

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
CAROLINA PRESERVE BY DEL WEBB AT AMBERLY
BY
PULTE HOME CORPORATION**

**Unofficial Version with 6 Amendments and info from supplements -
created by Morey Copeland and Stan Levine to make searching
easier**

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA, AND THE DISPLAY OF THE POLITICAL SIGNS, PURSUANT TO THE FOLLOWING LANGUAGE:

- (i) “NO MORE THAN TWO (2) FLAGS MAY BE DISPLAYED USING A BRACKET OR OTHER APPROVED DEVICE MOUNTED TO THE DWELLING UNIT SO LONG AS THE SIZE OF THE FLAG DISPLAYED DOES NOT EXCEED THAT OF A STANDARD UNITED STATES FLAG (WHICH SHALL IN ALL EVENTS BE NO LARGER THAN 4 FEET BY 6 FEET AND MAY BE FURTHER LIMITED AS DETERMINED IN THE BOARD’S DISCRETION).”**
- (ii) “MEMBERS AND RESIDENTS SHALL BE PERMITTED TO DISPLAY ... PATRIOTIC ... SIGNS, SYMBOLS, AND DECORATIONS ON THEIR LOTS OF THE KINDS NORMALLY DISPLAYED IN SINGLE-FAMILY RESIDENTIAL NEIGHBORHOODS, PROVIDED THAT THE ASSOCIATION MAY REGULATE ALL SUCH DISPLAYS FOR CONFORMITY WITH THIS DECLARATION AND, SPECIFICALLY, WITH THE COMMUNITY-WIDE STANDARD.”**
- (iii) “THE ASSOCIATION SHALL NOT REGULATE THE CONTENT OF POLITICAL SIGNS; HOWEVER, THE ASSOCIATION MAY ADOPT REASONABLE TIME, PLACE, AND MANNER RESTRICTIONS REGARDING THE POSTING OF SUCH SIGNS, AS ESTABLISHED IN THE DESIGN GUIDELINES.”**
- (iv) “THE SIGNS ALLOWED BY CLAUSE (B) OF THE FOREGOING SENTENCE SHALL ONLY BE ALLOWED IN THE FRONT YARD OF A LOT AND WITHIN TEN (10) FEET OF THE FOUNDATION OF THE DWELLING UNIT.”**

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THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CAROLINA PRESERVE BY DEL WEBB AT AMBERLY (this “**Declaration**”) is made as of the 24th day of August, 2006, PULTE HOME CORPORATION, a Michigan corporation (“**Declarant**”). Any reference in collateral documentation for the Community (as hereinafter defined) to “CC&Rs” or “Parcel Declaration” shall refer to this Declaration, as the same may hereafter be amended and/or supplemented from time to time.

This Declaration is part of a general plan to protect and enhance the value and desirability of all property which is now or hereafter becomes bound by this Declaration.

A. INTRODUCTION TO THE COMMUNITY

Pulte Home Corporation, as the developer of the Community (which also may be referred to herein as Carolina Preserve at Amberly) has created this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, expansion, administration, maintenance, and preservation of the Community as a master planned community. The Community, as part of the Master Community (as hereinafter defined), is also subject to the Master Declaration (as hereinafter defined). This Declaration does not supercede or replace the Master Declaration but instead operates as a “Parcel Declaration” (as defined in the Master Declaration).

Article I Creation of the Community

1.1 Purpose and Intent.

Declarant, who together with the Association owns all of the real property described in Exhibit A (the “**Existing Property**”) attached hereto and incorporated herein by reference, intends by Recording this Declaration to establish a general plan of development for the planned community known as Carolina Preserve by Del Webb at Amberly for residential, recreational and other uses. To evidence its consent to the recording of this Declaration with respect to property it owns within the Existing Property, the Association has caused one of its duly authorized officers to sign this Declaration.

This Declaration provides for the Community’s overall development, administration, maintenance, and preservation, and provides flexible and reasonable procedures for its future expansion. Declarant intends, without obligation, that when developed fully, Carolina Preserve at Amberly may include several residential neighborhoods, one or more clubhouses, and greenbelts and recreational areas, including but not limited to open spaces, walkways and other social, commercial and civil buildings and facilities.

An integral part of Declarant’s development plan is the creation of the Association (as hereinafter defined). Declarant desires the Association to operate as a non-profit corporation (i) to own, operate, manage and maintain the Common Areas, including all community facilities and amenities located thereon, and certain other areas in the Community, (ii) to administer and enforce this Declaration and the other Governing Documents (as hereafter defined), including the powers to levy, collect and disburse the Assessments and other charges imposed hereunder, (iii) to act as the agent and representative of the Owners (as hereinafter defined), and (iv) for other lawful purposes set forth in the by-laws and articles of incorporation for the Association, as the same may be amended from time to time. Every Owner of real property within Carolina Preserve at Amberly shall be a Member (as hereinafter defined) of the Association.

The Master Plan (as hereinafter defined) provides for a variety of land use classifications, but only a subset of those approved land uses shall be allowed in Carolina Preserve at Amberly. The initial land use classifications in Carolina Preserve at Amberly shall be (i) Single Family Residential; (ii) Townhouse Residential Use; (iii) Recreational Use; (iv) Master and Neighborhood Common Areas; and (i) Natural Open Space Use. The foregoing list of classifications may be amended from time to time, in accordance with procedures prescribed by this Declaration and by applicable federal, state and local law. Future amendments to the foregoing list of classifications may include such other residential or other related uses, including, without limitation, condominium uses, as may hereafter be authorized pursuant to a Supplemental Declaration, as well as such non-residential or other related uses, including, without limitation, Commercial Uses, as may hereafter be authorized pursuant to a Supplemental Declaration. For purposes of this paragraph, “Commercial Uses” shall mean the use of any Parcel or portion thereof

which is owned by one person or entity or by a group of persons and/or entities for one or more commercial purposes allowed by the Master Community, including, without limitation, the following: apartments, offices and shopping centers; provided, however that Commercial Uses shall not be allowed on any Common Areas or on other areas or facilities of common use which are owned by any superior or subordinate owners' association or which are owned in common by residential condominium owners. For purposes of this paragraph, "Recreational Uses" shall be deemed to include use of the Recreational Facilities for their intended purposes.

Declarant reserves the right, without obligation and without the further consent of the Association or its Members, to incorporate all or part of the Additional Property (as hereinafter defined) into the Community and in doing so to subject such part or entirety of the Additional Property to this Declaration, as more particularly described in **Section 11.1** hereof.

In accordance with **Article XII** hereof, Declarant reserves the right, without further consent of the Association or its Members, to amend this Declaration to withdraw any unimproved portions of real property from the scope of this Declaration.

As the development of Carolina Preserve at Amberly proceeds, Declarant, as it deems appropriate and without incurring any obligation to do so, intends (i) to Record various subdivision plats, (ii) to dedicate to public use, or to retain for private use and convey to the Association, all or part of the Additional Property which is used for streets, roadways, drainage, flood control and general public use, and (iii) as more particularly described in **Article XI** hereof, to Record Supplemental Declarations with respect to all or part of the Additional Property which may (a) subject such property to this Declaration, (b) designate the purpose(s) for which such portions of the Additional Property may be used, and (c) set forth additional covenants, conditions and restrictions applicable to such portions of the Additional Property.

This document does not and is not intended to create a condominium under North Carolina law.

1.2 Binding Effect.

All Existing Property and any Additional Property made subject to this Declaration in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to this Declaration. This Declaration shall run with the title to such property and shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, regardless of whether said binding effect of this Declaration is specifically referenced in any conveyance deed.

Declarant, the Association, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. Unless otherwise provided by North Carolina law, this Declaration shall have perpetual duration unless terminated as set forth herein.

The termination of this Declaration shall require a written termination agreement, executed or ratified in the same manner as a deed, by the Members to whom eighty percent (80%) or more of the total votes in the Association are allocated, at a meeting duly called and held for the purpose of terminating this Declaration. Such written termination agreement shall be Recorded in the Wake and Chatham County Registries, and shall otherwise comply with the terms of North Carolina General Statutes Chapter 47F, Section 2-118.

In any event, if any provision of this Declaration would be unlawful, void, or voidable because of any law which restricts the period of time in which covenants on land may be enforced, such provision shall expire fifty (50) years from the date of Recording of the latest Supplemental Declaration or a shorter time, if mandated by law. Nothing in this paragraph shall be construed to permit the termination of any easement created in this Declaration without the consent of the parties benefited by such easement.

1.3 Governing Documents.

The Governing Documents create a general plan of development for Carolina Preserve at Amberly.

The following documents, including all existing and future amendments thereto, comprise

the Governing Documents (the list of Governing Documents below does not establish the priority in the event of a conflict between the Governing Documents, which priority is established in the sixth paragraph of this Section, consistent with Section 7.3 of the Bylaws):

<u>Carolina Preserve at Amberly Governing Documents</u>	
Name of Document	Purpose
Articles of Incorporation (to be filed with the North Carolina Secretary of State)	establish the Association as a non-profit corporation under North Carolina law
By-Laws (to be adopted by the Board)	describe the system governing the Association’s internal affairs, including, without limitation, voting rights, elections, meetings and officers
Declaration (to be Recorded)	creates obligations and rights, which are binding upon the Association and all present and future owners of property in the Community
Supplemental Declaration (to be Recorded, if entered into)	can add property to the Community; can impose additional obligations or restrictions applicable to one or more Parcels
Design Guidelines (to be adopted by Declarant)	establish architectural standards, guidelines and procedures for Improvements and modifications to Lots and Common Areas, including structures, landscaping, and other items on Lots
Use Restrictions (initial version set forth in <u>Exhibit C</u> to this Declaration)	govern use of privately owned property and activities within Carolina Preserve at Amberly
Board Resolutions and Rules (to be adopted by the Board)	establish rules, policies, and procedures for operation of the Association; regulate operation and use of Common Area
Action without Meeting (to be adopted by the Board)	establish rules, policies, and procedures for operation of the Association; regulate operation and use of Common Area
Rules and Regulations (to be adopted by the Board)	establish rules and regulations for use of Community and Common Area

All of the foregoing documents, other than this Declaration, which shall be amended in accordance with the terms hereof, may be amended from time to time by the Board of Directors or Declarant without the approval of Owners, and all current Owners are responsible for obtaining a copy of the most current such document.

It is acknowledged that because the Community is part of the Master Community, the Community and the Governing Documents are subject and subordinate to the Master Declaration and the authority of the Master Association (as hereinafter defined). Pursuant to the Master Declaration, the Master Delegate will represent the Community in the Master Association, but none of Declarant, the Association or the Master Delegate has, or purports to have, control over the Master Association, or the ability to cause amendments to be made to the Master Declaration or to any other documents governing the Master Community.

Notwithstanding the foregoing provisions of this paragraph and except as permitted under the Master Declaration, so long as Declarant owns any Existing Property or Additional Property, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant’s written consent, it being acknowledged that the foregoing Declarant consent shall be of a more general nature than the consent required pursuant to Section 6.4(a) hereof. Any instrument Recorded in violation of the foregoing sentence is void and of no force and effect.

If there exists any conflict among North Carolina law, ordinances of the Town of Cary, the Master Declaration, this Declaration, the Articles, and the By-Laws, then North Carolina law, ordinances of the Town of Cary, the Master Declaration, this Declaration, the Articles, and the By-Laws (in that order) shall prevail.

The Governing Documents and the Master Declaration apply to all Owners and all Occupants, as well as their respective Tenants, guests, and invitees. **The obligations set forth in this Declaration shall not apply to Declarant unless it is specifically noted to the contrary in each instance.** Any lease on a Lot shall provide that the Tenant and all Occupants of the leased Lot shall be bound by the terms of the Governing Documents and the Master Declaration and shall be responsible for assuring that their guests and invitees comply with the same.

Unless otherwise specifically provided herein, any notice provided for in the Governing Documents shall be provided in accordance with the By-Laws.

If any judgment or court order should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity or applicability of other provisions hereof.

All diagrams, that are included in the Governing Documents are intended only to summarize the express written terms therein. **Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.**

1.4 Calculation of Time Periods and Deadlines.

In computing the number of days for purposes of any provision of this Declaration or any of the other Recorded documents referenced herein, all days shall be counted including Saturdays, Sundays, and federal holidays; provided however, that if the final day of any time period falls on a Saturday, Sunday or federal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or federal holiday.

Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms used and not defined elsewhere in this Declaration shall be defined as described below. Capitalized terms defined or described elsewhere in this Declaration shall be further defined or described as and if provided below.

“Act”: The North Carolina Planned Community Act, General Statutes of North Carolina Sections 47F-1-101 through 47F-3-120, as amended from time to time.

“Activity Card”: A card issued by the Association, initially in accordance with the terms and conditions set forth in **Article X** hereof, which confers upon the holder rights of access to and use of the Common Area facilities, subject to the applicable Governing Documents.

“Additional Property”: All or any portion of the property described in Exhibit B attached hereto and by this reference made a part hereof.

“Age-Qualified Occupant”: A Person who is 55 years of age or older and who has designated a Dwelling Unit as such person’s primary residence. Primary residence may be established by using the Dwelling Unit’s address as the mailing address for the individual, or the official address on file for voter registration purposes or the address set forth on such person’s driver’s license or other means to establish legal residency under the law of the state where the Dwelling Unit is located.

“Architectural Review Committee” or “ARC”: The committee established to review plans and specifications for the construction or modification of Improvements and to administer and enforce the Design Guidelines within the Community, as more particularly described in **Article IV** hereof.

“Articles”: The articles of incorporation for the Association, filed with the North Carolina Secretary of State, as the same may be amended from time to time.

“Assessment” or “Assessments”: Any or all Annual Base Assessments, Special Assessments, Maintenance Charges, Special Use Fees, Security Fees, Transfer Fees or any other fees, fines or charges made or assessed hereunder by the Association against an Owner and his or her Lot in accordance with the provisions of **Section 9.1** hereof.

“Assessment Lien”: A lien that is created or imposed as set forth in **Section 9.8**.

“Assessable Property”: Any Lot or Parcel, excluding Exempt Property.

“Association”: Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

“Base Assessment”: The Assessment levied annually to fund Common Expenses for the general benefit of all Lots, as determined in accordance with **Section 9.1** hereof.

“Benefited Assessment”: Assessments charged to a particular Lot or Lots from time to time for Association expenses as described in **Section 9.5**.

“Board of Directors” or “Board”: The body responsible for the Association’s general governance and administration, selected and/or elected as provided in the By-Laws.

“Budget”: The annual budget for Common Expenses, Base Assessments, Benefited Assessments and all other income and expenses anticipated by the Association for the coming year.

“By-Laws”: The by-laws of the Association, as the same may be amended from time to time. A copy of the initial By-Laws is attached to this Declaration as Exhibit D; provided, however that the By-Laws may be amended from time to time in accordance with the terms thereof, without the need of any concurrent amendment to or Recording of this Declaration.

“Carolina Preserve Plan”: The land use plan for the development of Carolina Preserve by Del Webb at Amberly as approved by the Town of Cary, as the same may be amended from time to time. Declarant may annex Additional Property into the Community regardless of whether such property is shown on the Carolina Preserve Plan.

“Common Area” and “Common Areas”: Any real estate within the Community owned or leased by the Association, other than a Lot.

“Common Actual Expenses”: The actual expenses that the Association incurs for the general benefit of all Owners, including reserves, if any, which the Board finds necessary or appropriate.

“Common Estimated Expenses”: An estimate of the expenses that the Association expects to incur for the general benefit of all Owners, including reserves, if any, which the Board finds necessary or appropriate.

“Community” or “Carolina Preserve at Amberly” The Existing Property described in Exhibit A, together with such Additional Property, described on Exhibit B or otherwise, as is subjected to this Declaration in accordance with **Article XI**.

“Community-Wide Standard”: The standard of conduct, maintenance, or other activity generally prevailing in the Community, or the minimum standard established pursuant to the Design Guidelines, Use Restrictions, or Board Resolutions and Rules, whichever provides the strictest standard. Declarant may initially establish the Community-Wide Standard, which subsequently may be more specifically defined in the Design Guidelines, the Use Restrictions, Rules and Board resolutions, including any amendments thereto. Any amendment of the Community-Wide Standard shall meet or exceed the standards set during the Declarant Control Period. The Community-Wide Standard may contain both objective and subjective elements and may or may not be in writing. The Community-Wide Standard may evolve as development progresses and as the needs, desires and demands within the Community change. The Community-Wide Standard is the strictest of the minimum standards set in the Design Guidelines, Use Restrictions, Board Resolutions and Rules, this Declaration, any Supplemental Declaration, or as otherwise specified by Declarant or the Board, including in accordance with Section 6.4(a) hereof.

“Declarant”: Pulte Home Corporation, a Michigan corporation, or any successor or assign who holds or takes record title to any portion of the Existing Property or the Additional Property for purposes of development and/or sale, provided such successor or assign is designated as the successor or assign by the then-current Declarant in an instrument which is Recorded by or on

behalf of the then-current Declarant.

