.96 feet to a point; runs thence North 19 degrees 08 minutes 22 seconds West 248.60 feet to a point; runs thence North 19 degrees 08 minutes 22 seconds West 66.09 feet to the point of BEGINNING.

BK4469PG0064

"EXHIBIT B"

BEGINNING at a concrete monument, said point being located at the intersection of the southeastern corner of Pascall and the northwesternmost corner of that certain tract of land described by instrument recorded in Book 3417, Page 366, Wake County Registry; runs thence from said point of beginning with the line of Pascall North 04 degrees 12 minutes East 874.00 feet to a concrete monument in the line of Philip Whitley, runs thence with the line of Philip Whitley South 85 degrees 02 minutes East 2469.00 feet to a concrete monument; runs thence South 04 degrees 02 minutes East 533.00 feet to a concrete monument; runs thence South 87 degrees 52 minutes East 62.11 feet to an iron stake; runs thence South 15 degrees 31 minutes East 273.01 feet to an iron stake; runs thence South 62 degrees 38 minutes East 225.25 feet to an iron stake; runs thence South 16 degrees 59 minutes West 244.94 feet to an iron stake; runs thence South 55 degrees 51 minutes East 137.17 feet to an iron stake; runs thence South 24 degrees 07 minutes East 229.56 feet to an iron stake; runs thence South 11 degrees 00 minutes East 112.90 feet to an iron stake; runs thence South 44 degrees 51 minutes East 119.17 feet to an iron stake; runs thence South 13 degrees 18 minutes West 175.51 feet to an iron stake; runs thence South 32 degrees 54 minutes East 164.17 feet to an iron stake; runs thence North 87 degrees 16 minutes East 139.53 feet to an iron stake; runs thence South 81 degrees 14 minutes East 300.09 feet to an iron stake; runs thence South 22 degrees 51 minutes East 100.42 feet to an iron stake; runs thence South 04 degrees 15 minutes West 133.94 feet to an iron stake; runs thence South 30 degrees 19 minutes East 336.95 feet to an iron stake; runs thence South 68 degrees 53 minutes East 142.25 feet to an iron stake; runs thence South 26 degrees 55 minutes East 167.95 feet to an iron stake in the line of Broadwell; runs thence with the line of Broadwell South 81 degrees 20 minutes West 1724.64 feet to an iron stake; runs thence North 22 degrees 20 minutes West 2295.77 feet to an iron stake; runs thence North 83 degrees 42 minutes West 1460.00 feet to a concrete monument, the point and place of beginning and being all of that certain tract of land containing 119.90 acres according to a map and survey of Williams, Pearce and Associates, date 1-17-85, entitled "Property Map for Amber Associates, Marks Creek Township, Wake County, North Carolina."

wtd82024.006

BK4540PG0838

Mail to: Amber Acres North Homeowners Association
W. Thurston Debnam, Jr.
Post Office Drawer 26268
Raleigh, North Carolina 27611

000121

PRESENTED
FOR
REGISTRATION

89 AUG -3 PM 2:09

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

Drawn by: W. Thurston Debnam, Jr. (Ken Edwards)
SMITH, DEBNAM, HIBBERT & PAHL
Post Office Drawer 26268
Raleigh, North Carolina 27611

NORTH CAROLINA

WAKE COUNTY

AMENDMENT OF DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF AMBER
ACRES NORTH, PHASE III, COSD HOMEOWNERS
ASSOCIATION

Amber Associates, a North Carolina General Partnership and the owner of all lots within a subdivision in the County of Wake, State of North Carolina, known as Amber Acres North, Phase III, COSD, hereby executes this Amendment for the purpose of amending its Declaration of Covenants, Conditions and Restrictions filed March 31, 1989 and recorded at Book 4469 and Page 0039 of Wake County Registry.

The following Amendment to the Declaration of Covenants, Conditions and Restrictions was adopted by its Partners on the 31 day of July, 1989 in the manner prescribed by law:

Article V, section 2, subsection Class B is amended by striking the first sentence of the subsection and inserting in lieu thereof "The Declarant shall be a Class B member and shall be entitled to three (3) votes for each lot owned."

IN WITNESS WHEREOF, the undersigned, being the partners of Declarant herein, have hereunto set their hands and seals this _____ day of _____, 1989.

AMBER ASSOCIATES,
a North Carolina General Partnership

BY:

W. Thurston Debnam, Jr.
W. Thurston Debnam, Jr., Partner

AMBER ACRES NORTH, PHASE III
COSD, HOMEOWNERS ASSOCIATION

BY:

W. Thurston Debnam, Jr.
President

ATTEST:

Secretary

NORTH CAROLINA, Wake County.

I, a Notary Public of the County and State aforesaid, certify that W. Thurston Debnam, Jr., general partner of Amber Associates, Grantor, personally appeared

before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 31 day of July, 1989.

My commission expires: 5/26/93 Lisa J. Stephens Notary Public

NORTH CAROLINA Wake County.

I, a Notary Public of the County and State aforesaid, certify that David R. Kittner, personally came before me this day and acknowledged that he is

Secretary of Amber Acres North Phase III COSD Homeowners Association, a North Carolina corporation, and that by authority duly given and

as the act of the corporation, the foregoing instrument was signed in its name

by its _____ President, sealed with its corporate seal and attested by

him as its _____ Secretary. Witness my hand and official stamp

or seal, this 31 day of July, 1989.

My commission expires: 5/26/93 Lisa J. Stephens Notary Public

jke82024.004

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate 2 of _____

Lisa J. Stephens
Notary Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds