

FILED Oct 18, 2023
AT 04:19:33 PM
BOOK 02385
START PAGE 0991
END PAGE 1087
INSTRUMENT # 09126
EXCISE TAX \$0.00

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STATE OF NORTH CAROLINA

COUNTY OF WAKE/CHATHAM

RESTATED

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
CAROLINA PRESERVE BY DEL WEBB AT AMBERLY

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."

THIS RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CAROLINA PRESERVE BY DEL WEBB AT AMBERLY is made as of the 12 day of October 2023, by the Board of Directors of the Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc., (the "Association"), a North Carolina nonprofit corporation, for the sole purpose of compiling into one document the original Declaration of Covenants, Conditions and Restrictions for Carolina Preserve by del Webb at Amberly, recorded in Book 12155, Page 387 in the Wake County, North Carolina Registry and in Book 1281, Page 462 of the Chatham County, North Carolina Registry, as well as the seven (7) recorded amendments thereto and sixteen (16) recorded supplemental declarations thereto (sometimes collectively referred to hereinafter as "the Declaration"), for ease of use and convenience of the Members of the Association. To the extent this document conflicts with the Declaration of Covenants, Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly, as originally recorded and as amended in the Wake or Chatham County Registries as is further described below, the original recorded documents shall control.

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RESTATED

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

THIS ORIGINAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CAROLINA PRESERVE BY DEL WEBB AT AMBERLY (this "Declaration") was made as of the 24th day of August 2006, by 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 A¹ (the "Existing Property") attached hereto and incorporated herein by reference, intends by

¹ Revised by operation of First Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in the Wake County Registry, Book 1285 and Page 249 and Chatham County Registry, Book 12164, Page 321; Revised by operation of Second Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in the Wake County Registry, Book 012164 Page 321 and Chatham County Registry, Book 1290, Page 0464. Revised by operation of Third Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry, Book 012369, Page 00955 and Chatham County Registry, Book 01313, Page 249; Revised by operation of Fourth Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Web at Amberly by Pulte Home Mortgage Corporation recorded in Wake County Registry Book 012399; Page 02337 and Chatham County Registry Book 01316; Page 0359; Revised by operation of Fifth Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 012671, Page 02569 and Chatham County Registry Book 01350, Page 0458; Revised by operation of Sixth Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 012805, Page 00945 and Chatham County Registry Book 01366; Page 0841; Revised by operation of Seventh Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 012886, Page 02194 and Chatham County Registry Book 01376, Page 1072; Revised by Operation of Eighth Supplemental Declaration of Covenants, Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 012997; Page 02500 and in Chatham County Registry Book 01390, Page 0768; Revised by Operation of Ninth Supplemental Declaration of Covenants Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 013223, Page 02445 and in Chatham County Registry Book 01419, Page 1101; Revised by Operation of Tenth Supplemental Declaration of Covenants Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 013325, Page 01409 and in Chatham County Registry Book 01434, Page 0420; Revised by Operation of Eleventh Supplemental Declaration of Covenants Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 013547, Page 00287 and in Chatham County Registry Book 01462, Page 0491; Revised by Operation of Twelfth Supplemental Declaration of Covenants Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 013627, Page 02389 and in Chatham County Registry Book 01471, Page 0966; Revised by Operation of Thirteenth Supplemental Declaration of Covenants Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 013847, Page 01325 and in Chatham County Registry Book 01500, Page 0222; Revised by Operation of Fourteenth Supplemental Declaration of Covenants Conditions and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation and Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 014967, Page 02011 and in Chatham County Registry Book 01645, Page 1122; Revised by Operation of Fifteenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation and Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in Wake County Registry Book 015373, Page 01284 and Chatham County Book 1699, Page 0130; Revised by operation of Sixteenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly by Pulte Home Corporation recorded in the Wake County Registry, Book 015457; Page 01940 and Chatham County Registry Book 01711, Page 0744.

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, , 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.²

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

² Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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 which may be supplemented by additional covenants, rules, regulations, restrictions, and easements (as hereinafter defined).³

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)⁴:

Carolina Preserve at Amberly Governing Documents	
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.

³ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

⁴ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.

Any Neighborhood within the Community may choose to enact additional restrictions or provisions with respect to a Lot or group of Lots within the Neighborhood, provided the same are more restrictive than the provisions of this Declaration, unless written consent is obtained in accordance with Section 6.4(a) hereof. If written consent pursuant to Section 6.4(a) hereof is not obtained with respect to additional restrictions for a Neighborhood, then between this Declaration and any additional restrictions or provisions enacted by a Neighborhood, the more restrictive of the two will control. If written consent pursuant to Section 6.4(a) hereof is obtained with respect to additional restrictions for a Neighborhood, then between this Declaration and any additional restrictions or provisions enacted by a Neighborhood, the Neighborhood's restrictions will control. 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.⁵

"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": All real and personal property, including easements and other land use rights, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including areas designated as Common Area by Declarant from time to time and areas designated as "common element(s)", "common area(s)" or "open space" on a Plat. Common Area includes Limited Common Areas, as defined below.

"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, unless a different standard applies to a Neighborhood in accordance with the terms of Section 6.4(a) hereof. 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

⁵ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.* (1888), 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.⁶

"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

⁶ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.

"Intentionally Deleted"

"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 or 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 Area⁷.

"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,

⁷ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

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).⁸

"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) designates Neighborhoods, (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 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 C², 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

⁸ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

⁹ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

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 located within certain Neighborhoods.

(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.¹⁰

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.

¹⁰ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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 as well as specific provisions which may vary from Neighborhood to Neighborhood. 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 the submission, by Owners of the Lots adjacent to the applicant's Lot. 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.¹¹

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.

¹¹ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556; Revised again by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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) estop 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.¹²

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 estop 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

¹² Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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 Owners 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.¹³

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 or a Neighborhood Association, pursuant to a Supplemental Declaration or any additional covenants, assumes all or part of such maintenance.

5.3 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.

Additional Recorded covenants applicable to any Neighborhood may establish requirements for insurance and standards for rebuilding or reconstructing structures on the Lots within the Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed, any of which may be more strict than the standards set forth herein; provided, however, if written consent to the Neighborhood covenants is obtained in accordance with Section 6.4(a) hereof, then provisions of the Neighborhood covenants may differ from the standards set forth herein¹⁴.

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

¹³ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

¹⁴ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.¹⁵

(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.¹⁶

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 the 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.¹⁷

(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

¹⁵ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

¹⁶ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

¹⁷ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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) 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 landscaping within public rights-of-way within or abutting Carolina

(d) 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

(e) 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 (i) were installed by Declarant, and (ii) are at least eight inches (8") in diameter.¹⁸

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 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 Neighborhood Expense assessed against the Lots within the benefited Neighborhood(s).

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

¹⁸ Revised by First Amendment to Declaration Recorded in Wake County Registry Book 012411 Page 00294; Revised again by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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 included 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;¹⁹

(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) premiums for property insurance on Lots within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Limited Common Areas within a Neighborhood may be a Neighborhood Expense 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.J(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 or a Neighborhood 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 behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood 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.

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

(7) a cross liability provision; and

(8) 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 within the insured Neighborhood, 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. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Benefited Assessment against all Lots within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association 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.²⁰

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.²¹

7.11 Provision of Services.

The Association may provide, or provide for, services and facilities for all or any of the

²⁰ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

²¹ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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 Neighborhood or 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) in the case of Limited Common Area serving one or more Communities, the change has been approved by the Committee(s), if any, that administer such Limited Common Area.²²

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 Jaws, 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 Neighborhood Assessment or 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, neighborhood 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 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 shall include expenses associated with Common Area and each Neighborhood for which the Association maintains capital items as a Neighborhood Expense, if any. 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 and the Neighborhood budgets, as appropriate.

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. Such policies may differ for general Association purposes and for each Neighborhood. 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.²³

9.3 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, or against the Lots. 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.²⁴

9.4 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 Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided, however, the Board shall give prior written notice to the Owners of Lots in the Neighborhood and an opportunity for such Owners to be heard before levying any such Assessment.