“Declarant’s Affiliate”: Any Person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

“Declarant Control Period”: The period of time during which Declarant may appoint a majority of the Board members. the Declarant Control Period ends upon the earliest occurrence of any of the following:

(a) when 100% of the Lots permitted under the Carolina Preserve Plan are issued certificates of occupancy and are owned by Members other than Declarant; provided, however, that in the event Additional Property is annexed into the Carolina Preserve Plan or Community, the Declarant Control Period shall be reinstated until such time as 100% of the Lots permitted within such Additional Property are issued certificates of occupancy and are owned by Members other than Declarant,

(b) December 31, 2026, or

(c) when, in its sole discretion, Declarant so determines.

“Declaration”: This Declaration of Covenants, Conditions and Restrictions for Carolina Preserve at Amberly, as amended from time to time, in accordance with the terms hereof.

“Design Guidelines”: The architectural, design, and construction guidelines and review procedures adopted pursuant to **Article IV** hereof for all construction within the Community other than new construction and modifications to existing structures performed by Declarant.

“Development Agreement”: A Development Agreement with a local jurisdiction having jurisdiction over the Community, providing for charges to be imposed and other obligations affecting development of the Community, which may be amended by Declarant from time to time.

“Dwelling Unit”: A single building or structure or portion of a building or structure situated upon a Lot, which is intended for use and occupancy as a separate attached or detached Dwelling Unit for one or more persons.

“Existing Property”: As defined in **Section 1.1** hereof.

“Governing Documents”: As defined in **Section 1.3** hereof.

“Housing Act”: Collectively, and as all of the same may be amended from time to time, (i) the Fair Housing Amendments Act, 42 U.S.C. §3601 *et seq.* (1988), as amended, (ii) the exemption set out in 42 U.S.C. §3607(b)(2)(C), and (iii) the regulations promulgated thereunder allowing discrimination based on familial status.

“Improvement” or “Improvements”: Any (a) Dwelling Unit, building, fence or wall; (b) swimming pool, tennis court, basketball court, road, driveway, parking area or satellite dish; (c) trees, plants, shrubs, grass or other landscaping Improvements of every type and kind; and (d) any other structure of any kind or nature.

“Limited Common Area”: A portion of the Common Area primarily benefiting one or more, but less than all Owners, as more particularly described in **Article XIV** hereof.

“Lot”: A portion of Carolina Preserve at Amberly, whether improved or unimproved, which may be independently owned and conveyed, and upon which a Dwelling Unit is intended for development, use, and occupancy. The term “Lot” shall refer to the land, if any, which is part of the Lot as well as any Improvements, including any Dwelling Unit, on the Lot. The boundaries of each Lot shall be shown on a Plat or other Recorded map; provided, in the case of a building containing multiple Dwelling Units for individual sale, each Dwelling Unit capable of being sold individually shall be a separate Lot. The term “Lot” shall not include Common Area, or property dedicated to public use or land owned by Declarant within the Master Plan (as hereinafter defined) not yet bound by a Supplemental Declaration.

“Master Association”: Amberly Master Property Owners Association, Inc., a North Carolina non-profit corporation, established in accordance with the Master Declaration as the property owners’ association for the Master Community, and its successors and assigns.

“Master Community”: The real property located in the Town of Cary and Wake and Chatham Counties comprising the development in which the Community is located and of which it is a part, commonly known as the Amberly Subdivision and subject to the Master Plan.

“Master Declarant”: Sandler at Amberly, LLC, a Virginia limited liability company, or any successor, successor-in-title, or assign, who is properly designated as “Declarant” under the Master Declaration, as more particularly provided in the Master Declaration.

“Master Declaration”: That certain Master Declaration of Covenants, Conditions, and Restrictions for Amberly dated April 1, 2004, and Recorded in Book 10748, Page 347 in the Office of the Wake County Register of Deeds and in Book 1095, Page 575 in the Office of the Chatham County Register of Deeds, as the same may heretofore and hereafter be amended, in accordance with the terms thereof.

“Master Delegate”: The representative of the Community within the Master Association (referred to as the “Association Delegate” in the Master Declaration), selected in accordance with and having all authority granted herein.

“Master Plan”: The land use plan for the development of the Master Community, as approved by the Town of Cary, as the same may be amended from time to time. Inclusion of property as part of the “Age Restricted” parcel on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration or limit Declarant’s ability to subject such property to a different declaration, nor shall the omission of property described as Additional Property from the Master Plan bar its later submission to this Declaration.

“Member”: Each Owner of a Lot, subject to **Section 6.2** hereof, holding Membership in the Association pursuant to this Declaration.

“Membership”: A membership in the Association and the rights granted to the Owners of Lots pursuant to **Section 6.2** hereof to participate in the Association.

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

“Mortgagee”: A beneficiary or holder of a Mortgage.

“Occupant”: Any individual other than an Owner who Occupies a Dwelling Unit or is in possession of a Lot or Parcel, or any portion thereof or building or structure thereon, whether as a lessee or otherwise, other than on a merely transient basis (including, without limitation, a Resident).

“Occupy” “Occupies”, or “Occupancy”: Unless otherwise specified in the Governing Documents, staying overnight in a particular Dwelling Unit for at least 90 total days in a consecutive twelve (12) month period.

“Owner”: Any Person or Persons who individually or collectively own fee title to a Lot or Parcel (as evidenced by a Recorded instrument), provided that: (a) Declarant (and not the fee title holder) shall be deemed to be the “Owner” of each Lot or Parcel with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of Declarant of a Declarant Affiliate; (b) in the event that, and for so long as, Declarant or a Declarant Affiliate has a right or option to acquire any one or more Lots or Parcels (other than by exercise of a right of first refusal) contained in a written agreement, then Declarant or a Declarant Affiliate shall be deemed the “Owner” of such Lot(s) or Parcel(s), instead of such fee title holder(s); (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to the North Carolina General Statutes, the owner of the trustor’s or grantor’s interest under the deed of trust shall be deemed the “Owner” of that Lot. Where reference is made in this Declaration to Lots or Parcels “owned by” a Person, such phrase shall be deemed to refer to Lots or Parcels of which that Person is the Owner as determined pursuant to this definition.

“Parcel”: Any tract or area of real property in the Community, and all Improvements

situated thereon, shown as a separate parcel of land on the Carolina Preserve Plan, provided, however, that in the event a Parcel is subdivided into separate tracts, such resulting separate tracts, and not the parent parcel shall thereafter constitute Parcels hereunder. If the same Person owns two or more contiguous parcels of land, they shall be considered one Parcel for purposes of this Declaration. A Parcel shall cease to be a Parcel when it has been fully subdivided into Lots (together with Common Area and/or streets, if any). If a portion of a Parcel is subdivided into Lots (and Common Area, if any), the subdivided portions shall cease to be part of the Parcel, but each remaining unsubdivided portion (not constituting Lots, Common Area or streets) shall be a Parcel if it otherwise meets the requirements set forth in this definition.

“Party Structure”: Each fence, driveway or similar structure (other than a wall) built on the Lots, which serves and/or separates any two adjoining Lots or a Lot and Common Area.

“Person”: An individual, corporation, partnership, business trust, estate, trustee, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

“Plat”: Any Recorded engineering or land survey plat for all or any portion of the Community. During the Declarant Control Period, a plat must be executed by or otherwise consented to by Declarant prior to Recording.

“Property”: The real property described in Exhibit A, together with such portions of the Additional Property as is made subject to this Declaration, from time to time, pursuant to annexation provisions set forth in **Section 11.1** hereof.

“Record”, “Recording”, or “Recorded”: Respectively, to Record, the Recording of or recorded version of a legal instrument or plat in the Register of Deeds for Wake or Chatham Counties, as applicable to the location of the land affected thereby, in the state of North Carolina.

“Recreational Facilities”: All facilities constructed or installed in the Community for the common recreational use of all Members, and any Common Areas on which such facilities are located. Recreational Facilities may include, but neither Declarant nor the Association shall have any obligation to construct, pools, tennis courts, clubhouses serving any pool(s) or tennis court(s), playing surfaces for bocce and croquet, chipping and putting greens, fishing ponds, athletic fields, gymnasiums, walking trails, bicycle paths, spa facilities and the like. The foregoing list is for purposes of illustration only and is not exhaustive. In accordance with the terms of this Declaration, although all Members shall be entitled to use Recreational Facilities, fees may be charged for the use of certain Recreational Facilities and reasonable limitations in use may be established, including without limitation, limits on the number of people served at any particular time and advance registration or scheduling requirements. Additional information concerning the rights of others in and to the Recreational Facilities is set forth in **Section 12.11** hereof, including the ability of clubs or other outside organizations to offer services from time to time to a portion of the Community, using the Recreational Facilities.

“Resident” or “Qualified Occupant”: Any person (i) who is an Age-Qualified Occupant; (ii) a person 19 years of age or older who Occupies a Dwelling Unit with an Age-Qualified Occupant; or (iii) a person 19 years of age or older who Occupied a Dwelling Unit with an Age-Qualified Occupant and who continues, without interruption, to Occupy the same Dwelling Unit after the death of the last Age-Qualified Occupant Occupying the Dwelling Unit. An individual who Occupies a Dwelling Unit but is not a Qualified Occupant shall not be entitled to any rights or privileges granted hereunder to Residents or Qualified Occupants.

“Reserve” or “Reserves”: Funds that are set aside by an association to pay for the repair or replacement of Community assets for which the Association is responsible.

“Reserve Study”: A study conducted on behalf of the Association to determine if the Association is sufficiently funded. The results of any Reserve Study shall be used in setting the next budget for the Association, including the budget for Reserves.

“Shared Walls”: Within the Community, a keystone-type retaining wall of any size which is (i) located (A) entirely on Common Area, (B) on two or more Lots, or (C) on Common Area and one or more Lots and (ii) installed by or on behalf of Declarant. Except to the extent located upon Common Area, Shared Walls shall not constitute Common Area. Shared Walls specifically

exclude any foundation wall, as well as any “Party Wall” (as defined in either that certain Ninth Supplemental Declaration of Covenants, Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly, recorded in Book 13223, Page 2445 of the Wake County Registry and in Book 1419, Page 1101 of the Chatham County Registry or in that certain Tenth Supplemental Declaration of Covenants, Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly, recorded in Book 13325, Page 1409 of the Wake County Registry and in Book 1434, Page 409 of the Chatham County Registry).

“Single Family”: A group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

“Special Assessment”: Any Assessment levied and assessed against all Owners or some Owners in accordance with **Section 9.4** hereof.

“Supplemental Declaration”: A Recorded instrument in which Declarant (i) subjects Additional Property to this Declaration, (ii) (((Intentionally Deleted))), (iii) identifies or redefines Common Area and Limited Common Area, and/or (iv) imposes, whether expressly or by reference, additional restrictions and obligations on the land described in such instrument.

“Tenant”: A Person who has an agreement, that has been approved in writing by the Board, with an Owner or another Tenant (as sublandlord) to lease a Dwelling Unit for a minimum of six (6) months, provided that a copy of the tenancy agreement has been provided to the Association and contains a statement that the Tenant is subject to this Declaration.

“Use Restrictions”: The use restrictions, rules, and regulations governing the use of and activities on the Lots set forth in Exhibit C, in accordance with **Article III** hereof.

B. CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance, and design at Carolina Preserve at Amberly are what give the community its identity and make it a place that people want to call “home”. This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for community standards to evolve as the Community changes and grows.

Article III Restrictions Affecting Lots

3.1 Restrictions Affecting Occupancy and Alienation.

(a) Restrictions Occupancy. Subject to the rights reserved by Declarant in **Section 12.15** hereof, the Lots are intended for the housing of persons 55 years of age or older. The provisions of this **Section 3.1(a)** are intended to be consistent with, and are set forth in order to comply with, the Housing Act. The Association, acting through the Board, or Declarant shall have the power to amend this Section without the consent of the Members or any Person except Declarant, for the purpose of maintaining the age restriction in a manner consistent with the Housing Act, the regulations adopted pursuant thereto, and any related judicial decisions in order to maintain the intent and enforceability of this Section.

(i) Each occupied Dwelling Unit shall at all times be Occupied by at least one person 55 years of age or older; however, in the event of the death of a person who was the sole Occupant 55 years of age or older of a Dwelling Unit, any Qualified Occupant may continue to Occupy the same Dwelling Unit as long as the provisions of the Housing Act are not violated by such occupancy.

(ii) No person under the age of 19 shall Occupy a Dwelling Unit.

(iii) Nothing in this Section shall restrict the ownership of or transfer of title to any Lot; provided, no Owner under the age of 55 may Occupy a Dwelling Unit, except in compliance with this Section, nor shall any Owner permit Occupancy of a Dwelling Unit in violation of this Section. Any Owner who proposes to enter into a lease or other occupancy agreement or any agreement of sale relating to the Owner’s Lot or Dwelling Unit shall: (i) assure that any such agreement is in writing, (ii) include in such agreement a statement in conspicuous type that the Lots within the Community are intended for residency by persons 55 years of age or older, as set forth in this **Section 3.1**,

(iii) clearly disclose the Community's age-restricted purpose to any prospective tenant, purchaser, or other potential occupant of the Lot, and (iv) provide that any violation of **Section 3.1** of this Declaration by the tenant or purchaser under the agreement shall constitute a default of the agreement.

(iv) Any Owner may request in writing that the Board make an exception to the requirements of this Section with respect to a Dwelling Unit on his or her Lot, based on a hardship that is substantiated by documentation supplied with the written request. The Board may, but shall not be obligated to, grant exceptions to this Section in its sole discretion, provided that all of the requirements of the Housing Act are met in any event.

(v) In the event of any change in Occupancy of any Dwelling Unit, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of a permanent Dwelling Unit, or otherwise, the Owner of the Dwelling Unit shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Dwelling Unit and such other information as the Board may reasonably require to verify the age of each occupant required to comply with the Housing Act. In the event that an Owner fails to notify the Board and provide all required information within 10 days after a change in occupancy occurs, the Association may levy monetary fines against the Owner and the Lot for each day after the change in Occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Article, in addition to all other remedies available to the Association under this Declaration and North Carolina law.

(vi) The Association shall be responsible for maintaining records to support and demonstrate compliance with the Housing Act. The Board shall adopt policies, procedures, and rules to monitor and maintain compliance with this Section and the Housing Act, including policies regarding visitors, updating of age records, the granting of exemptions to compliance, and enforcement. The Association shall periodically distribute such policies, procedures, and rules to the Owners and make copies available to Owners, or Tenants and Mortgagees upon reasonable request.

The Association, acting through the Board, may enforce this **Section 3.1** in any legal or equitable manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of Dwelling Units, requiring that copies of birth certificates or other proof of age for one new Age-Qualified Occupant per Dwelling Unit be provided to the Board on a periodic basis, and in the Board's sole discretion, taking action to evict the occupants of any Dwelling Unit which does not comply with the requirements and restrictions of this Section. Association's records regarding individual members shall be maintained on a confidential basis and shall not be disclosed except as legally required and then only to governing authorities having jurisdiction and seeking to enforce the Housing Act. Each Owner shall fully and truthfully respond to any request from the Association or Board for information regarding the occupancy of Dwelling Units on his or her Lot which, in the Board's judgment, is reasonably necessary to monitor compliance with this Section. **Each Owner hereby appoints the Association, which may act through the Board, as its attorney-in-fact for the purpose of taking legal or equitable action to dispossess, evict, or otherwise remove the occupants of any Dwelling Unit on his or her Lot as necessary to enforce compliance with this Section.**

Each Owner shall be responsible for ensuring compliance with the requirements and restrictions of this Section and the Association rules adopted hereunder, by itself and by its Tenants and any other occupants of its Lot(s). **Each Owner, by acceptance of title to a Lot, agrees to indemnify, defend, and hold Declarant, any affiliate of Declarant, and the Association harmless from any and all claims, losses, damages, and causes of action which may arise from failure of such Owner to uphold the obligation set forth in the foregoing sentence.** Such defense costs shall include, but not be limited to, attorney fees and costs.

(b) Residential and Related Uses. The Community shall be used only in compliance with applicable zoning, and then only for residential, recreational, and related purposes. Related purposes may include, without limitation, offices for the Association or its management agent(s), Declarant's business or sales office(s), and any business use which meets the conditions of **Section 3.1(d)** below. In addition, the Association or Declarant may permit

limited business activity within the confines of a Dwelling Unit that does not detract from the Community's residential and recreational character, provided the same complies with applicable zoning. Supplemental Declarations or any other Recorded covenants may impose stricter standards than those contained in this Article, or in accordance with Section 6.4(a) hereof, Supplemental Declarations or any other Recorded covenants may impose different standards from those contained in this Article, and the Association shall have standing and the power to enforce such standards.

(c) Recreational Use. Recreational Use shall include, without limitation, the use of any Recreational Facilities, including without limitation, club meetings, classes, seminars, social gatherings, lessons and other events and programs thereon.

