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WAKE COUNTY, NC 111
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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BOOK:012795 PAGE:00042 - 00082

DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS,

EASEMENTS, CHARGES AND LIENS

FOR

AMBER RIDGE

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

Drawn by and HOLD FOR: Moore & Alphin, PLLC (Box 155)

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ARTICLE I
DEFINITIONS

Definitions. The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

Section 1. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F of the North Carolina Statutes.

Section 2. "Additional Covenants" shall mean and refer to any additional covenants, conditions and restrictions filed in the Office of the Register of Deeds of Wake County, North Carolina, with regard to specific Phases of the Property, as more particularly described in Section 3 of Article II hereof.

Section 3. "Annual Assessments" shall have the meaning as set forth in Article V hereof.

Section 4. "Approved Builder" shall mean and refer to one or more Persons in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant.

Section 5. "Architectural Control Committee" and "ACC" shall mean and refer to the committee formed pursuant to Article X hereof to oversee the development and enforcement of architectural control standards and restrictions with respect to the Subdivision and to perform certain other functions described in the Declaration.

Section 6. "Architectural Design Guidelines" shall have the meaning set forth in Article X hereof.

Section 7. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

Section 8. "Association" shall mean and refer to the Amber Ridge Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 9. "Board" shall mean and refer to the Board of Directors of the Association, which is the "Executive Committee" defined in the Act.

Section 10. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist.

Section 11. "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 17. "Declaration" shall mean and refer to this Declaration Of Covenants, Conditions, Restrictions Easements, Charges And Liens For Amber Ridge, as it may be amended and/or supplemented from time to time as herein provided.

Section 18. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 19 "Member" shall mean and refer to every Person who holds membership in the Association as set forth in Article III hereof.

Section 20. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, including contract sellers and owners of an equity of redemption, but excluding those having such interest merely as security for the performance of an obligation.

Section 21. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 22. "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 23. "Plat" shall mean and refer to any plat of the Property or any part of it which has been recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 24. "Property" or "Properties" shall mean and refer to that certain real property located in the Town of Fuquay-Varina, Wake County, North Carolina and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof.

Section 25. "Registry" shall mean and refer to the Office of the Register of Deeds for Wake County, North Carolina.

Section 26. "Rules" shall mean and refer to, collectively, the governing documents for Amber Ridge, including, without limitation, the Articles of Incorporation and Bylaws of the Association, the Declaration, any Supplementary Declarations, the Architectural Guidelines, and any rules and regulations adopted by the Board or the Members.

Section 27. "Special Assessments" shall have the meaning set forth in Section 5 of Article V hereof.

Section 28. "Special Individual Assessments" shall have the meaning set forth in Section 6 of Article V hereof.

any amendments thereto, whether or not such right and authority are expressly provided for in such Additional Covenants.

Section 4. Merger or Consolidation. Upon any merger or consolidation of an Association with another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phases of the Property over which such Association has jurisdiction) and the applicable Additional Covenants affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Covenants pertaining to the Property or any portion thereof accept as specifically provided in this Declaration.

Section 5. Changes to this Declaration, Additional Covenants or Supplemental Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration, and/or any Additional Covenants, or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have three (3) classes of voting membership.

(a) Class A. Except as provided below, Class A Members shall be all Lot Owners except the Declarant and Approved Builders. Class A Members shall be entitled to one (1) vote for each such Lot owned. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the vote appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Lots owned by Class A Members shall be Class A Lots.

(b) Class B. Class B Members shall be the Declarant. Declarant shall be entitled to nine (9) votes for each Lot that it owns, so long as the Class B membership continues to exist. Lots owned by a Class B Member shall be Class B Lots.

of the Association from granting easements for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Property. Notwithstanding the foregoing, the Association, acting through the Board and without consent of the Members, shall have the right to exchange, convey or transfer small portions of the Common Area to any Person for the purpose of changing any Lot lines or correcting minor errors, discrepancies or encroachments which may arise, including any corrections made necessary by the revision or modification of an existing recorded map of the Property;

(d) Except as provided in subsection (c) above, conveyance or encumbrance of Common Area shall be governed by §47F-3-112 of the Act, which provides that portions of the Common Area may be conveyed or subjected to a security interest by the Association only if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of Common Area shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Area or subject Common Area to a security interest, but the contract is not enforceable against the Association until approved as set forth herein. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support.

(e) The right of the Association, with the assent of members entitled to at least eighty percent (80%) of the entire membership of the Association, to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(f) The right of the Association to levy Annual Assessments, Special Individual Assessments and Special Assessments;

(g) The right of Declarant, its employees, agents, contractors, subcontractors, invitees, to make any improvements that it or they may deem proper upon the Common Areas, even after their conveyance to the Association, including, without limitation, the right to construct, maintain and dedicate any additional storm water drainage easements, utility easements, and sewer or water line easements across any of the Common Areas. The rights reserved herein shall terminate five (5) years after the date on which Declarant no longer owns any property within the Subdivision;

(h) The right of Declarant, its successors and assigns, and the Association, to erect and maintain monuments, walls, fences, ponds, signs, lighting and irrigation systems, and any other improvements and landscaping within Common Areas, median strips and right-of-way islands, as identified on any Plat of the Property; and

(i) The right of the Association to prescribe rules and regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area), subject to limitations established by Declarant on such right to impose such rules and regulations.

(iii) of this Section 1 (the "Assessments"), together with interest thereon, late charges, attorney fees, court costs and other cost of collection, shall be a charge on the land and, upon filing of a claim of lien as provided in §47F-3-116 of the Act, shall be a continuing lien upon each Lot against which each such Assessment is made. The Assessment shall also be the personal or corporate obligation of the Person(s) owning such Lot at the time when the Assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid Assessment charges are not the personal obligation upon such Owner's successors in title unless expressly assumed by the successors in title, the unpaid Assessment charges continue to be a lien, or subsequent lien, upon the property against which the Assessment has been made.

Section 2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, the enforcement of this Declaration and the rules of the Association, and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association, its directors, officers and committee members, when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other needs as may arise.

Without limiting the generality of the above-described purposes, the Assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of the Common Areas and improvements thereon, and of the medians within public road rights-of-way, including the landscaping and irrigation system(s), if any, located in the Common Area, including the following:

(a) providing grass cutting, fertilizing, weed and insect treatments and maintenance of trees, shrubbery and flowers located on or within Common Areas and median strips;

(b) providing maintenance and operation of all walls, fountains, ponds, waterfalls, monuments, irrigation facilities, sidewalks, private streets and alleys, paths, trails, sidewalks, pool, tennis courts, playgrounds, clubhouse, parking areas, fences, signage, lighting or other structures and facilities located on or within median strips and any of the areas identified as Common Areas;

(c) providing grass cutting, fertilization, weed and insect treatments and maintenance of trees, shrubbery and flowers within the public street right-of-way where it is adjacent to Common Areas;

(d) keeping the Common Areas clean and free from debris and to maintain the same in a clean and orderly condition;

(e) paying all ad valorem taxes levied against the Common Areas and any other property owned by the Association;

(f) paying the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

expenses of the Association and the monies collected by the Association for Assessments as provided herein. Notwithstanding the foregoing, any Lot owned by an Approved Builder or the Declarant which contains a dwelling occupied by any Person as a residence shall be assessed at the Class A rate.

Unless a lower amount is set by the Board of Directors, the initial Annual Assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Any Annual Assessment established by the Board of Directors shall continue thereafter from year to year as the Annual Assessment until changed by said Board.

Except as provided herein, Annual Assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

(c) Certificate of Payment. The Association shall, upon demand and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. If such certificate states that all Assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 5. Special Assessments. In addition to the Annual Assessments described in Sections 3 and 4 above, the Board, with the approval of Members having at least two-thirds (2/3) of the votes present and voting at an annual or special meeting of the Members, one of the purposes of which is to vote on a Special Assessment, may levy in any assessment year a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for or payable out of funds on hand in the Association or out of the Annual Assessments collected by the Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon or within the Common Area, including fixtures and personal property related thereto, the cost of maintenance, repair or reconstruction of storm water facilities and devices, or for such other non-recurring needs as may arise from time to time. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Members entitled to cast no less than two thirds (2/3) of all votes entitled to be cast by the Members. The due date of any Special Assessment levied pursuant to this Section 5 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner, including the Approved Builders and the Declarant, as applicable, at least thirty (30) days prior to the date such Special Assessment is due.

Section 6. Special Individual Assessments. The Board may levy Special Individual Assessments against an Owner: (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas caused by the act or omission of the Owner, his family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the

Any assessment not paid within thirty (30) days after the due date shall also be subject to late charges and interest at the rate established by the Board from time to time, or the highest amount permitted by laws, whichever is less; and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the Lot as provided in Section 47F-3-116 of the Act and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning his Lot.

Section 10. Fines. Subject to the provisions of this Declaration, the Bylaws of the Association, and §47F-3-107.1 of the Act, the Board of Directors shall have the right and authority to levy fines or suspend privileges or services provided by the Association for reasonable periods for the violation of any provision of this Declaration and other Rules. Any monetary fine shall be deemed a Special Individual Assessment against the Lot of the Owner against whom such fine is assessed.