(d) Business Use. No business shall be conducted in or from any Lot, except that an Owner or a Resident of the Lot may conduct business activities within the Dwelling Unit so long as:

(i) the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit;

(ii) the business activity complies with applicable zoning requirements;

(iii) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation within the Community; and

(iv) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as determined by the Board in its sole discretion.

(e) The term "Business", as used in subsections (c) and (d) hereof, shall be given its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the provider and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (A) such activity is engaged in full or part time, (B) such activity is intended to or does generate a profit, or (C) a license is required. Leasing a Dwelling Unit for a period of at least six (6) months and in compliance with other leasing requirements set forth in this Declaration is not a "business" within the meaning of this subsection.

This Article shall not be construed to restrict Declarant's activities in the Community, nor shall it restrict the activities of Persons approved by Declarant involved with the development and sale of property in the Community. Additionally, this Article shall not apply to any Association activity relating to operating and maintaining the Community, including the Community's Recreational Facilities and other amenities, which may be used and operated in accordance with the terms of this Declaration.

(f) Leasing. For purposes of this Declaration, "leasing" is defined as regular, exclusive occupancy of a Dwelling Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or compensation. A Lot may be leased only in its entirety (*e.g.*, separate rooms within the same Dwelling Unit may not be separately leased). No fraction or portion may be leased.

No structure on a Lot other than the primary Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that structures approved by Declarant or the Architectural Review Committee in accordance with the terms hereof and used for ancillary purposes, such as an "in-law suite", may be occupied, but not independently leased. There shall be no subleasing of a Dwelling Unit or assignment of leases except with the Board's prior written approval.

All leases shall require that tenants and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents and the Master Declaration. The restrictions on leasing set forth in the foregoing sentence shall not apply to Declarant.

Notice of any lease, together with such additional information as the Board may require, shall be given to the Board or its designee by the Owner within ten days of execution of the lease. The Owner must make available to the tenant copies of the Governing Documents and the Master Declaration. The Board may adopt reasonable Use Restrictions and additional rules regulating leasing and subleasing and the activities of tenants and subtenants.

No transient tenants may be accommodated in a Dwelling Unit. All leases, including subleases, shall be in writing and shall be for an initial term of at least six (6) months, except: (a) with the Board's prior written consent, or (b) as Declarant initially authorizes in a Supplemental Declaration for Lots.

(g) Maximum Occupancy. No more than two Persons per bedroom shall occupy the same Dwelling Unit on a regular and consistent basis, as determined by the Board in its discretion.

(h) Occupants Bound. The Governing Documents and the Master Declaration apply to all Occupants of and visitors to any Lot. Every Owner shall cause anyone occupying or visiting his or her Lot to comply with the Governing Documents and the Master Declaration and shall be responsible for all violations and losses to the Common Area caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(i) Subdivision of a Lot and Time-Sharing. Lots may not be subdivided or their boundary lines changed except in accordance with all applicable laws and with the Board's prior written approval; provided, however, Declarant, in its sole discretion, may subdivide, change the boundary line of, and replat any Lot(s) it owns, and, for so long as Declarant owns any portion of the Community, Declarant may convert Lots into Common Area or Common Area to Lots at any time prior to the transfer of title to such property to third parties or to the Association.

Timesharing, fraction-sharing, or similar programs whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years is prohibited, except by Declarant, while Declarant owns any property within the Community.

(j) Disease and Insects. No Person shall permit any thing or condition to exist upon any Lot, Parcel or other property which shall induce, breed or harbor infectious diseases or noxious insects.

(k) Mineral Exploration. No Lot, Parcel or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by Declarant.

(l) Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Lot, Parcel or other property by anyone other than Declarant or a Person acting on behalf of Declarant unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Review Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings or structures approved by the Architectural Review Committee. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a Dwelling Unit or other building facing the street running directly in front of a Dwelling Unit.

(m) Model Homes. Any provisions of this Declaration, Supplemental Declarations or any other declarations which prohibit non-residential use of Lots and certain Parcels and regulate parking of vehicles shall not be construed to prohibit the construction and maintenance of model homes or other model Dwelling Units of any kind (including, without

limitation, any used in whole or in part as sales offices, or for design center displays (collectively “**Models**”) by Declarant in the Community, or parking incidental to the visiting of Models, so long as the construction, operation and maintenance of Models and the incidental parking otherwise comply with the provisions of this Declaration. The Architectural Review Committee may also permit Lots, Common Areas and other areas to be used for parking in connection with the showing of Models.

(n) Incidental Uses. The Architectural Review Committee may approve uses of property within a land use classification which are secondary to the full enjoyment of the land use classification by Owners and Occupants. Such approval may be subject to such regulations, limitations and restrictions, including termination of the approved use, as the Architectural Committee may wish to impose, in its sole discretion, for the benefit of Carolina Preserve at Amberly as a whole.

3.2 Framework for Regulation.

In addition to the foregoing restrictions affecting Lots, the Governing Documents establish, as part of the general plan of development, a framework of affirmative and negative covenants, easements, and restrictions which govern the Community, including the Use Restrictions. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes affecting the Community. This Article establishes procedures for modifying and expanding the Use Restrictions to respond to such changes.

The procedures set forth in this Article shall not apply to the Board’s enactment and enforcement of rules and regulations relating to use and operation of the Common Area or other administrative rules, which the Board may adopt by resolution.

3.3 Owners’ Acknowledgment and Notice to Purchasers.

All Owners are hereby given notice that use of their Lots and the Common Area is limited by the Use Restrictions, as the same may be amended, expanded, and otherwise modified from time to time. **Each Owner, by accepting a deed, each Tenant, by accepting a lease, and each Occupant, by accepting possession, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot can be affected by the Use Restrictions and Board Resolutions and Rules, which may change from time to time. All purchasers of Lots are hereby put on notice that the Association may have adopted amendments to the Use Restrictions and that such amendments may not be set forth in a Recorded document.** The Association shall make available copies of the Use Restrictions and Board Resolutions and Rules currently in effect.

3.4 Rule-Making Authority.

(a) The Board may change (*i.e.*, modify, cancel, limit, create exceptions to, or expand) the Use Restrictions from time to time. The exercise of this authority shall be subject to the Board’s obligations as set forth in the By-Laws and Articles and to the need to make as few changes to the Use Restrictions as possible to meet the Board’s objectives and still fulfill the reasonable expectations of the Members. The Board shall provide notice to all Owners of any proposed change to the Use Restrictions pursuant to the Association’s then-current communication policy at least five (5) business days before the Board meeting at which such changes will be considered. Members shall have a reasonable opportunity to be heard on the proposed change at such Board meeting.

If endorsed by the Board, the proposed change shall be approved unless it is rejected by a majority vote of the Members. The Board is not obligated to call a meeting to re-consider any rejection of a changes unless it receives a petition to do so that meets the requirements for special meetings set forth in the By-Laws. If the Board receives such a petition before the effective date of the Board’s action under this Subsection, the proposed change shall not become effective until after the second meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Members, representing a majority of the votes in the Association, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect. During the Declarant Control Period, any such change shall require the approval of Declarant.

(c) Before any Use Restriction change can become effective, the Board shall provide to each Owner, free of charge, a copy of the new or changed Use Restriction. The change shall not become effective until at least thirty (30) days following the date of such mailing to all Owners. Each Owner shall be bound regardless of whether the mailing is actually received. The Association shall provide, free of charge, a copy of the Use Restrictions then in effect to any Member, Tenant or Mortgagee requesting the same.

(d) At least once every two years after the Declarant Control Period ends, the Board shall review and evaluate the then-current Use Restrictions for continued viability or necessity within the Community.

(e) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

(f) Notice under this Section may be sent to each Owner by any manner permitted under the Association's then-current communication policy and North Carolina law, including, if so permitted: (i) U.S. Mail, (ii) electronic communication (*i.e.*, "fax" or "e-mail"), or (iii) publication in the community newsletter delivered or mailed to each Owner, provided such action is clearly identified under a separate newsletter headline.

3.5 Protection of Members and Residents.

Except as may be set forth in this Declaration (either initially or by amendment) or in the Use Restrictions, the Association's actions with respect to Use Restrictions and rules must comply with the following:

(a) Displays. Members and Residents shall be permitted to display religious, patriotic and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in single-family residential neighborhoods, provided that the Association may regulate all such displays for conformity with this Declaration and, specifically, with the Community-Wide Standard.

(b) Signs. The Association shall not regulate the content of political signs; however, the Association may adopt reasonable time, place, and manner restrictions regarding the posting of such signs, as established in the Design Guidelines. Regulations concerning all other signs may be contained in the Use Restrictions or the Design Guidelines, as the same may be amended from time to time.

(c) Rights of Assembly. Members and Residents shall be permitted to engage in orderly conduct to express opinions to the membership at large, but only in accordance with the Association's approved Assembly Policy.

(d) Household Composition. The Association shall not interfere with the freedom of Members and Residents to determine the number of Qualified Occupants within a household, except that it may limit the total number of Persons entitled to occupy a Dwelling Unit based upon the size of the Dwelling Unit (including, without limitation, such factors as the number of bedrooms), not to exceed the number of occupants permitted under applicable zoning ordinances, and it may limit the number of Occupants per household who have full privileges to use the Common Area.

(e) Activities Within Dwellings. The Association shall not interfere with activities carried on within a Dwelling Unit, except it may prohibit activities not normally associated with residential property uses, and it may restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Dwelling Unit, or that create an unreasonable source of annoyance.

(f) Alienation. The Association shall not prohibit leasing or transfer of any Lot except in accordance with the Governing Documents. The Association may require that Owners use Association-approved lease forms (or include specific lease terms) and may impose a reasonable administrative fee for review of a lease or a transfer of any Lot. (See **Section 3.1(e)** for minimum lease terms established hereunder).

(g) Abridging Existing Rights. The Association may not require an Owner to dispose of personal property that was in or on a Lot in compliance with rules previously enacted with respect to the Lot. This exemption shall apply only during the period of such Owner's ownership of the Lot, and shall not apply to subsequent Owners who take title to the Lot after adoption of a different rule.

(h) Reasonable Rights to Develop. The Association may not unreasonably impede Declarant's right to develop Carolina Preserve at Amberly, or require Declarant to develop any portion thereof, with all development decisions being left to Declarant's sole discretion.

The limitations in subsections (a) through (h) of this Section shall only limit rule-making authority exercised under **Section 3.4** of this Declaration; they shall not apply to amendments to this Declaration adopted in accordance with **Article XXI** hereof.

Article IV Architecture and Landscaping

4.1 General.

No structure or thing shall be placed, erected, or installed upon any Lot and no Improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place within Carolina Preserve at Amberly, except in compliance with this Article and the Design Guidelines. Each Dwelling Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee, in its sole discretion, otherwise approves.

Any Owner may remodel, paint, or redecorate the interior of an Improvement (including a Dwelling Unit) on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from outside an Improvement shall be subject to approval as set forth in the Design Guidelines.

This Article shall not apply to Declarant's activities during the Declarant Control Period, or to the Association's activities.

4.2 Architectural Review.

(a) *By Declarant; New Construction.* Declarant shall have exclusive authority under this Declaration to administer and enforce architectural controls and to review and act upon all applications for original construction within the Community. This right shall continue until 100% of the Lots have been conveyed to Members, other than Declarant or the Association, and each such Lot contains a finished Dwelling Unit, unless Declarant earlier terminates its rights in a Recorded instrument. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may, in its discretion, designate one or more Persons or an outside management company, to act on its behalf from time to time in reviewing applications.

From time to time Declarant may, but shall not be obligated to, delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Review Committee. Any such delegation shall be in writing, specifying the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) *Architectural Review Committee; Modifications.* During the Declarant Control Period, Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for modifications to Improvements constructed within the Community. Declarant is to maintain Records of all approvals and denials and to turn them over to the Association at the end of the Declarant Control Period. Prior to termination of Declarant's rights under **Section 4.2(a)** hereof or to further a delegation if requested by Declarant, the Board shall establish the ARC, which shall consist of at least three Persons. Members of the ARC shall be appointed and shall serve at the discretion of the Board; provided, however, that so long as and at any time that Declarant owns any property described in Exhibit A

or Exhibit B, as the same may be amended from time to time, Declarant may appoint one member of the ARC.

When appointed, the ARC shall have exclusive jurisdiction hereunder over modifications to all Lots and/or structures and any additional Improvements within the Community, subject to Declarant's rights under Subsection (a) above. Declarant, in its discretion, may assign jurisdiction over original construction and landscaping within the Community to the ARC.

Declarant or the Board may create and appoint such subcommittees of the ARC as the same deem appropriate. Such subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by such procedures as may be established by the ARC or the Board. Any action of any subcommittee shall be subject to the review and approval of the ARC and, during the Declarant Control Period, Declarant. Notwithstanding the above, neither the ARC nor Declarant shall be obligated to review all actions of any subcommittees and the failure of the same to take action in any instance shall not operate as a waiver of ARC's or Declarant's right to act, or not act, in the future.

(c) *Reviewer.* The entity having jurisdiction in a particular case (whether it be Declarant or its designees or the ARC) shall be referred to as the "Reviewer". On behalf of the Association, the Reviewer may retain architects, engineers, or other Persons as deemed necessary to perform a review. The cost will be the responsibility of the applicant.

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board shall include the estimated compensation of such Persons in the Association's annual operating budget.

(e) *Master Declaration.* **Nothing herein alters or shall be deemed to alter any architectural approval provisions or requirements applicable to the Community by virtue of the Master Declaration.**

4.3 Guidelines and Procedures.

(a) *Design Guidelines.* Declarant shall prepare Design Guidelines, which may contain general provisions applicable to all of the Community. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Community or has a unilateral right to annex Additional Property pursuant to **Section 11.1** hereof. Declarant's right to amend shall continue notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates to the ARC its power to amend. Upon termination or delegation of Declarant's right to amend, the ARC may amend the Design Guidelines with the written consent of the Board.

Amendments to the Design Guidelines shall be prospective only. The Design Guidelines shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced in compliance with applicable laws and ordinances. Subject to the Community-Wide Standard, there shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners who seek to engage in construction within Carolina Preserve at Amberly.

(b) *Custom Lot Guidelines.* Declarant may prepare Custom Lot Guidelines, if Declarant elects to sell custom lots within the Community. It may follow the same procedures as apply to the Design Guidelines, or it may establish new procedures.

(c) *Procedures.* Except as otherwise specifically provided in the Design Guidelines, no construction activities or other activities described in **Section 4.1** hereof shall commence on any portion of Carolina Preserve at Amberly until an application has been submitted

to and approved by the Reviewer. The application shall (i) be in the form Reviewer requires, (ii) include plans and specifications and other information required under the Design Guidelines, and (iii) be acknowledged in writing, at the time of submission, by the Owners of the Lots adjacent to the applicant's Lot. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of the proposed construction. The Design Guidelines and the Reviewer may require additional information as reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular Improvements. Subject to Declarant's veto right, the Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall only be subject to review or appeal to the Board.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and all information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions, with or without conditions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of a final determination on any application within five days after such determination is made. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond by the deadlines set forth above, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to **Section 4.5** hereof.

Notice shall be deemed given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed given at the time of delivery to the applicant.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a specified time period. If construction does not commence within the required period, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer grants an extension in writing, which it is not obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

(d) *Exemptions.* The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Reviewer approval shall not constitute approval of or waiver of approvals or reviews by the Town of Cary or any other municipality, by Wake and Chatham Counties, by the State of North Carolina or any other governmental agency or entity having jurisdiction over architectural or construction matters.

4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner

acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the Improvements involved. Accordingly, a Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5 Variances.

The Reviewer may authorize variances from compliance with any of the guidelines and procedures set forth in this Declaration or in the Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require or when legally required for compliance with the Americans with Disabilities Act, but only in accordance with rules and regulations established by Declarant or the Board. No application for variance from compliance with any of the guidelines and procedures set forth in this Declaration or in the Design Guidelines shall be considered for approval unless the Owner submitting or authorizing the submission of such application submits written acknowledgements with such application signed by each Owner of a Lot abutting the applying Owner's Lot, which acknowledge receipt of a copy of the application and receipt of contact information for the Reviewer. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) stop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No variance may be issued without Declarant's written consent for so long as Declarant owns any portion of the Community or has the unilateral right to annex Additional Property.

4.6 Limitation of Liability.

(a) The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Carolina Preserve at Amberly; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on aesthetic considerations only. The Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that every Dwelling Unit is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners provided the Community-Wide Standards shall serve as a guide in the review process.

(b) Declarant, the Association, its officers, the Board, the ARC, the Association's management agent, any committee, or any member of any of the foregoing shall not be held liable for matters related to its decisions including, but not limited to, soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the ARC, and the members of each, and the Association officers, shall be defended and indemnified by the Association as provided in **Section 7.7** hereof.

4.7 Certificate of Compliance.

Declarant, or any Owner may request in writing that the Association issue a certificate of architectural compliance certifying either that there are no known violations of this Article or the Design Guidelines as to the Owner's Lot, or specifying such violations. The Association may charge a reasonable administrative fee in connection with responding to such a request. The Association shall either issue such a certificate within 45 days after receipt of the written request therefor, or a certificate specifying no violations shall be deemed to have been issued. Issuance of such a certificate shall stop the Association from taking enforcement action against an Owner for any condition known to the Association on the date of the certificate and not specified therein.

Article V Landscaping, Home Maintenance and Repair

5.1 Maintenance of Walls.

Shared Walls shall be maintained by the Association, and the Association's costs for such maintenance shall constitute Common Actual Expenses. Additionally, the Association shall maintain any wall that is a "Qualified Wall" as defined herein. A "Qualified Wall" is defined as a keystone-type wall (i) entirely located on one Lot, and (ii) having at least one exposed face (i.e. one above-ground surface of such wall) exceeding one hundred fifty (150) square feet in area, and (iii) having an above-ground height of (A) at least four (4) feet for a continuous span of fifteen (15) feet, or (B) in excess of ten (10) feet at any point. By way of example, any of the following would constitute a Qualified Wall: (X) a wall on a single Lot having an above-ground height of four (4) feet for a length of thirty-eight (38) feet, or (Y) a wall on a single Lot that has a ten (10) foot-long section with an above-ground height of four (4) feet, a twenty-five (25) foot-long section with an above-ground height of three and a half (3.5) feet, and a six (6) foot-long section with an above-ground height of four (4) feet, or (Z) a wall on a single Lot that has a thirty-eight (38) foot-long section with an above-ground height of three and a half (3.5) feet and a three (3) foot-long section with an above-ground height of ten (10) feet. In each instance, the above-ground height of a wall, or any portion thereof, shall be measured as the shortest distance from the surface of the ground to the top of the same wall face. The costs of maintaining Qualified Walls shall constitute Common Actual Expenses. All walls other than Shared Walls or Qualified Walls shall be maintained by the Owner(s) of the real property upon which they are located. To the extent not inconsistent with the foregoing provisions of this Section 5.1, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to walls within the Community located on the real property of more than one Owner. Any dispute arising concerning such a wall shall be handled in accordance with Article XVI hereof

5.2 Maintenance of Lots.

Each Owner shall maintain its Lot, including the Dwelling Unit and all other Improvements situated on or in the Lot, in a manner consistent with the Governing Documents, the Master Declaration, the Community-Wide Standard, and any other applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to any Supplemental Declaration or additional covenants applicable to such Lot.

The initial maintenance obligations for Owners, specified by Dwelling Unit type, are set forth in Exhibit E. Exhibit E constitutes only the initial division of maintenance responsibilities between Owners and the Association, depending on Dwelling Unit type, and the maintenance responsibilities contained therein may be changed at any time without any need of amending this Declaration and without any need of recording the changes, by the Declarant during the Declarant Control Period and by the Association after the end of the Declarant Control Period. Changes in maintenance responsibilities may include changes to the parties responsible as well as whether the Association opts to offer a particular maintenance feature at all, or on a fee basis.

Each Owner shall also be responsible for maintaining the sidewalk and landscaping located in the public right-of-way adjacent to his or her Lot unless the Association, pursuant to a Supplemental Declaration or any additional covenants, assumes all or part of such maintenance.

5.3 Intentionally Deleted

5.4 Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or the Master Declaration or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable Improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefited Assessment against the benefited Lot and its Owner.

In the event of damage to or destruction of Improvements on a Lot, the Owner shall promptly repair or reconstruct such structure in a manner consistent with the original construction or other plans and specifications approved in accordance with **Article IV** hereof. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the

Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

C. COMMUNITY GOVERNANCE AND ADMINISTRATION

This Declaration establishes the Association as the mechanism by which each Owner is able to participate in the governance and administration of Carolina Preserve at Amberly. While many powers and responsibilities are vested in the Association's Board of Directors in order to facilitate day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's Membership -- the Lot Owners.

Article VI The Association and its Members

6.1 Function of Association.

The Association is responsible for the management, maintenance, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Association may choose to oversee the administration of certain social programs for the benefit of the Owners and in so doing, may hire a lifestyle director and additional staff for the administration of such programs, either as employees or as independent contractors. The Association also has primary responsibility for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and North Carolina law.

6.2 Membership.

Every Owner is a Member of the Association, but there shall be no more than one Membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of Membership, subject to the By-Laws, reasonable Board Regulations and Rules and the voting restrictions described in **Section 6.3(c)** hereof. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The Membership rights of an Owner that is not an individual may be exercised by any officer, director, partner, manager, member, or trustee, or by an individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

6.3 Voting.

(a) *Voting Matters.* During the Declarant Control Period or during such time as Declarant owns any of the Community or has a unilateral right to annex Additional Property pursuant to **Section 11.1** hereof the only matters subject to a vote of all the Members in the Community are those which the Declarant wishes to put to a Community-Wide vote, as applicable. The foregoing sentence shall not relieve the Declarant or the Association, as the case may be, of the obligation to provide budget summaries to the Owners following adoption of a proposed budget and to hold a meeting for the purpose of obtaining a ratification vote on the proposed budget, as required by the Act.

(b) *Members.* Members shall have one equal vote for each Lot in which they hold the interest required for Membership under **Section 6.2** hereof, except that there shall be only one vote per Lot. The right to vote for a Lot commences at such time as the Lot is made subject to this Declaration; provided, no vote shall be exercised for any Lot which is exempt from Assessment under **Section 9.10** hereof.

(c) *Exercise of Voting Rights.* The Owner shall exercise the vote for its Lot. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary, or its designee, in writing prior to the vote being taken. Absent such advice, and in the event that more than one such co-Owner casts a vote, the Lot's vote shall be suspended and excluded from the final vote tally on the matter on which a vote is being taken.

6.4 Intentionally Deleted

Article VII Association Powers and Responsibilities

7.1 Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as landlord or tenant), operate, and dispose of tangible and intangible personal property and real property. Contracts for terms in excess of three (3) years shall require a majority vote of the Members. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for payment or no payment as the Board deems appropriate, to permit use of portions of the Common Area by community organizations and by other third parties for the general benefit of or as a convenience to Owners and other residents of Carolina Preserve at Amberly. A conveyance or mortgage of the Common Area requires approval by Members entitled to cast at least eighty percent (80%) of the votes in the Association. A conveyance or mortgage of Limited Common Area requires the approval of one hundred percent (100%) of the Owners of Lots to which said Limited Common Area is allocated.

(b) Declarant and its designees may transfer or convey to the Association, and the Association shall accept, rights Declarant has in and to personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibit A or Exhibit B. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2 Maintenance of Common Area.

The Association shall maintain, in accordance with the Community-Wide Standard, the Common Area, and such maintenance shall include, but need not be limited to:

(a) all portions of the Common Area, including landscaping, structures, and other Improvements thereon or therein;

(b) landscaping within public rights-of-way within or abutting Carolina Preserve at Amberly;

(c) such portions of any additional property as may be dictated by Declarant, the Master Declaration, this Declaration, any Supplemental Declaration, any Plat, or any contract, covenant, or agreement for maintenance entered into by, or for the benefit of, the Association; and

(d) all ponds, streams, and/or wetlands located within Carolina Preserve at Amberly that serve as part of the Community's stormwater drainage system, including the associated improvements, equipment, and facilities, provided however, that the Association shall only be responsible for maintaining those stormwater drainage pipes located within the boundaries of a Lot if the subject drainage pipes (i) were installed by Declarant, and (ii) are at least eight inches (8") in diameter.

The Association may maintain other property that it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own.

The Association shall maintain the facilities and equipment within the Common Area in continuous operation, except for any periods necessary to perform required maintenance or repairs, as determined by the Board in its sole discretion, unless and until Members representing 75% of the Member votes in the Association, and Declarant, if during the Declarant Control Period, agree in writing to discontinue such operation.

Except as provided above, the Common Area shall not be reduced or increased except with

Declarant's prior written approval during the Declarant Control Period, or for so as long as Declarant owns any part of the Community or has the unilateral right to annex Additional Property into the Community pursuant to **Section 11.1** hereof.

The costs incurred by the Association in connection with the maintenance, repair, and replacement of the Common Area, excluding Limited Common Areas, shall be a Common Expense; provided, the Association may, but shall not be obligated to, seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, a Supplemental Declaration, or other Recorded covenants or agreements. Maintenance, repair, and replacement of Limited Common Areas shall be a Expense assessed against the benefitted Lots.

7.3 Insurance.

(a) *Required Coverages.* The Association, acting through the Board or an agent duly authorized by the Board, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "all risks of direct physical loss" on a "special causes of loss form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Area to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad causes of loss form" (specified perils) coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees or agents while acting on behalf of the Association, and if generally available at a reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$5,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;

(iii) With respect to any contractors working on the Common Area or any third parties holding events on the Common Area, up to and including December 31, 2019, all such individuals shall be required to carry sufficient similar commercial general liability insurance with minimum limits of \$1,000,000.00 combined single limit per occurrence and \$1,000,000.00 general aggregate limit, and shall be endorsed to include Pulte Homes, Inc., its subsidiaries and affiliates and their respective directors, officers, employees, and agents as additional insureds with respect to any claims, losses, expenses or other costs arising out of any work performed for Pulte;

(iv) Statutory Workers' compensation and employer's liability insurance in the amount of the State of North Carolina's statutory limits to cover all employees engaged in the services;

(v) Earthquake, wind and flood damage coverage, of and to the extent required by law and or appropriate for an Association based in North Carolina;

(vi) Automobile liability insurance for all owned, non-owned and hired vehicles with a minimum limit of \$500,000.00 combined single limit per accident;

(vii) Directors' and officers' liability coverage; and

(viii) Commercial crime insurance covering all Persons, including Persons serving without compensation, responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand.

Any parties, other than the Association, required by the Subsections (a)(i), (a)(ii) and

(a)(iii) above to carry certain insurance, shall file with the Association certificates of insurance evidencing the minimum coverage required in such Subsections at the time of execution of any agreement for services or events conducted on the Common Area and shall maintain the same insurance in a current status throughout the term of any such agreement. Such certificates of insurance shall require the insurer(s) to provide not less than thirty (30) days advance written notice to the Association in the event of any cancellation, non-renewal or material change (*i.e.*, a greater than twenty-five percent (25%) reduction) in the policy limits, terms or conditions. Such parties shall maintain all of their insurance and at the required levels described above for not less than five (5) years following the expiration or termination of any agreement with the Association.

The Board, in the exercise of its business judgment, may obtain such additional insurance coverage and higher limits.

Insurance obtained for the Association is not meant to replace any individual's personal liability or property insurance and it is strongly suggested that each Member of the Association carry their own personal coverage.

Premiums for insurance on the Common Area shall be Common Expenses, except that (i) ((Intentionally Deleted)); and (ii) premiums for insurance on Limited Common Areas unless the Board reasonably determines that other treatment of the premiums is more appropriate. All of the coverage required herein should be maintained with insurers rated AB or better in the most current edition of Best's Insurance Reports.

(b) *Policy Requirements.* Prior to the adoption of the Budget, the Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Raleigh/Durham/Chapel Hill metropolitan area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member who is insured thereunder. Declarant reserves the right to satisfy its requirements to obtain and maintain insurance under Declarant's blanket policy, provided that the cost to replace the insurance when such coverage terminates shall be disclosed to the Members as a footnote to the Budget.

Insurance policies may contain a reasonable deductible which shall not be subtracted from the face amount of such policies in determining whether the policy limits satisfy the requirements of **Section 7.3(a)** hereof. In any event, the total amount of insurance after application of deductibles shall be not less than 80%, or the then-current percentage required by the Act, of replacement costs, exclusive of land, excavations, and foundations, at each renewal date. In the event of an insured loss, the deductible shall be treated as a Common Expense, as applicable, in the same manner as the premiums for the applicable insurance coverage are treated. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized and licensed to do business in North Carolina;

(ii) be written in the name of the Association as trustee for the benefit of the benefited parties specified in this Subsection (b)(ii). Policies covering the Common Areas shall be for the benefit of the Association and its Members. Policies secured on for the benefit of the Owners and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);

(vii) Unless the Board waives the requirement of this Subsection(b)(vii), it must include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

(1) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(2) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(3) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(4) a cross liability provision; and

(5) a provision vesting in the Board or their authorized representative, which shall be Declarant so long as Declarant's policy provides Association coverage, exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) *Restoring Damaged Improvements.* In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 80% of the total Member votes in the Association and Declarant, if during the Declarant Control Period, vote within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, repairs shall be made unless at least 100% of the Owners that are benefited by such Limited Common Area vote not to repair or reconstruct within 60 days after the loss. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended for up to 60 additional days until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed upon settlement, for the benefit of the Members or the Owners of Lots, as appropriate, and place such funds in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the applicable insurance premiums.

7.4 Compliance and Enforcement.

(a) The Board may impose sanctions for Governing Documents violations, which sanctions include those listed below and any others specifically described in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of this Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations.

The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws (provided only a single notice and hearing is required for continuing violations) and the Act:

(i) imposing reasonable monetary fines, not to exceed \$100.00 per violation (or per day after the decision to impose a fine in the case of a continuing violation), or the highest amount allowed by the Act, if different, which shall constitute a lien upon the violator's Lot enforceable in the same manner in which Assessments may be enforced, subject to any limitations on enforcement imposed by the Act. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use Common Area amenities; provided, however, nothing shall authorize the Board to impair an Owner's or occupant's access to his or her Lot;

(iv) suspending any services of the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation; and

(vi) levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, the Board, or its designees, may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of following the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, towing vehicles that are in violation of parking rules and regulations);

(ii) taking other action to abate a violation on the Common Area or a violation on a Lot in an emergency situation;

(iii) exercising reasonable self-help in a non-emergency situation where a violation of this Declaration or any rules or regulations promulgated in accordance with this Declaration continues for 30 days after notice of the violation is given to the violating party, or to the Owner responsible for the violating party (specifically including, but not limited to, towing vehicles that are parked in violation of applicable rules and regulations) or otherwise correcting or eliminating the violation;

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such required maintenance and assess all costs incurred against the Lot and the Owner as a Benefited Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in enforcement. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may, but shall not be required to, enforce applicable town ordinances, and the Town of Cary may enforce its ordinances within Carolina Preserve at Amberly.

7.5 Enforcement of Design Guidelines

(a) Any construction, alteration, or other work performed in violation of the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association or Declarant, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure the nonconformance to the satisfaction of the requester or restore the Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association, Declarant, or their designees shall have the right to enter the Lot, remove the violation, and restore the Lot to substantially the same condition as previously existed. All costs, together with interest at a rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration or in the Act.

(b) All design approvals shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, Declarant or the Association may, after notifying the Owner of the Lot and giving an opportunity to be heard in accordance with the By-Laws, enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment.

(c) All acts of any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Design Guidelines may be excluded from the Community, subject to the notice and hearing procedures contained in the By-Laws and provided in the Act. In such event, neither Declarant nor the Association, or their officers and directors, shall be held liable to any Person for exercising the rights granted by this Paragraph.

(d) After the earlier of (x) the end of the Declarant Control Period or (y) Declarant's delegation of such task to the Association, the Association shall be primarily

responsible for enforcement of the Design Guidelines. So long as Declarant owns any part of the Community or has the unilateral right to annex Additional Property into the Community pursuant to **Section 11.1** hereof, and in the discretion of Declarant, the Association fails to take appropriate enforcement action, as authorized herein, within a reasonable time period, then Declarant may, but shall not be obligated to, exercise enforcement rights in the same manner as set forth above for the Association. In addition to the foregoing, the Association and Declarant (so long as Declarant owns any part of the Community or has the unilateral right to annex Additional Property into the Community pursuant to **Section 11.1** hereof) shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of the Design Guidelines and the Reviewer's decisions. If the Association or Declarant prevails in an action instituted pursuant to the foregoing sentence, then they shall be entitled to recover all costs including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

7.6 Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly, or by reasonable implication, by the Governing Documents, or take action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise the Association's rights and powers without a vote of the Members.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Area, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed to create any independent legal duty to institute any legal or other action or proceeding on behalf of or in the name of the Association or the Members.

In exercising the Association's rights and powers, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.7 Indemnification of Officers, Directors, and Others.

The officers, directors, employees and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and employees shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

Subject to North Carolina law, the Association shall indemnify every officer, director, employee and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, employee or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, employee or committee member may be entitled. The Association shall, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available, and the costs of the same shall be a Common Expense.