Section 11. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any Assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 12. Exempt Property. All property 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.

ARTICLE VI
EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded Plats of the Properties. Furthermore, Declarant reserves an easement ten (10) feet in width over, under and through and along all Lot lines of all Lots for the foregoing purposes, and such temporary easements as are necessary for the construction, maintenance and repair purposes; provided; however, that the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded Plat of the Property or required by any applicable zoning ordinances, e.g., in the event the side set back line for a Lot is three feet (3'), then the maximum width of the reserved easement is also three feet (3'). In the event it is determined that other and further easements are required over any Lot in locations not shown on the recorded Plat and not along rear or side Lot lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a Lot to be affected thereby, the written assent of the Owner of such Lot and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within

Section 5. Easement For Encroachments. In the event that any dwelling erected on a Lot by an Approved Builder encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 6. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

ARTICLE VII
INSURANCE

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 2 through 5 of this Article VII set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended or deleted, the insurance requirements set forth in Sections 2 through 5 of this Article VII shall automatically be changed, amended or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

Section 2. Property Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

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Section 2. Dwelling Size. The minimum heated square footage of a dwelling may not be less than 1,800 square feet for a one-story dwelling and 1,500 square feet on the first floor of a two-story or two and one-half story dwelling.

Section 3. Building Setbacks; House Location. No dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the Properties or as otherwise required or permitted by the zoning ordinance of the Town of Fuquay-Varina (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

Section 4. Fences. Any fence or wall installed within the Properties must meet all requirements of the Zoning Ordinance and must be in compliance with the Zoning Ordinance and the Architectural Design Guidelines, and be approved pursuant to Article X hereof. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots nor to any fence or wall installed by the Declarant or, with the approval of the Declarant, by an Approved Builder.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Temporary structures may be placed or erected on a Lot by the Declarant and, with the approval of the Declarant, by an Approved Builder, for purposes of developing the Properties and the sale and construction of houses therein.

Section 6. Parking; Driveways and Parking Pads; Abandoned Vehicles. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway or other approved pad or structure. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway or other pad or structure approved pursuant to Article X. Any driveway or other vehicular paving constructed on a Lot shall have a concrete surface, unless another surface is approved pursuant to Article X. Unless otherwise approved pursuant to Article X, driveways on a Lot shall connect to the street from which the front building setback is measured. The foregoing requirements shall not apply to any temporary driveway installed by the Declarant or, with the approval of the Declarant, by an Approved Builder.

No mobile house trailer (whether on or off wheels), trailer of any type, vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), recreational vehicle ("RV"), tractor trailer body or cab, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. The foregoing prohibition regarding commercial vehicles shall not apply to a pickup truck (3/4 ton or less) which does not contain any equipment racks and is not otherwise unreasonably encumbered with equipment or materials (as determined by the Association), even if such truck has a business name painted or otherwise placed

Section 11. Swimming Pools. No above-ground swimming pool shall be permitted in the Properties, except that one small wading pool shall be permitted in the back yard of a Lot during summer season, provided that such pool does not constitute a nuisance to any adjacent Lot.

Section 12. Mailboxes. It is the intent of the Declarant that there will be a standard mailbox and post design for the Properties, which design will be set forth in the Architectural Design Guidelines. No mailbox or post shall be permitted on any Lot except that set forth in said Guidelines, and no mailbox or post may be modified in any manner inconsistent with the Guidelines.

Section 13. Maintenance of Lot; Construction. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in an acceptable state of repair or maintenance, as determined by the Association. In the event that any structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or occurrence, the Owner of such Lot shall repair the damage and/or reconstruct the structure within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape the area on which the structure stood or repair or reconstruct the structure.

All construction, reconstruction, repair, landscaping or other work that has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially-completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion, as determined by the Association. The Owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

Section 14. Clotheslines. No exterior clothesline may be erected or maintained on any Lot.

Section 15. Garbage; Unsightly Storage. All trash and rubbish shall be kept in appropriate garbage containers stored in such a manner as not to be visible from any street. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly or offensive items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage containers may be moved to the street on the night before the scheduled pickup, but all garbage containers must be returned to approved enclosure the night of the scheduled pickup. Stored materials, such as lumber and building materials, must be within an enclosed structure so as not to be visible from any street or any other Lot within the Properties. Firewood, storage containers, mechanical equipment and similar items shall be located or screened so as not to be visible from any street within the Properties.