7.8 Safety and Security.

Each Owner and occupant of a Lot, and their respective guests and invitees, are responsible for their own personal safety and the security of their property in Carolina Preserve at Amberly. The Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security

within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Community, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within Carolina Preserve at Amberly assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

7.9 Guardhouses.

Guardhouses may be constructed within or adjacent to Carolina Preserve at Amberly in order to limit access and to provide more privacy for Owners and Occupants. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such guardhouse may restrict or delay entry into, or access within Carolina Preserve at Amberly by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such guardhouse will restrict or delay entry into, or access within Carolina Preserve at Amberly by police, fire department, ambulances or other emergency vehicles or personnel. Neither Declarant, the Association nor any director, officer, agent or employee of Declarant of the Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting directly or indirectly, from the construction, existence or maintenance of any such guardhouse.

If any guardhouses are constructed within Carolina Preserve at Amberly, Declarant makes no representations or warranties that a guard service will be provided or, if guard service is provided, that it will be provided during any particular hours or be continued in the future. Nothing that may be represented to a purchaser by real estate brokers or salesmen representing Declarant or any developer of Lots or Common Area in the Community shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration or any part of the Additional Property.

7.10 Committees.

(a) The Association shall have the authority, in the discretion of the Board, to establish standing and ad hoc committees to assist it in accomplishing its tasks and its obligations under the Governing Documents, and/or to obtain Members' participation and input in the operation of the Community. The Board shall at all times maintain power and control over any committees as established and shall engage in such oversight as is reasonably necessary to ensure the committee acts in a way consistent with the goals, values and initiatives of the Association.

(b) Intentionally Deleted

7.11 Provision of Services.

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or, if such services and facilities are provided to all Lots, the Board may opt include the costs of the same in the Budget as a Common Expense and assess it as part of the Base Assessment. If certain services or facilities are provided to less than all Lots, then the Association may assess such costs as a Benefited Assessment, as appropriate. To the extent not covered by the Base Assessment, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may modify or

cancel existing contracts for services in its discretion, unless the services are otherwise required by the Governing Documents and no alternative contract for such services is feasible. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay Assessments for such services.

7.12 Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.13 Facilities and Services;

Openness to the Public, or a Portion Thereof; Redesignation.

(a) Certain facilities and areas within Carolina Preserve at Amberly may be temporarily or permanently opened for public use and enjoyment in the discretion of the facility owner. Such facilities and areas may include, by way of example: greenbelts, trails and paths, parks, areas conducive to gathering and interaction, roads, sidewalks, and medians.

(b) During the Declarant Control Period, without the approval or consent of the Members, and thereafter, pursuant to action of the Members taken at a duly called meeting of the Members, the Board shall have the power and right to change the use of portions of the Common Area and Limited Common Area. Any such change shall be pursuant to Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area or Limited Common Area, (d) the new use is consistent with the then effective Master Plan and Carolina Preserve Plan, and (e) ((Intentionally Deleted)).

Notwithstanding the above provisions of this Subsection, if after the Declarant Control Period the Board adopts a resolution which states that the change in use will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within thirty (30) days of the notice. If less than ten percent (10%) of the Members who will be affected by the change submit written objections, the change shall be deemed approved, and a meeting shall not be necessary.

7.14 View Impairment.

Neither Declarant nor the Association guarantee or represent that any view over and across the Lots, or any Common Area or open space within the Community will be preserved without impairment, and neither party shall be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Association and Declarant (with respect to the Common Area) have the right to add trees, walls, fences, berms, homes or other structures, signs, lighting, water features and other landscaping from time to time subject to applicable law. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Notwithstanding the above, the Design Guidelines or Association rules may impose requirements restricting the location of modifications to existing Improvements designed to preserve views.

7.15 Relationship with Governmental and Tax-Exempt Organizations.

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute or receive money, real property (including Common Area), personal property, or services to or from any such entity. Any such contribution shall be a Common Revenue or Expense and included as a line item in the Association's annual budget.

For the purposes of this Section, a “tax-exempt organization” shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code (“Code”), such as, but not limited to, entities which are exempt from federal income taxes under Section 501(c)(3) or 501(c)(4) of the Code, as the same may be amended from time to time.

7.16 Real Estate Taxes.

The Community is located in two different real estate tax districts (Wake and Chatham Counties). If the Community is expanded from time to time, pursuant to the powers granted to Declarant hereunder, it may also come to include property located outside the limits of the Town of Cary. Accordingly, the real estate taxes levied against a Lot may differ from those levied against another, possibly neighboring, Lot. Neither the Declarant nor the Association have or wish to attempt to take any control over the boundary lines of tax districts or the taxes levied thereunder.

7.17 Master Delegate.

Pursuant to Article IV, Section 2(i) of the Master Declaration, each Parcel (as defined in the Master Declaration) must appoint a representative or delegate to represent the interests of the Owners within the Parcel to the Master Association. As of the date hereof, the Community comprises one (1) Parcel (as defined in the Master Declaration) and has one (1) Master Delegate. Until the end of the Declarant Control Period, Declarant, in its sole discretion, shall name such Master Delegate to represent the interests of the Community. Following the end of the Declarant Control Period, the Master Delegate shall be chosen by the Board. Pursuant to the Master Declaration, the Master Delegate will represent the Community in the Master Association, but none of Declarant, the Association or the Master Delegate has, or purports to have, control over the Master Association, or the ability to cause amendments to be made to the Master Declaration or to any other documents governing the Master Community. The Master Delegate shall exercise the vote for the Community within the Master Association in accordance with the goals, values and initiatives of the Association and shall take all reasonable steps to ensure that the Board is kept well informed of matters of interest within the Master Association. A Master Delegate may be removed at any time by action of Declarant (during the Declarant Control Period) or of the Board otherwise, if Declarant or the Association, as applicable, reasonably believes that the Master Delegate is not fulfilling the duties set forth in this Section or in the Master Declaration.

Article VIII Telecommunity

An important aspect of the Association’s mission is to perpetuate a sense of community life and spirit within Carolina Preserve at Amberly. To promote this goal, the Association may provide technology, activities, services, educational opportunities, entertainment, social events, healthcare information, and other programs for the Community. By providing these diverse components, the Association endeavors to establish community building and networking opportunities among all members of the Community.

In order to encourage awareness of, and participation in, the activities, programs, opportunities, events, and services provided by, or through, the Association, a telecommunity system may be developed to provide a communication resource that connects all members of the Community.

8.1 Community Intranet System.

A community intranet system, which would be maintained by the Association, may be established by the Declarant (during the Declarant Control Period) or if thereafter, by the Association. The Board shall have discretion and authority in determining and selecting an appropriate system, and may change, modify, or terminate the system from time to time. There is no guarantee or representation that any particular type of community intranet system or systems will be utilized.

8.2 Provider of Broadband Service.

Declarant and the Association shall have authority to select the provider or providers of the components of a broadband internet system for the Community (including, but not limited to, hardware, software, programming, infrastructure, services, management, and administration). The Association shall have no obligation to utilize any particular provider or providers.

The Association may enter into contracts with providers for different components of a community broadband system and with other Persons for the maintenance, management,

administration, upgrading, modification, and operation of such system. The terms of a particular contract may obligate individual Owners or Occupants to execute contracts or agreements directly with the Persons providing the product or service under contract prior to gaining access to the broadband system. Such contracts or agreements may contain terms and conditions relating to use and access to the community broadband system in addition to those contained in this Article.

8.3 Governmental Regulation.

Any community broadband system and its providers, managers, and operators may be subject to federal, state, or municipal regulations, laws, and ordinances. Such regulations, laws, and ordinances may have a significant impact on certain aspects of the system including, but not limited to, the fees charged, the method of delivery, the rights of the system users, as well as the rights of the system providers or operators. These regulations and their impact are beyond the Association's control.

8.4 Use of Technology.

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, and in addition to the community broadband system provided for above, the Association may provide for or offer services that make use of computers and other technological opportunities and charge the fees for the same as a Common Expense. For example, to the extent permitted by North Carolina law, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; send notice of and collect Assessments and other invoices over the computer; sponsor a community cable television channel; create and maintain a community intranet or Internet home page offering interactive participation opportunities for users; maintain an "online" newsletter or bulletin board; and provide funding to the Association for any of the above purposes, which shall constitute a Common Expense.

8.5 Central Telecommunication, Receiving, and Distribution System.

Declarant reserves for itself, its affiliates, successors, and assigns, the exclusive and perpetual right and easement, but not the obligation, to operate within Carolina Preserve at Amberly, and to service the Improvements on or within any Lot, a central telecommunication receiving and distribution system (including cable television and security monitoring), including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (collectively, the "**Community Systems**") as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the vicinity of Carolina Preserve at Amberly, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

Declarant may require that the Association enter into a bulk rate service agreement for the provision of Community Systems to all Lots as a Common Expense. If particular services or benefits are provided to particular Owners or Lots at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Benefited Assessment, as appropriate.

8.6 Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in cable television and other Community Systems services will occur from time to time, neither Declarant nor any of Declarant's successors or assigns shall in any manner be liable for, and no Community System user shall be entitled to refund, rebate, discount, or offset in applicable fees, for any interruption in Community Systems services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

8.7 Disclaimer and Limitation of Liability.

The Association shall not be liable for any loss, damage or injury resulting from (a) any virus or contamination of any data, computer, or computer system arising from access to the Community Systems; (b) any delays, interruptions, or inconveniences in accessing or using any

functions of the Community Systems, or inability to access or download information, software or other materials through the Community Systems; (c) the quality, validity, completeness of, or any inaccuracies, errors or omissions in, any information, software or other materials accessible through the Community Systems. The Association does not endorse and makes no representations or warranties regarding the quality, safety, suitability, or usefulness of any software or other materials accessible through the Community Systems. All users assume the entire risk associated with use of and access to the Community Systems and any information, software or other materials available through the Community Systems. **The Community Systems and all information and materials accessible to users of the Community Systems are made available “as is” without warranties of any kind, either express or implied, including, without limitation, warranties of title or implied warranties of merchantability or fitness for a particular purpose.**

Information contained in the Community Systems shall be made available exclusively to Owners via a password-protected web site. This information will never be sold, distributed or used in any manner other than for this purpose by Declarant or Association. However, the security of any web site is not guaranteed. Therefore, by placing an entry on the web site you understand the potential security risks involved and acknowledge that Declarant and Association are not responsible for any unauthorized misuse by Residents, Owners or others outside of this Community.

Declarant may disclose any content, Record, or electronic communication of any kind including personal information of the user for any purpose whatsoever including, but not limited to:

1. Satisfy any law, regulation or authorized governmental request;
2. If such disclosure is necessary in Declarant’s sole discretion to operate the Community Systems;
3. Protect the rights or property of Declarant, any affiliate of Declarant or users of the Community Systems;
4. Any affiliate of Declarant for any purpose whatsoever, including, but not limited to, the purpose of sending e-mails or solicitations.

Article IX Association Finances

9.1 Budgeting and Allocating Common Expenses.

Declarant shall establish the initial Base Assessments by calculating the amount needed to meet the financial needs of the Association for the fiscal year and dividing that amount by the number of Lots platted for the Community (other than Declarant’s Lots) as of the first day of the Association’s fiscal year. In consideration of paying Declarant’s obligation pursuant to **Section 9.7(b)** hereof, Declarant shall not be responsible for paying any other Assessments pursuant to this Declaration (whether base, benefited, or otherwise) on Lots owned by Declarant.

In determining the Base Assessment, the Board may consider any Assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to Assessment during the fiscal year.

Within 30 days of adopting the Budget, the Board shall send to each Owner (a) a copy of the Budget, (b) notice of the amount of the Base Assessment, and (c) notice of a meeting scheduled to consider ratification of the Budget prior to the beginning of the fiscal year.

If any proposed Budget is disapproved under **Section 9.9** hereof, or if the Board fails for any reason to determine the Budget for any year, then the Budget most recently in effect shall continue in effect until a new Budget is determined.

The Board may revise the Budget and adjust the Base Assessment from time to time during the year, subject to **Section 9.9** hereof and the notice requirements set forth above.

9.2 Intentionally Deleted

9.3 Budgeting for Reserves.

Within six (6) months following conveyance of the Common Areas to the Association, the Board shall obtain a Reserve Study and establish or verify that the Budget includes appropriate reserves. The budget for Reserves shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall, in the exercise of its business judgment, establish a plan to fund Reserves at a level projected to achieve 40-60% funding by the end of the Declarant Control Period; thereafter, the Board shall review the budget for Reserves annually and when additional common areas are conveyed. Amounts to be funded as reserves shall be reflected as such in the budget for Common Expenses.

The Board shall adopt a policy restricting the expenditure of any Reserves, including policies designating the nature of assets for which Reserves may be expended. During the Declarant Control Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

The Board may enter into agreements with Declarant regarding the timing and extent of Declarant contributions, on negotiated terms, under which Declarant may provide financial assurances in lieu of cash.

9.4 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of the Budget. Any such Special Assessment may be levied against all Members, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least two-thirds (2/3) of the total votes allocated to Lots which will be subject to such Special Assessment, and, during the Declarant Control Period, the affirmative vote or written consent of Declarant. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.5 Benefited Assessments.

The Association shall have the power to levy Benefited Assessments against particular Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Lots upon the request of the Lot's Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in **Section 7.11** hereof) or which the Association may otherwise provide to less than all Owners under this Declaration or any Supplemental Declaration; and

(b) to cover costs incurred in bringing the Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Board shall give the Lot's Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefited Assessment under this subsection (b).

Benefited Assessments for special services may be levied in advance of the provision of the requested service. The Association may also levy a Benefited Assessment against the Benefitted Lots, provided, however, the Board shall give prior written notice to the Owners of Lots and an opportunity for such Owners to be heard before levying any such Assessment.

9.6 Commencement of Assessment Obligation; Time of Payment.

The obligation to pay Assessments shall commence as to each Lot on the date of conveyance of title to an Owner other than Declarant. The first annual Base Assessment levied on each Lot shall be pro-rated for the time remaining in the fiscal year in which the Lot is conveyed to the Owner.

Advance payment of Assessments shall be required for the applicable payment period at closing of the transfer of title to a Lot. The Board shall establish whether Assessments are to be paid annually, semi-annually or in quarterly or monthly installments. Until the Board otherwise

provides, the annual Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on its Lot, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

9.7 Obligation for Assessments.

(a) *Personal Obligation.* Each Owner, by accepting a deed for any Lot, covenants and agrees to timely pay all Assessments authorized in the Governing Documents. All Assessments, together with interest (computed from its due date at a rate of 18% per annum or such higher rate as the Board may establish, in compliance with the Act and otherwise subject to the limitations of North Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee of title shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance.

The Board's failure to establish or obtain Member approval of Assessment amounts or rates, if required hereunder, or the Board's failure to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last fiscal year for which an Assessment was made, if any, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for Assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay Assessments is a separate and independent covenant for which each Owner is jointly and severally liable. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association or Board.

Common Expense caused by negligence or misconduct of an Owner, Tenant or Occupant may be assessed exclusively against the Owner or Occupant's Lot.

Within ten (10) business days of receiving a written request from an Owner, Mortgagee or other person designated by the Owner, the Association shall furnish to the requesting party or other Person designated in the written request, a certificate in writing signed by an Association officer setting forth the amount of any unpaid Assessments against the applicable Lot. Such certificate shall be conclusive evidence of payment or non-payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such a certificate.

(b) *Declarant's Obligation.*

(i) During the Declarant Control Period, Declarant shall not be obligated to pay Assessments on its unsold Lots but, instead, shall be obligated to pay a subsidy based on the "shortage" (*i.e.*, operating deficit) for each fiscal year. A "shortage" shall exist if Income and Revenues (each as defined below) for a particular fiscal year are less than Expenditures (as defined below) incurred for the same fiscal year. Income and Revenues and Expenditures are to be calculated using the accrual basis of accounting.

(ii) For purposes of this Section, Income and Revenues are defined as the amount of all income and revenue of any kind earned by the Association during the subject fiscal year, including, but not limited to, Assessments, use fees, cash advances (if any) provided by Declarant, and income from all other sources. For purposes of this Section, Assessments for each Lot shall be deemed earned on the anniversary of the commencement of Assessments with respect to such Lot.

(iii) For purposes of this Section, Expenditures are defined as the amount of all actual operating expenses incurred by the Association, or for which the Association is obligated, during the subject fiscal year, including without limitation any contributions to Reserves for such year, and any budgeted or approved non-budgeted capital assets acquired during the fiscal year. Expenditures shall **not** include (1) all

non-cash expenses such as depreciation or amortization, (2) expenditures for or purchase of non-budgeted, non-approved items, and (3) all expenditures paid from Reserves. For purposes of this paragraph, “approved” shall mean the same has been given the prior written approval of Declarant.

(iv) Following the expiration or termination of the Declarant Control Period, Declarant may annually elect either to pay the Assessments described in Subsection (i) above on each of its unsold Lots or to pay the shortage for such fiscal year. Declarant’s election may be made separately with respect to Base Assessments. If Declarant elects to pay Assessments on each Lot and, after such payment, a shortage exists, Declarant may, but shall not be obligated to, pay such shortage. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year.

(v) The Association is specifically authorized to enter into subsidy contracts or contracts for “in kind” contribution of services, materials, or a combination of services and materials with Declarant or other entities for payment of Common Expenses. Declarant’s payment of Assessments may be reduced or abated by the agreed value of any such services or materials provided by Declarant, in accordance with any such contract or agreement with the Association.

(vi) Any such subsidy for Base Assessments shall be disclosed as a line item in the income portion of the Budget. The payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

9.8 Lien for Assessments.

The Association shall have a lien against each Lot, including Declarant’s Lots, to secure payment of Assessments that are delinquent by thirty (30) days or more, as well as interest, late charges (subject to the limitations of North Carolina law, other than the Act), and costs of collection (including attorneys’ fees by filing a claim of lien in the office of the Clerk). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, Assessments, and other levies which by law would be superior, (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) the lien of any assessments levied pursuant to the Master Declaration. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure in a like manner as the foreclosure of a deed of trust pursuant to North Carolina General Statutes 45, Section 2A.

At a foreclosure sale, the Association may bid for the Lot and acquire, hold, lease, mortgage, and convey the Lot. The Association may sue for unpaid Assessments and other charges without foreclosing or waiving its Assessment lien.

Sale or transfer of any Lot shall not affect the Assessment lien or relieve such Lot from the lien for any subsequent Assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee’s foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for Assessments on such Lot due prior to the foreclosure sale. Such unpaid Assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to Assessment under **Section 9.6** hereof, including such purchaser, its successors and assigns.

Notwithstanding the above, if a Lot is owned by the Association: (a) no right to vote shall be exercised on its behalf, (b) no Assessment shall be levied on it, and (c) each other Lot shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

9.9 Limitation on Increases of Assessments.

Notwithstanding any provision to the contrary, and except for Assessment increases necessary for emergency situations, the Board may not impose a Base Assessment that is more than twenty (20%) greater than such Assessments for the immediately preceding fiscal year

without the approval of a majority of the Members subject to the applicable Assessment. Approval may be indicated by vote or written consent.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered; or
- (c) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible which could not reasonably have been foreseen by the Board in preparing and distributing the pro forma budget pursuant to **Section 9.1** hereof. However, prior to the imposition or collection of such an Assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of such resolution shall be provided to the Members along with the notice of such Assessment.

9.10 Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Area and other portions of the Community that are not Lots;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) All Limited Common areas that are not Lots and are used for the common use and enjoyment of its members, or owned by the members as tenants-in-common; and
- (d) All property owned by the Master Association and operated as “Common Area” for purposes of the Master Declaration.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to Persons qualifying for tax exempt status under Section 501(c) of the Code, as amended, so long as such Persons own property subject to this Declaration for purposes listed in said section.

9.11 Capitalization of Association.

Upon acquisition of Record title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount of up to \$500.00, subject to increase as provided below. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such Assessment. This amount shall be collected at the closing of the purchase of the Lot and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws. This amount may be changed by Declarant from time to time during the Declarant Control Period, or by the Association from time to time, following the end of the Declarant Control Period, as necessary to properly establish and ensure that all Owners fairly contribute to the working capital of the Association. In no case shall an amendment to this Declaration be necessary to effect an increase in the working capital contribution.

9.12 New Member Fee.

- (a) *Authority.* As an additional funding source, in addition to the administrative or transfer fee collected to cover administrative costs of membership transfer, the Association and Declarant shall collect a “New Member Fee” upon each transfer of title to a Lot, other than exempt transfers as set forth herein. The New Member Fee shall be charged to the grantor of the property, shall be payable by grantor or grantee as their contract provides to the

Association and Declarant at the closing of the transfer of the Lot, and shall be secured by the Association's lien for Assessments. Each Owner transferring a Lot shall notify the Association's secretary or designee at least seven (7) days prior to the scheduled closing. Such notice shall include the name of the buyer, the date of title transfer, and other information the Association may reasonably require.

(b) *Fee Limit.* The fee to the Association and to Declarant shall equal 1/3 of one percent (1/3%) of the Gross Selling Price of the Lot, with all Improvements, upgrades and premiums included, and shall be due upon the closing of the Sale of the Lot. The Gross Selling Price shall be the total cost to the purchaser of the Lot, excluding transfer taxes and title fees imposed by Wake or Chatham County, as applicable.

(c) *Purpose.* New Member Fees allocated to the Association shall be used for purposes which the Association Board deems beneficial to meet the general operating needs of the Association. By way of example and not limitation, New Member Fees may be used to assist the Association of one or more tax-exempt entities in funding operating and maintenance costs for recreational facilities, common areas open space preservation and all other funding needs for operating the Association .

(d) *Duration.* The term for the collection of the New Member Fee shall be the duration of this Declaration for the portion payable to the Association and for a term of ten (10) years from the date of Recording of this Declaration for the portion to be paid to Declarant.

(e) *Exempt Transfers.* Notwithstanding the above, no New Member Fee shall be levied upon transfer of title to property:

- (i) by or to Declarant;
- (ii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (iii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (iv) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Fee shall become due; or
- (v) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

9.13 Collection of Master Declaration Assessments.

The Association has the authority to collect as due from Owners in the Community the amount of any assessments coming due under the terms of the Master Declaration. Nothing in the foregoing sentence shall be construed so as to limit or waive the Master Association's right and authority to collect any assessments due under the Master Declaration. Any such amounts collected by the Association pursuant to the Master Declaration shall be remitted promptly to the Master Association and shall not at any time be considered as property of the Association. Assessments due under the Master Declaration shall be allocated equally among all similarly situated Lots. Notwithstanding the foregoing sentence, assessments due under the Master Declaration charged to the Association shall be a line item in the Association budget to be collected from Owners in the same manner as general assessments pursuant to this **Article IX** and shall be paid to the Master Association or the Master Declarant, as the case may be. The aforementioned assessment obligation shall be enforceable by the Master Association or the Master Declarant, as the case may be, against the Association and the Owners as provided in the Master Declaration. The Association shall pay to the Master Association or the Master Declarant, as the case may be, its share of the Master Declaration assessment as provided in the Master Declaration. Notwithstanding anything herein to the contrary, nothing herein shall prohibit the Association from levying as a Special Assessment pursuant to Section 9.4 hereof or as a Benefited Assessment pursuant to Section 9.5 hereof any amounts charged to the Association pursuant to the Master Declaration which charges have been allocated to one (1) or more Lots hereunder or are occasioned by the conduct of less than all of those entitled to occupy all of the

Lots, or by the Occupant(s), licensees or invitees of any such Lot(s).

Owners are hereby notified that in addition to the obligations, dues and other payments described above, pursuant to Article XII, Section 4 of the Master Declaration, the first Owner (other than Declarant) to acquire a Lot shall be required to pay to the Master Declarant: (i) a non-refundable membership fee of \$500.00 for one year's use of the "Amenity Center" (as defined in the Master Declaration) following its opening for business, and (ii) a non-refundable capital contribution to the Master Association's working capital fund in the initial amount of \$250.00 (which amount may be increased or decreased by the board of directors of the Master Association from time to time).

D. COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Carolina Preserve at Amberly and to accommodate changes in the Carolina Preserve Plan which inevitably occur as a community the size of Carolina Preserve at Amberly grows and matures.

Article X Activity Cards

10.1 Issuance by the Board.

One Activity Card shall be allocated to each Qualified Occupant of a Lot, up to a maximum of two Activity Cards per Lot. No Activity Cards shall be allocated to any Lot which is not Occupied by a Qualified Occupant. The Board shall review entitlement to Activity Cards on an annual basis. Activity Cards shall be renewed annually, so long as the Qualified Occupants continue to Occupy the Lot and all applicable Assessments and other charges pertaining to such Lot have been paid. The Board may establish policies, limits, and charges with regard to the issuance of additional, renewal or replacement cards and guest privilege cards.

The Board may, at its sole discretion, issue temporary Activity Cards to persons who have signed binding contracts to purchase a Lot, subject to such policies as the Board may determine from time to time. Any temporary Activity Card(s) provided pursuant to the foregoing sentence shall expire at Close of Escrow.

10.2 Assignment of Rights.

The right to an Activity Card shall be tied to Occupancy of a Lot. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall be deemed to have assigned his or her rights to an Activity Card to the Tenant of such Lot. The Tenant of the Lot shall be entitled to an Activity Card only if the Lot continues to be Occupied by a Qualified Occupant and in no event shall an Activity Card be assigned to anyone under nineteen (19) years of age. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to Occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

10.3 Issuance to Declarant.

As long as Declarant owns any portion of the Community or has the right to annex property pursuant to **Section 11.1** hereof, the Association shall provide Declarant, free of charge, with as many Activity Cards as Declarant, in its sole discretion, deems necessary for the purpose of marketing the Community or any Additional Property. Declarant may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to Declarant shall entitle the bearer to use all Common Area and recreational facilities, (subject to the availability, payment of admission fees or other use fees charged to Qualified Occupants holding Activity Cards).

Article XI Expansion of the Community

11.1 Annexation by Declarant.

Declarant may, from time to time, subject to this Declaration all or any portion of the Additional Property by Recording a Supplemental Declaration describing the property being

subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this Section expires when all Additional Property has been subjected to this Declaration or twenty (20) years after this Declaration is Recorded, whichever is later. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the Existing Property or Additional Property. Any such transfer shall be memorialized in a Recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the Additional Property in any manner whatsoever.

11.2 Annexation by the Association.

The Association also may annex property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of more than 50% of the Members in person or by proxy at a meeting duly called for such purpose, and the consent of the property owner. Further, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with **Section 11.1** hereof, Declarant's consent shall be required for such annexation to be effective. Such Supplemental Declaration shall be executed by the Association, the owner(s) of the property being annexed, and, for as long as consent thereof is required, the Declarant.

11.3 Additional Covenants and Easements.

By Supplemental Declaration, Declarant may impose additional covenants and easements on portions of the Community, including covenants obligating the Association to maintain and insure specific property and authorizing the Association to recover its costs through Assessments. If a person other than Declarant owns any of the property affected by the additional covenants or easements, then the consent and signature of such Owner(s) shall be required on the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

11.4 Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording, unless otherwise specified. The Lots are thereby subjected to this Declaration and the jurisdiction of the Association and shall have equal voting rights in the Association and equal pro rata liability for Base Assessments with all other Lots.

Article XII Additional Rights Reserved to Declarant

12.1 Deannexation of Property.

Declarant reserves the right to amend this Declaration by Recording an Amended Supplemental Declaration, so long as it has a right to annex property pursuant to **Section 11.1** hereof, to remove any unimproved portion of Carolina Preserve at Amberly from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Lots then subject to this Declaration by more than 10%. "Unimproved" means that no permanent structure has yet been built on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal and shall reconvey to Declarant any withdrawn property owned by the Association.

12.2 Marketing and Sales Activities.

Notwithstanding any provision in this Declaration, including the Use Restrictions set forth in Exhibit C, to the contrary, Declarant may construct and maintain upon portions of the Common Area and other property owned by Declarant or the Builder such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include, without limitation,

business offices, signs, flags (whether hung from flag poles or attached to a structure), model Lots, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant, Declarant's Affiliates, and their employees, agents, and designees may park vehicles in areas other than garages or driveways, including on streets. Declarant and shall have easements for access to and use of such facilities at no charge.

12.3 Right to Develop.

Declarant and Declarant's Affiliates and their employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area, and to the Additional Property, as it deems appropriate in its sole discretion.

Declarant for itself or its successors, specifically reserves the right to develop land adjacent to or in the vicinity of the Community for commercial uses.

Nothing contained in this Declaration or in any Supplemental Declaration shall be construed to prevent the construction, installation or maintenance by Declarant, any Declarant Affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or signs deemed necessary or convenient by Declarant, in its sole discretion, to the development or sale of property within the Property.

12.4 Right to Designate Sites for Governmental and Public Interests.

For so long as Declarant owns any Existing Property or any Additional Property, Declarant may designate sites within the Community for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, commercial and other public facilities subject to receiving all necessary approvals. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

12.5 Right to Approve Additional Covenants.

No Person, other than Declarant, shall Record any additional covenants, conditions, or restrictions affecting any portion of the Community without Declarant's review and written consent. Any instrument Recorded without compliance with the foregoing sentence shall be void and of no force and effect unless subsequently approved by written consent, signed by Declarant, and Recorded.

12.6 Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions, rules, or the Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with the terms hereof.

12.7 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded instrument signed by Declarant and executed by assignee. Declarant may allow other Persons to exercise, on a one time or limited basis, any Declarant right without transferring such right in its entirety. In such case, this Declaration does not require a Recorded instrument for such temporary transfer. However, a Recorded Instrument may be required by the Act.

12.8 Exclusive Rights To Use Name of Development.

No Person shall use the name "Carolina Preserve by Del Webb at Amberly" or any derivative of such name in any printed or promotional material, or in logo or depiction, without Declarant's prior written consent. However, Owners may use the name "Carolina Preserve by Del

Webb at Amberly” where such term is used solely to specify that particular property is located within the Community, and Declarant may offer to the Association a license to use the words “Carolina Preserve by Del Webb at Amberly” in its name.

12.9 Del Webb Marks.

Any use by the Association of names, marks, or symbols of Del Webb Corporation or any of its affiliates (collectively “Del Webb Marks”) shall inure to the benefit of Del Webb Corporation and shall be subject to Del Webb Corporation’s periodic review for quality control. The Association shall enter into license agreements with Del Webb Corporation, terminable with or without cause and in a form specified by Del Webb Corporation in its sole discretion, with respect to permissive use of certain Del Webb Marks. The Association shall not use any Del Webb Mark without Del Webb Corporation’s prior written consent.

12.10 Equal Treatment.

So long as Declarant owns any Existing Property or any Additional Property, neither the Association nor any other entity shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

- (a) limits the access of Declarant, its successors, assigns, and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;
- (b) limits or prevents Declarant, its successors, assigns, and/or affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;
- (c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns, and/or affiliates in the Community from becoming members of the Association or enjoying full use of its Common Areas, including purchasers qualifying under **Section 12.15** hereof subject to the membership provisions of this Declaration and the By-Laws;
- (d) discriminates against or singles out any group of Members or prospective Members or Declarant provided that this provision expressly prohibits the establishment of a fee structure (*i.e.*, Assessments, Special Assessments and other mandatory fees or charges other than Benefited Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Members or Declarant, but does not prohibit the establishment of Benefited Assessments;
- (e) impacts the ability of Declarant, its successors, assigns, and/or affiliates, to carry out to completion its development plans and related construction activities for the Community, as such plans are expressed in the Carolina Preserve Plan, as such may be amended and updated from time to time. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete the Community shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or
- (f) impacts the ability of Declarant, its successors, assigns, and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any other entity shall exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Community or the Additional Property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Community or the Additional Property over the streets and other Common Areas within the Community. The Association shall not condone, encourage its members or participate in public assembly for the purpose of interfering with Declarant’s business within the Community or engage in any activity that presents a public health or safety risk.

12.11 Right To Use Common Area and Recreational Facilities for Special Events.

As long as Declarant owns any Existing Property or Additional Property, Declarant shall have the right to use all Common Area, including the Recreational Facilities, to sponsor special events for charitable, philanthropic, sports, and social purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities for the period of time requested of the Association by Declarant, provided that the request is not submitted more than six (6) months prior to the actual special event.

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event (as per the insurance requirements for such events set forth herein) other than customary use charges that shall be waived; and

(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

The foregoing rights of Declarant to use such areas shall include the right (i) to temporarily exclude Members from such areas and/or facilities, as required during the set-up, duration and clean-up associated with any special event, (ii) to charge admission or other fees in connection with the use of such areas and/or facilities in connection with a special event, and (iii) to allow non-Members access (including access free of charge) to such areas and/or facilities. Declarant may also allow clubs or other similar organizations, whether nonprofit or for-profit, to operate within the Common Area and/or the Recreational Facilities on a regular or recurring basis so long as such operations (x) are for the benefit of, and provide services exclusively to, Members, and (y) do not materially prevent or impair other Members' use of the Common Area or Recreational Facilities for extended periods of time. Such clubs or other organizations may charge fees to Members and require advance registration for participation in their activities. Notwithstanding the foregoing, however, the Association shall be entitled to operate certain Common Area and Recreational Facilities on a fee-for usage basis so long as it does not charge the operating expenses for such activities for which fee-for-usage charges are recouped in annual Assessments. Furthermore, the Association shall be entitled to hire a management company to operate the Recreational Facilities on the Association's behalf, and such management company shall not be treated as a club hereunder but shall enjoy the rights and privileges granted to the Association under this section.

Declarant shall have the right from time to time to assign its rights contained in this Section to nonprofit entities selected by Declarant, including, without limitation, the Association. Declarant's right to use the Common Area and Recreational Facilities for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration. Upon the termination of Declarant's rights under this Section, the Association shall automatically assume such rights, without need for further documentation.

12.12 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Community, including Lots, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and, except in the case of an emergency, no entry into a Dwelling Unit or other structure on a Lot shall be permitted without the consent of the Owner. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

12.13 Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or Improvements within Carolina Preserve at Amberly in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant has been first notified in writing ten (10) days prior to the inspection and given an opportunity to meet with the Owner and conduct an independent inspection.