Section 16. Septic Tanks; Wells. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals

charges levied by the Association against his Lot and shall be fully responsible for ensuring that his Lot and the occupants thereof are in compliance with all of the requirements of this Declaration. The Association may pursue any remedy against the Owner without the necessity of taking any enforcement action against a tenant or other occupant.

ARTICLE IX
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members or any disinterested directors or otherwise and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall make efforts to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

ACC; thereafter, the members shall be appointed by the Board. The members of the Committee need not be Members of the Association, nor are they required to possess any special qualifications of any type except such qualifications as the Declarant, in its discretion, requires. However, it is recommended that at least one member of the ACC be an architect, planner, engineer, developer or other member of a profession engaged in the construction or development industry. A majority of the members of the Committee shall constitute a quorum for any properly-called meeting, and the concurrence of a majority of the regular members at a meeting shall be necessary for any decision of the ACC.

Section 4 Review by Committee. After issuance of a certificate of occupancy for a dwelling constructed on a Lot, no alteration or modification to the dwelling, no building, gazebo, storage shed, room addition, room, fence, wall, sign (including unit identification signs), canopy, statuary, awning, roof, device to be mounted on roofs, exterior lighting facility, athletic facility, change in exterior paint color, or other similar improvements or attachments shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping or any alteration of the established drainage on a Lot shall be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted (in duplicate) to and approved in writing by the ACC. Such plans and specifications shall specifically identify any requested variance from the set back lines, garage location or any other requirement set forth in this Declaration or Architectural Design Guidelines. The Committee shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that all such changes, improvements and alterations requested for properties within the Property conform to and harmonize with the existing surroundings, dwellings, landscaping and structures. At such time as the plans meet the approval of the Committee one complete set will be retained by the Committee and the other set shall be marked approved on behalf of the Committee and returned to the Owner or his designated representative. If disapproved by the Committee one set of such plans shall be returned marked "disapproved" and shall be accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans.

If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date on which detailed, full and complete plans and specifications have been received by it, approval will not be required, and the requirements of this Section shall be deemed to have been complied with, so long as the submission does not otherwise violate or fail to conform to any restrictions or requirements of this Declaration or previously established requirements of the ACC, in which event the submission shall be deemed disapproved by the Committee. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

Section 5. Subcommittee. The Architectural Control Committee, with the advice and consent of the Board, is herein empowered to form a subcommittee of the Architectural Control Committee the ("Subcommittee") comprised of Members of the Association. The Subcommittee shall be comprised of such number of Members as the ACC deems reasonable and necessary in order to carry out its function. The ACC shall be entitled to delegate to the Subcommittee such responsibilities and activities as the ACC, in its discretion, shall determine, including but not limited to the ability to preview homeowner submittals to the ACC and make non-binding

continue diligently toward achieving compliance, the Declarant or the Association may seek injunctive relief, recovery of costs incurred, and imposition of fines, liens, penalties and other remedies allowed by law.

Section 11. Non-Liability for Approval of Plans. ACC approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications neither the Committee, the Members thereof, the Association, any Member thereof, the Board nor Declarant assumes or shall be deemed to have any liability or responsibility therefor, or for any defect in any improvements constructed from such plans or specifications. Neither the Committee, any Member thereof, the Association, the Board nor the Declarant shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 12. Compliance with Laws. Review and approval of plans and specifications by the ACC shall not imply or infer compliance with any law, ordinance or regulation, or structural integrity or safety of any improvements described in any approved plans and specifications. Review and approval as provided in this Article is for aesthetic purposes only. It is each Owner's sole responsibility to plan and construct any and all improvements in a manner which complies with all applicable codes, statutes, laws, ordinances, and regulations in compliance with any approval granted hereunder.

Section 13. Approved Builder Exemption for Pre-Approved Plans. The ACC shall have no authority, power, or jurisdiction over improvements or structures built pursuant to plans which have been previously approved in writing by Declarant as provided in Section 1 hereof.

Section 14. Duty to Complete Improvements. An Owner shall complete all approved improvements, subject to unforeseen circumstances and causes beyond the reasonable control of such Owner, as reasonably determined by the ACC within twelve (12) months following commencement of construction of such approved improvements. All improvements included and approved with any submittal shall be completed as one continuous project. Sequencing, phasing or deletion of approved improvements must be approved by the ACC.

ARTICLE XI
COMMON AREA AND LOT MAINTENANCE

Section 1. Common Area Easements. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners. To that end, Declarant will, prior to the conveyance of the first Lot in any Phase to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which a Common Area easement lies.