12.14 Termination of Rights.

The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Declarant's Recording of a written statement that all sales activity has ceased with respect to the Community. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This **Article XII** shall not be amended without Declarant's written consent so long as Declarant owns any Existing Property or Additional Property.

12.15 Sales by Declarant.

Notwithstanding the restriction set forth in **Section 3.1** hereof, Declarant reserves the right to sell Lots for Occupancy to Persons between 45 and 55 years of age; provided, such sales shall not affect the Community's compliance with all applicable State and Federal laws under which the Community may be developed and operated as an age-restricted community.

E. PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the Community.

Article XIII Easements

13.1 Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents, the Act, and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use any Common Area amenity (a) for any period during which any Assessment or other charge against the Owner's Lot remains delinquent, and (b) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration;
 - (iv) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
 - (v) permit use by people from outside of Carolina Preserve at Amberly, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;
 - (vi) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred;
- (d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas", as described in **Article XIII** hereof;
- (e) The requirement that access to and use of recreational facilities within

the Community shall be subject to the presentation of an Activity Card the Association issues for such purpose and as provided under **Article XV** hereof [regarding Limited Common Areas]; and

(f) The Association's right to close or limit the use of the Common Areas, or portions thereof, while maintaining and repairing the same.

Any Owner may obtain guest passes to provide use and enjoyment of facilities in the Community to the members of his or her family, Tenants, and social invitees, as applicable, subject to reasonable regulation and use fees by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the Tenant of such Lot for the period of the lease.

13.2 Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area or Private Amenity and between adjacent Lots due to the unintentional placement, or settling, or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3 Easements for Utilities, Etc.

(a) *Installation and Maintenance.* Declarant reserves for itself, so long as Declarant owns any Existing Property or any Additional Property, perpetual non-exclusive easements throughout Carolina Preserve at Amberly (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Carolina Preserve at Amberly, cable and other systems for sending and receiving data and/or other electronic signals, drainage systems, and security and similar systems;

(ii) installing walkways, pathways and trails, street lights, and signage on property which Declarant or the Association owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(iii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described above; and

(iv) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to grant or deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) *Utility Easements.* Declarant also reserves for itself the non-exclusive right and power to grant and Record such utility easements as may be necessary, in Declarant's sole discretion, in connection with the orderly development of any Existing Property or any Additional Property. The location of the easement shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

13.4 Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns, respectively, shall be responsible for any damage caused to the Common Area as a result of their actions. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

13.5 Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under **Section 7.2** hereof. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents to abate a Governing Document violation and/or to remove any structure, thing or condition which violates the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Benefited Assessment.

13.6 Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Area and enter upon adjacent Lots to the extent necessary to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Lots and Common Area; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any portion of the Community which abuts or contains bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not inside a Dwelling Unit or other structure) adjacent to or within 100 feet of bodies of water and wetlands within Carolina Preserve at Amberly, in order to (a) temporarily flood and back water upon and maintain water over such portions of Carolina Preserve at Amberly; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Area; and (c) maintain and landscape the slopes and banks pertaining to such areas. Anyone exercising these easements shall use reasonable care in and repair any damage resulting from their intentional exercise of the easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to natural occurrences.

13.7 Easements for Cross-Drainage.

Every Lot and the Common Area shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any Existing Property or any Additional Property.

13.8 Rights to Stormwater Runoff, Effluent, and Water Reclamation.

Declarant hereby reserves for itself and its designees all rights to ground water, surface water, stormwater runoff, and effluent located or produced within the Community, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section may not be amended without the consent of Declarant and the rights created in this Section shall survive termination of this Declaration.

Article XIV Limited Common Areas

14.1 Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular area. For example, Limited Common Areas may include entry features, recreational facilities, private streets, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area within a particular area. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an area allocated among the Owners to which the Limited Common Areas are assigned.

14.2 Designation.

Initially, any Limited Common Area shall be designated as such in a Supplemental Declaration, the deed conveying such area to the Association, or on a Plat (including, without limitation, by designating streets as “private”); provided, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject Additional Property to this Declaration pursuant to the terms hereof.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Members representing a majority of the total Member votes within the area(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with the terms hereof, Declarant’s written consent also is required.

14.3 Use by Others.

Upon approval of a majority of Owners of Lots within the area to which any Limited Common Area is assigned, the Association may permit Owners of Lots in other areas to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Expenses attributable to such Limited Common Area.

Article XV Party Structures

15.1 General Rules of Law to Apply.

The general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to Party Structures. Any dispute arising concerning a Party Structure shall be handled in accordance with the provisions of Article XVI hereof.

15.2 Maintenance; Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Lots, the cost of reasonable repair and maintenance of a Party Structure shall be shared equally by the Owners who own property benefited by the Party Structure.

If a Party Structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any benefited Owner shall contribute a pro rata share for the cost of restoration. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(((Note. Supplement 10, Supplement 13, and Amendment 4 contain additional language applicable to phase 3F.)))))

F. RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Carolina Preserve at Amberly as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article XVI Dispute Resolution and Limitation on Litigation

16.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Carolina Preserve at Amberly without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 16.2** hereof in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents or the Act;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;

(iii) the design or construction of non-residential Improvements within the Community, other than matters of aesthetic judgment under **Article IV** hereof, which shall not be subject to review; or

(iv) a challenge to any decision by the Board or any decision by a Board Committee, except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 16.2** hereof:

A. any suit by the Association to collect Assessments or other amounts due from any Owner;

B. any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Declaration (relating to creation and maintenance of community standards);

C. any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

D. any suit in which any indispensable party is not a Bound Party; and

E. any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by **Section 16.2(a)** hereof, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be

necessary to comply with this Article.

16.2 Dispute Resolution Procedures.

(a) *Notice.* The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent’s role in the Claim;

(ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);

(iii) the Claimant’s proposed resolution or remedy; and

(iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) *Negotiation.* The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) *Mediation.* If the Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Raleigh/Durham/Chapel Hill metropolitan area. Each Bound Party shall submit to the mediator a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys’ fees, and each Party shall share equally all fees charged by the mediator.

(d) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys’ fees and court costs.

16.3 Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding against Declarant or anyone else unless first approved by a vote of Members entitled to cast 75% of the total Member votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Declarant Control Period;

(b) initiated to enforce the provisions of this Declaration, including collection of Assessments, and foreclosure of liens and seeking injunctive relief for non-monetary violations;

(c) initiated to challenge *ad valorem* taxation or condemnation proceedings;

(d) initiated against any contractor (exclusive of Declarant), vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; or

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings. The Association cannot sue anyone with respect to any issues on individual homes including, without limitation, construction and warranty claims, and can only sue for issues regarding the common areas.

In the matters listed above, the Directors of the Association shall be indemnified for their decisions pursuant to **Section 7.6** hereof.

Article XVII Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

17.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an “**Eligible Holder**”), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Carolina Preserve at Amberly or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of Assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any Association insurance policy; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

17.2 No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.3 Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

17.4 Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a

written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

17.5 HUD/VA Approval.

As long as there is a Declarant membership, and provided that either or both of the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Department of Veterans Affairs ("VA") requires approval, the following matters shall be submitted for the required approvals: merger, consolidation, or dissolution of the Association; annexation of additional property other than the Additional Property; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws. In addition, provided that either or both of HUD and the VA requires approval of the following matter, then so long as HUD or VA insures or guarantees the Mortgage on any Lot, the above actions also shall require the prior approval of at least two-thirds (2/3) of the Members and the consent of Declarant.

Notwithstanding anything to the contrary in this Section or in **Article XIX** hereof, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership or HUD or VA.

17.6 [Intentionally Omitted]

17.7 [Intentionally Omitted]

17.8 Definitions.

For purposes of this Article, FHA" means the Federal Housing Administration (or its successor federal agency), and the term "VA" means the Veterans Administration (or its successor federal agency).

G. CHANGES IN THE COMMUNITY

Communities such as Carolina Preserve at Amberly are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Carolina Preserve at Amberly and its Governing Documents must be able to adapt to these changes while protecting the things that make Carolina Preserve at Amberly unique.

Article XVIII Intentionally Deleted

Article XIX Changes in Ownership of Lots

Any Owner, other than Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require (the "**Transfer Notice**"). Upon completion of the transfer, the Owner shall pay the New Member fee as described in **Section 9.12** hereof. Notwithstanding the transfer of title, the transferor, in its individual capacity, shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including Assessment obligations, until the date upon which the Board receives the Transfer Notice.

Article XX Changes in Common Area

20.1 Condemnation.

Whenever any part of the Common Area shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner shall be entitled to notice thereof.

The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Declarant, so long as Declarant owns any property described in Exhibit A or Exhibit B of this Declaration, and at least 67% of the total Members in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 7.3** hereof regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

In the event any Lot or part of a Lot shall be acquired by eminent domain, the Lot shall be repaired or restored, and or the rewards paid on account thereof in accordance with NC Gen. Stat. Section 47F-1-107.

20.2 Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. While the Common Area is owned by the Association, no suit for partition shall be brought.

20.3 Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Wake and/or Chatham County, the Town of Cary, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by **Section 17.5** hereof.

Article XXI Amendment of Declaration

21.1 By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until a Lot is conveyed to a Person other than a Builder, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; (d) to correct clerical or technical errors; or (e) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

So long as Declarant owns property described on Exhibit A or Exhibit B for development as part of Carolina Preserve at Amberly, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of the Members. In addition, Declarant shall have the right to amend provisions affecting particular lots for any reasons with the prior written consent of the Owners thereof.

21.2 By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written agreement signed by Owners of Lots to which at least sixty seven percent (67%) of the total votes in the Association are allocated. Any amendments approved as provided herein shall be Recorded in every county in which a portion of the Community is located, and shall be indexed under the name of the Community and the name of the Association.

21.3 Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall only become effective upon Recording. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted.

21.4 Exhibits.

Exhibit A and Exhibit B attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit C is incorporated by reference and may be amended as provided in **Article III** hereof or in accordance with this Article. Exhibit D and Exhibit E are attached for informational purposes and may be amended as provided herein or therein.

21.5 Severability.

Invalidation of any one of the covenants and restrictions in this Declaration by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

DECLARANT:

PULTE HOME CORPORATION,
a Michigan corporation

Exhibit A - Land Initially Submitted

(This exhibit has been intentionally deleted from this unofficial document since there have been at least 14 supplements and its contents are difficult to search)

Exhibit B - Land Subject to Annexation

(This exhibit has been intentionally deleted from this unofficial document since there is no more land subject to annexation)

Exhibit C - Initial Use Restrictions

The purpose of Design Guidelines and Use Restrictions is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all Improvements or activities which fall outside of “the norm”. In fact, it is expressly intended that the Reviewer under **Article IV**, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Lot under one set of circumstances, the same thing may be disapproved for another Lot under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it stop the Board from taking enforcement action in any appropriate circumstances.

Subject to the above, the following restrictions shall apply to all of the Community until such time as they are amended, modified, repealed, or limited pursuant to **Article III** of this Declaration.

(a) General.

When used in these Use Restrictions, the phrase “Visible from Neighboring Property” shall mean, with respect to any given object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of the neighboring property at an elevation no greater than the elevation of the base of the object being viewed, except where the object is visible solely through a view fence and would not be visible if the view fence were a solid fence.

(b) Animals and Pets.

No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Community, except that for each Dwelling Unit there shall be permitted up to a total of three (3) dogs or three (3) cats or a combination of dogs and cats not to exceed three (3) in total, no more than two (2) birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local laws. In no event, however, shall monkeys, snakes, pigs or ferrets be permitted in any Dwelling Unit. Pets which are permitted to roam free, or which, in the Association’s sole discretion, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners or residents of any portion of the Community shall be removed from the Community upon the Board’s request at the Owner’s expense. If the Owner fails to honor such request, the Board may cause the pet to be removed at the Owner’s expense. The Board may adopt reasonable rules designed to minimize damage and disturbance to other Owners and Residents, including rules requiring damage deposits, waste removal, leash controls, noise controls, more restrictive pet occupancy limits than those set forth above based on the size and facilities of the Dwelling Unit and fair share use of the Common Area or Facilities; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept in the Community in compliance with the rules in effect prior to the adoption of such rule. Nothing in this paragraph shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of Residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred, or maintained for any commercial purpose. As of the date hereof, Town of Cary ordinances require dogs, cats and certain other animals to be maintained on a leash when off their owner’s property, except in certain limited circumstances. It is each Owner’s responsibility to comply with the Town of Cary leash laws, as they may be amended from time to time.

(c) Wildlife.

Capturing, killing, or trapping wildlife is prohibited within the Community, except for trained professionals in circumstances imposing an imminent threat to the safety of Persons or pets. Feeding wildlife is prohibited within the Community, except for limited and reasonable use of bird feeders and squirrel feeders.

(d) Firearms or Other Weapons.

The carrying, use or discharge of firearms or other weapons within the Common Areas is prohibited. The term "firearms or other weapons" includes, but is not limited to, "B-B" guns, pellet guns, knives, swords, cross-bows and other firearms or other weapons of all types, regardless of size.

(e) Nuisances.

No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Community or which results in unreasonable levels of sound or light pollution.

(f) Garages and Driveways.

Garage doors shall remain closed at all times except to the limited extent reasonably necessary while working in or near the garage or to permit the entry or exit of vehicles or persons. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities.

(g) Storage of Goods.

Storage (except in approved structures or containers) of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels on the Common Area (except by the Association), or, if not in active use, any portion of a Lot which is visible from outside the Lot is prohibited. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Parcel, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction or modification) of a building, appurtenant structures or other Improvements; and (b) that which Declarant or Association may permit or require for the development, operation and maintenance of Carolina Preserve at Amberly.

(h) Prohibited Conditions.

The following conditions, structures, or activities are prohibited on any Lot.

(i) Guest House (except as initially constructed by Declarant or approved by Declarant as part of the initial construction of a Dwelling Unit on a Lot);

(ii) Dog runs and animal pens of any kind, if such structures are Visible from Neighboring Property;

(iii) Shacks or other structures of a temporary nature on any Lot except as may be authorized by Declarant during the initial construction of Improvements within the Community. Temporary structures used during the construction or repair of a Dwelling Unit or other Improvements shall be removed immediately after the completion of construction or repair;

(iv) Permanent sport goals, basketball standards, backboards or similar structure or device which are or would be Visible from Neighboring Property; provided, portable sport goals may be used on a Lot without prior approval, but must be stored so as not to be Visible from Neighboring Property overnight or otherwise when not in use. No swing sets or other play structures shall be placed or constructed on any Lot without the prior approval of the Architectural Committee (including, without limitation, approval as to appearance and location);

(v) Flagpoles; provided, no more than two (2) flags may be displayed using a bracket or other approved device mounted to the Dwelling Unit so long as the size of the flag displayed does not exceed that of a standard United States flag (which shall in

all events be no larger than 4 feet by 6 feet and may be further limited as determined in the Board's discretion);

(vi) Statues, lawn ornaments, and yard decorations of any size or type must be displayed in accordance with the rules, regulations, and standards set forth in the Design Guidelines; and

(vii) Outside clotheslines or other outside facilities for drying or airing clothes.

In any event, and notwithstanding the above list of prohibited conditions, as set forth in **Article IV** of this Declaration, any structure, Improvement, or thing proposed for construction, erection, installation, or placement on a Lot requires prior Reviewer approval unless otherwise specifically exempt under the Design Guidelines.

(i) Quiet Enjoyment.

Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Dwelling Units.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants and invitees of other Dwelling Units.

(j) Signs.

Political signs may be displayed on a lot, however, additional requirements for political signs may be set forth in the Design Guidelines. Except for political signs, no other signs shall be erected within the Community except as permitted by the Design Guidelines.

(k) Holiday Decorations.

Holiday decorations may be displayed on a Lot, however, additional requirements for Holiday Decorations may be set forth in the Design Guidelines and no holiday decorations in violation of such requirements shall be permitted on a Lot/Unit.

(l) Antennas and Satellite Dishes.

No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the Dwelling Unit, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae under one meter in diameter). Notwithstanding such protection, Residents are encouraged to obtain ARC approval before any installation, and an application for such an antenna or other device will be granted only if:

(i) First, the antenna or other device is designed for minimal visual intrusion (*i.e.*, is located in a manner that minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (*i.e.*, without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

(iii) Unless otherwise permitted under federal law, only one satellite dish antenna measuring one meter or less in diameter may be erected on any Lot. If the installation of a satellite dish antenna meets the foregoing requirements, no ARC approval is required.

The Architectural Review Committee shall consider any such application on an expedited basis, but to avoid undue delay, residents may request ARC approval within 10 (ten) days following an installation

(m) Trash Containers and Collection.