Section 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate,

No structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities, swales and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the subdivision map or maps applicable to the Properties, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee and all public authorities having jurisdiction. All such drainage facilities, swales and appurtenances shall at all times be accessible to Declarant until Morgan Creek is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities, swales and appurtenances. Declarant may from time to time present for recordation in the official records of Wake County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. Any improvements placed within maintenance easements are subject to removal by the entity having jurisdiction over the easement, and such entity shall not be obligated to replace any improvements so removed.

Section 4. Wetlands Ordinances and Regulations. Portions of the Property may have been designated as "Wetlands" by the U. S. Army Corps of Engineers and may be shown as Wetlands on the recorded maps of the Property. The areas designated as Wetlands must be maintained as Wetlands in compliance with any applicable laws, ordinances and regulations governing Wetlands until such time as changes to such laws, ordinances and regulations allow these areas to be maintained or developed in a condition or state other than as previously required of areas designated as Wetlands.

Section 5. Impervious Surfaces and Storm Water Management. The Properties is subject to the rules and regulations of Wake County, the Town of Fuquay-Varina, and the North Carolina Department of Environmental Health and Natural Resources concerning impervious surfaces, soil erosion and storm water drainage. The Owners of all portions of the Property, including Lots, streets and Common Areas are subject to and must comply with these regulations.

Section 6. Negligence. The cost of repair or replacement by the Association of any improvement intended to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

Section 7. Right to Enter. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining community walls, fencing, landscaping and signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral or written notice to the Owner or occupant of such Lot.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

ARTICLE XIII
EMINENT DOMAIN (CONDEMNATION)

In the event of a taking of all or any portion of a Lot or all or any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

ARTICLE XIV
TERMINATION OF PLANNED COMMUNITY

Amber Ridge, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

ARTICLE XV
GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, 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.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Neither the Association, a committee of the Association, nor any Person managing the Association shall be obligated to inspect or perform searches for any non-complying improvements or violations. However, it shall be the responsibility of the Association, committee or such Person to inspect and take such action as it or they deem appropriate as to any violation or non-compliance reported to or otherwise formally brought to the attention of the proper party(ies).

Section 8. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By Laws of the Association, the Declaration shall control.

Section 9. Condemnation. Subject to the provisions of Article XIII hereof, in the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or otherwise sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

Section 10. Disclaimer. Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, Rules or Regulations or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, occupant or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortious or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, agents, parties and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership or occupancy of any portion of the Property.

Section 11. Non-Liability of Governmental Entities. Neither the Town of Fuquay-Varina nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 12. Subdivision of Lots. No Lot within the Properties may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Properties, except with the consent of the Declarant and, if required, by the Town of Fuquay-Varina.

Section 13. Declarant's Right To Change Development. With the approval of the Town of Fuquay-Varina, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from or add real property to the development.

Section 14. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Properties and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the latest date set forth in the notary acknowledgments below.

ROBERT C. RHEIN INTERESTS, INC. (Seal)
a North Carolina corporation

By: _____
Richard M. Westmoreland, Jr., Vice President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: **Richard M. Westmoreland, Jr., Vice President.**

Date: 10/16/07

(*Official Seal*)

_____
RICHARD W. MOORE, Notary Public
(Print Name)
My commission expires: 6/17/2009

RICHARD W. MOORE NOTARY PUBLIC WAKE COUNTY NC

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

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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages

22.004-1/20/06

THEREFORE, pursuant to the provisions of Section 3 of Article XV of the Declaration, Declarant hereby amends the Declaration as follows:

1. Section 2 of Article VIII of the Declaration, entitled "Dwelling Size" is deleted in its entirety and replaced with the following:

"Section 2. Dwelling Size. The minimum heated square footage of a dwelling may not be less than 1,800 square feet for a one-story dwelling and 950 square feet on the first floor of a two-story or two and one-half story dwelling."

2. Except as specifically amended by this 1st Amendment, the Declaration remains unchanged and in full force and effect.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the date set forth in the notary acknowledgment below.

Robert C. Rhein Interests, Inc.

By: _____
Richard M. Westmoreland, Jr.
Vice President

STATE OF NORTH CAROLINA – COUNTY OF Guilford :

I certify that the following person personally appeared before me this day, and acknowledged to me that he signed the foregoing document for the purposes stated therein and in the capacity indicated:

Richard M. Westmoreland, Jr., Vice President of Robert C. Rhein Interests, Inc.

Date: January 18, 2010

(Stamp or Seal)

NOTARY PUBLIC
LINDSAY K. MORGAN
GUILFORD COUNTY, NC
My Commission Expires Nov. 18, 2012

Lindsay K. Morgan
Signature of Notary

Printed Name: Lindsay K. Morgan

My commission expires: November 18, 2012