No garbage or trash, compost piles or containers shall be placed or kept on any Lot, except in covered containers of a type, size and style which are pre-approved by the ARC or specifically permitted under the Design Guidelines, or as required by the applicable governing jurisdiction. Such containers shall not be Visible from Neighboring Property except when they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(n) Above-Ground Jacuzzi Spa Equipment.

All above-ground Jacuzzi spa equipment stored on any Lot shall be screened so as to be neither Visible from Neighboring Property nor able to be seen through any view fence.

(o) Unsightly or Unkempt Conditions.

All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate within, upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Community.

Woodpiles or other material shall be stored in a manner so as not to be Visible from Neighboring Property and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Community. No activities shall be conducted upon or adjacent to any Lot or within Improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(p) Garage Sales.

Except as expressly set forth herein, garage sales, yard sales and any similar rummage-type sales (collectively "Sales") are prohibited throughout the Community unless specifically approved in writing by the Board; provided that Sales may only be held on one weekend of each calendar month and Sales may only be held on any one Lot once in a calendar year. The Association may organize or sponsor a Community-wide garage sale event from time to time, subject to more detailed provisions as the Association may enact in the rules and regulations, but only Owners, Occupants and their families may participate in such events and the Association may opt to charge a registration fee for participation, as a seller, in such events.

(q) Vehicles and Parking.

The term "vehicles", as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of the Community except in a garage, driveway, or other area designated by the Board. No person shall park any recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Community other than in enclosed garages; provided, boats may be kept or stored on a Lot so long as they are not Visible from Neighboring Property. This Section shall not apply to emergency vehicle repairs.

Notwithstanding the above, for purposes of cleaning, loading, unloading, and short term parking, recreational vehicles may be parked on the Lot's driveway for period not exceeding 72 hours no more frequently than every thirty days. Owners must obtain a recreational vehicle permit for such short term parking from the Association office.

If the use of golf carts is permitted by the Town of Cary, the Association may implement rules, governing the use of golf carts, that are more stringent than those of the Town of Cary.

(r) Wetlands, Lakes, and Other Water Bodies.

All wetlands, lakes, ponds, and streams within the Community, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams, or other bodies of water within the Community, except that Members and their guests are authorized to fish, provided any and all fish caught are released back into the body of water, in certain bodies of water within the Common Areas as may be designated by the Association from time to time. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams, or other bodies of water within or adjacent to the Community. The Board may adopt reasonable rules to further restrict the use of bodies of water within the Community.

(s) Solar Equipment.

No solar heating equipment or device is permitted outside the Dwelling Unit except such devices whose installation and use is protected by federal or North Carolina law. Notwithstanding such protection, an application for such equipment or device must be submitted for approval under **Article IV** prior to installation and approval will be granted only if:

(i) First, such equipment or device is designed for minimal visual intrusion when installed (*i.e.*, is located in a manner which minimizes visibility from the street or an adjacent Lot and is consistent with the Community-Wide Standard); and

(ii) Second, the equipment or device complies to the maximum extent feasible with the Design Guidelines within the confines of the applicable governmental regulations.

(t) Rooftop HVAC Equipment Prohibited.

No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Dwelling Unit or other building so as to be Visible From Neighboring Property.

(u) Tanks.

No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot or Parcel unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot or Parcel of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or “hot tub”, so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Architectural Committee Rules or as to otherwise approved by the Architectural Committee, so as not to be Visible from Neighboring Property.

THE PROPERTY ALSO IS SUBJECT TO THE USE RESTRICTIONS SET FORTH IN THE MASTER DECLARATION, PROVIDED THAT THE MASTER DECLARANT AND THE MASTER ASSOCIATION HAVE AGREED THAT THE PROPERTY (INCLUDING THE ADDITIONAL PROPERTY) IS EXEMPT FROM THE FOLLOWING PROVISIONS OF ARTICLE XIV OF THE DECLARATION:

1. **Section 1 (Signs);**
2. **Section 7 (Irrigation);**
3. **Section 15 (Artificial Lakes, Exterior Sculptures and Similar Items);**
4. **Section 18 (Fences); and**
5. **Subsections (g), (h), (i), (q) and (r) of Section 19 (Prohibited Uses).**

Exhibit D - By-Laws of Carolina Preserve at Amberly Homeowners Association

(This exhibit has been intentionally deleted from this unofficial document since there is a more current stand-alone By-Laws document)

Exhibit E - Initial Lot Maintenance Responsibilities

Subject to amendment by Declarant and/or the Association from time to time (which amendment need not be recorded in the public registry, and need not take the form of an amendment to this Declaration), the following lawn care and maintenance services shall be provided by the Association without additional cost to Owners:

- Mowing,
- Mechanical Edging, and
- Pruning (up to 12').
- Pre-emergence of lawns
- Seeding, fertilizing, and aerating lawn as needed
- Fertilization of plants and trees
- Removal of lawn debris
- Leaf removal

Owners hereby assume all other obligations of maintenance with respect to their Lot and their Dwelling Unit, which obligations include, without limitation:

- Watering of lawn and plant life,
- Mulch and pine straw as necessary;
- Replacement of dead plant life, including dead shrubs, flowers, grass or sod,
- Storm Clean Up, and
- Snow removal.

OTHER - Added from the Ninth Supplement

Conveyance of Easements for Duplexes

3.1. Declarant hereby conveys to the Association a non-exclusive easement over, upon and through the "Easement Areas" (as defined herein) for establishing, maintaining, and replacing a small park, associated parking spaces, and an alley, as Declarant determines is necessary in its sole discretion, which shall include, without limitation, easements for: (a) the installation, maintenance, replacement and removal of landscaping on various places within those portions of Lots located within the Easement Area, (b) the installation, maintenance, replacement and removal of any driveways or alleys located on various places within those portions of Lots located within the Easement Area, and (c) access, ingress and egress over, through and within the Easement Areas as necessary to exercise the easement rights granted in the preceding clauses (a) and (b) (collectively, the "**Association Easement**"). For purposes of this Supplemental Declaration, "**Easement Areas**" shall comprise all areas shown as "Pocket Park and Alley Easement Area" on that certain plat entitled "The Carolina Preserve By Del Webb At Amberly (Age Restricted), Phase 2V Villas Subdivision, Town of Cary, Wake County, Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC," prepared by Chas H. Sells, Inc., and recorded in Book 2008, Page 252-256 of the Chatham County Registry and Book 2008, Page 1478-1482 of the Wake County Registry. TO HAVE AND TO HOLD this easement for the benefit of the Association, its successors and assigns forever.

3.2. Declarant hereby designates the Association Easement as Common Area for purposes of the Declaration, and the Association, without limitation of its general obligations with respect to Common Areas, shall be affirmatively obligated to maintain landscaping, driveways and alleys within the Easement Areas in accordance with the Community-Wide Standard. Pursuant to Section 7.3 of the Declaration, the Association shall be affirmatively obligated to maintain insurance coverage for the Easement Areas. In addition, the Association shall indemnify and hold harmless any Owners of Lots described in **Exhibit B** that each contain a portion of the Easement Areas ("Affected Lots"), for any claims, judgments, fines, penalties, losses, damages, liabilities and reasonable attorney's and consultant's fees and other costs and expenses, including but not limited to damages for bodily injury, death and property damage, which are caused by, arise out of, occasioned by or in any way attributable to the failure of the Association to maintain the Easement Areas as Common Area for purposes of the Declaration and for purposes of the additional maintenance obligations assumed by the Association above in this Section 3.2; provided, however, the foregoing indemnity does and shall exclude any matters caused by, arising out of, occasioned by or in any way attributable to the gross negligence or willful misconduct of the Owner(s) of the particular

Affected Lots, or their family members, guests or invitees. Further, the Association is empowered to satisfy any lien or encumbrance that is threatened on the Affected Lots that would have priority over the easement rights established or reserved herein, and the Association will be entitled to immediate reimbursement from the Owner of such Affected Lot for any such payment or expense in satisfaction of such lien, including interest and any costs of collection.

33. Declarant hereby conveys to all Owners a non-exclusive easement over, upon and through the paved portions of the Easement Areas for access, ingress and egress over, through and within the Easement Areas as necessary to park vehicles in designated parking areas an access the public right-of-way. Owners shall not use this easement to block access to paved portions of the Easement Areas from other Owners. Declarant also hereby conveys to all Owners a non-exclusive easement over, upon and through the unpaved portions of the Easement Areas for the use and enjoyment of the Easement Areas as a park or other use as intended by the Declarant or the Association. TO HAVE AND TO HOLD these easements for the benefit of Owners, their successors and assigns forever.

3.4. Declarant hereby conveys to Owners of Affected Lots a non-exclusive easement over, upon and through the paved portions of the Easement Areas for access, ingress and egress over, through and within the Easement Areas as necessary for access between such Owner's Lot and the public right-of way. Although all easements conveyed herein are non-exclusive, in no event shall Owners of Affected Lots be denied access to such Owner's Lot due to the use of easement rights of other Owners, the Association, or Declarant. TO HAVE AND TO HOLD this easement for the benefit of Owners of Affected Lots, their successors and assigns forever.

3.5. Only easements are conveyed by this Section; fee title to the land underlying the Easement Areas is reserved unto the Owners of the Affected Lots (currently, Declarant is Owner of all Affected Lots), to hold, convey or encumber, in whole or in part, as they, as well as their successor(s) in title to all or part of the Easement Areas, see fit. All easements granted in this Section (a) exist notwithstanding any unity of easement and fee title as of the date hereof, and (b) run with the land and are appurtenant to, and shall pass with the title to, each Lot.

Amendment for Duplexes

No amendment to the terms of this 9th Supplemental Declaration, including, but not limited to, the designation of the Easement Areas as Common Areas, the reservation of an easement for access to Owners of Affected Lots, and the Association's indemnification obligations herein, may be approved without the consent of (a) seventy-five percent (75%) of the Owners of the Affected Lots in Phase 2-V Part One, and (b) to the extent that Declarant owns any real property in Phase 2-V Part One, Declarant.

Party Walls and Shared Structures for Duplexes

In addition to, and not in place of, the restrictions in Article 15 of the Declaration, the following restrictions apply to the Owners of duplexes:

5.1 Party Wall Definition

The wall dividing a duplex into two Dwelling Units (the "Party Wall") shall be located on the dividing line between the two Lots. The Party Wall shall consist of the studs, blocking, insulation, cement and airspace located between the wallboard of one Dwelling Unit and the wallboard of the other Dwelling Unit in the duplex. It 'shall not consist of the wallboard, paneling, sheetrock, tiles, wallpaper and paint located on the interior sides of the Party Wall, all of which shall be considered part of the Dwelling Unit and the maintenance of which shall be the responsibility of the Owner of the Dwelling Unit.

5.2 Maintenance and Repair

Each Owner shall provide the other with reasonable notice of any painting, roofing, repair, reconstruction or other maintenance to the Party Wall or exterior or structure of the duplex ("Maintenance Work") that such Owner believes the duplex reasonably needs. Subject to the provisions of Section 5.8, the Owners shall agree on all such Maintenance Work before any Maintenance Work commences. If the Owners are unable to agree with respect to the Maintenance Work, then such matter shall be handled in accordance with the provisions of Article 16 of the Declaration. Except as otherwise provided herein, the costs of all Maintenance Work shall be borne equally between the Owners of Dwelling Units sharing the Party Wall. Each Owner is responsible for usual and routine

maintenance (for example, painting) of the portion of any Party Wall on the interior of such Owner's Dwelling Unit.

5.3 Damage by Owner

Notwithstanding any other provision of this Supplemental Declaration, an Owner of a Dwelling Unit which shares a Party Wall who, by such Owner's negligent or willful act or omission, damages or causes the Party Wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

5.4 Contribution

The right of any Owner to contribution from any other Owner under this Supplemental Declaration with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution.

5.5 Certification of Rights and Obligations

An Owner who desires to sell a Dwelling Unit, or the prospective purchaser of such Dwelling Unit, may request the Owners of each other Dwelling Unit which shares that Party Wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such Party Wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a Dwelling Unit which shares a Party Wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that Dwelling Unit and with respect to third parties.

5.6 Easement for Repair and Maintenance

Each Owner of a Dwelling Unit which shares a Party Wall with one or more other Dwelling Unit and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other Dwelling Unit to the extent reasonably necessary to repair, restore, maintain or reconstruct the Party Wall. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining Dwelling Unit damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

5.7 Roofing

The roof of an entire duplex must be replaced at one time.

5.8 Right to Maintain, Repair or Reconstruct Without Consent

If, in the reasonable opinion of an Owner, any Maintenance Work is needed, if the other Owner refuses to agree to such Maintenance Work, and if it would be imprudent to delay performance of such Maintenance Work, such Maintenance Work may be completed by the Owner who reasonably believes it is necessary. In such event, the cost of the Maintenance Work shall be divided between the Owners in the manner provided in Section 5.2 hereof, unless at the conclusion of dispute resolution handled according to the provisions of Article 16, a determination is made that the Maintenance Work was unnecessary or that the cost should be allocated in a manner other than equally.

5.9 Personal Obligation for Assessments

Each Owner, by acceptance of a deed for such Owner's Lot, whether or not so expressed in such deed, shall be deemed to covenant and to agree to pay such Owner's share of the costs of the Maintenance Work. No Owner may avoid liability for the costs of Maintenance Work by non-use or abandonment of the Party Wall or such Owner's Lot or Dwelling Unit.

5.10 Effect of Non-Payment for Maintenance Work; Remedies

If an Owner fails to pay for Maintenance Work as required hereunder, the other Owner, in addition to all other remedies which may be available, shall be entitled to recover from the defaulting Owner the

defaulting Owner's share of the costs for the Maintenance Work, together with interest thereon at the rate of twelve percent (12%) per annum from the date of expenditure by the non-defaulting Owner.

5.11 Utility Easements

Each Owner shall have an easement through the Party Wall for the purpose of installing, repairing, replacing, and maintaining utility lines, wires, pipes and conduits.

5.12 Insurance

Each Owner shall purchase and maintain insurance covering such Owner's interest in the Party Wall and the Duplex's structure and exterior. Each Owner shall provide the other with copies of such policies or other appropriate evidence of such insurance coverage at least ten (10) days before the expiration of all previous insurance coverage. If an Owner fails to furnish such evidence within such period, the other Owner may procure such policy in his own or both names and charge the defaulting Owner the cost of the premium. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks covered by the insurance policy required by this Section, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation. Upon the request of an Owner, the other Owner shall use his/her best efforts to have the first Owner's Mortgagee named as an additional insured party under the second Owner's property insurance policy in respect to the duplex.

5.13 Insurance Proceeds Sufficient to Cover Loss

If the Party Wall or the duplex is damaged by fire or other casualty, and if the proceeds of the Owners' insurance policies are sufficient to pay all costs of necessary repair or reconstruction, such proceeds shall be applied to such repair or reconstruction. The parties' respective insurance policies shall bear the responsibility equally for the cost of repair or reconstruction of the Party Wall and the duplex's exterior and structure.

5.14 Insurance Proceeds Insufficient to Cover Loss

If proceeds of the Owners' insurance policies are insufficient to pay all costs of necessary repair or reconstruction, the duplex nonetheless shall be promptly repaired or reconstructed. Any proceeds of the Owners' insurance policies shall be applied toward: (a) the costs of necessary repair or reconstruction of the Dwelling Unit so insured; and (b) for repair of the Party Wall and duplex's structure and exterior in the proportions referenced in Section 5.13. Each Owner shall be liable for the costs incurred in repairing or reconstructing his Dwelling Unit, and his share of costs incurred in repairing or reconstructing the Party Wall and duplex's structure and exterior that are not covered by proceeds from his own insurance policy. Notwithstanding the foregoing, if fire or another casualty has reduced the value of the duplex by three fourths or more, and if either Owner wishes, and all mortgagees, trust deed beneficiaries, land sale contract vendors, and insurers who have issued policies on the duplex agree, the duplex shall not be repaired or reconstructed. In such case, insurance proceeds shall be paid to the covered Owner after the expenses of demolition, debris removal, and Lot restoration are paid.

5.15 Cooperation; Application of Proceeds

In the event of any insurable loss to the duplex, the Owners shall cooperate with each other and their respective insurers to coordinate adjustment of the losses and application of insurance proceeds to reconstruction and repair of the duplex. Provided, however, and notwithstanding anything in this Supplemental Declaration apparently to the contrary, if either Lot Owner fails to maintain the insurance required by Section 5.12, or underinsures such Lot Owner's Dwelling Unit and interest in the Party Wall and duplex's structure and exterior, the other Lot Owner shall be entitled to first apply insurance proceeds received from such Owner's insurer to the repair and reconstruction of that portion of the duplex (including the interior) which is located on such Owner's Lot.

5.16 Architectural Changes after Damage or Destruction

Repair or reconstruction of the damaged or destroyed duplex means restoring the duplex to substantially the same condition in which it existed before the fire or other casualty, unless other action is agreed to by the Owners and first trust deed holders, and/or land sale contract vendors. In any event, any architectural changes shall conform to the Declaration.