9.5 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 and Neighborhood 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 and any Neighborhood 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.²⁵

9.6 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

²³ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

²⁴ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

²⁵ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762 (Item # 11 Contains a Typo to where it references Section 9.6. The document should reference Section 9.5)

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.²⁶

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.²⁷

(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.²⁸

²⁶ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

²⁷ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

²⁸ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

9.7 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.

9.8 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 or Neighborhood 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.

9.9 Exempt Property.

The following property shall be exempt from payment of Base Assessments and Special Assessments²⁹:

- (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 and other portions of the Neighborhood that are not Lots and are used for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and

²⁹ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762.

(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.

9.10 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.³⁰

9.11 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.

9.12 Collection of Master Declaration Assessments.

³⁰ Revised by Second Amendment to Declaration Wake County Book 012548 Page 01738 and Chatham County Book 01335 Page 0422.

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 (I) 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).

C. 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.³¹

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.

³¹ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.

Each Owner acknowledges that Carolina Preserve at Amberly is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Owner's Neighborhood, or (b) changes in the Carolina Preserve Plan as it relates to property outside the Owner's Neighborhood.

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 Property³².

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.

³² Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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-Laws³³;

(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 or Neighborhood Committee (if any) 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 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.

D. 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 Plat³⁴;
- (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.

³⁴ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

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 Community. 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 Community. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.³⁵

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 and/or, so long as Declarant has a right to subject Additional Property to this Declaration pursuant to the terms

³⁵ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

hereof.³⁶

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 Neighborhood(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 to which any Limited Common Area is assigned, the Association may permit Owners of Lots in other Communities 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.³⁷

Article XV Party Walls and Other Shared 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** hereof³⁸.

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 a 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.³⁹

E. 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;

³⁶ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

³⁷ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

³⁸ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

³⁹ Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556

(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 suite in which any indispensable party is not a Bound Party;

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 Holder

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).

F. 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.⁴⁰

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-1-107.⁴¹

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 Declaration21.1 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.⁴²

⁴⁰ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

⁴¹ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

⁴² Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.

CERTIFICATION OF VALIDITY OF RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR CAROLINA PRESERVE BY DEL WEBB AT AMBERLY

The undersigned, representing the Board of Directors of Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc. ("Association"), does hereby certify that the foregoing Restated Declaration of Covenants and Restrictions for Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc. is intended to be a compilation of the Declaration and amendments thereto, that is being recorded for the sole purpose of providing a comprehensive document for the convenience of the Members of the Association. The foregoing is not intended to and does not alter or take the place of the duly recorded Declaration and amendments thereto, which shall control in the event of any conflict.

CAROLINA PRESERVE BY DELWEBB AT AMBERLY
HOMEOWNERS ASSOCIATION, INC.

By: Judith M. Nixon
Judith Nixon, President

ATTEST:

Jeffrey E. Dixon
Secretary/ Assistant Secretary

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Rucha Patel a Notary Public of the County and State aforesaid, certify that Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc. Association, Inc. a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President and attested by Jeffrey E. Dixon as its Secretary/ Assistant Secretary.
(Secretary's Name)

Witness my hand and official stamp or seal, this 13th day of Oct. 2023.

Rucha Patel
Notary Public

RUCHA PATEL
Printed Name

My Commission expires: March 26, 2027

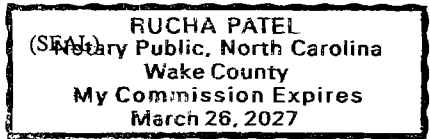


Exhibit A**Land Initially Submitted**

BEING ALL of those certain lots or parcels of land lying and being in Wake County and Chatham County, North Carolina and being more particularly described as follows:

PHASE 1-A Lots:

Lots 1-16, inclusive, and Lot 21, as shown on that certain plat entitled, "Carolina Preserve by Del Webb at Amberly Phase 1-A (Age Restricted), Town of Cary, Wake and Chatham Counties, N.C., Prepared for Sandler at Amberly, LLC," dated December 5, 2005 and revised February 23, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 581-584(582), Wake County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-B Lots:

Lots 33-42, inclusive, and Lots 249-263, inclusive, as shown on that certain plat entitled, "Carolina Preserve by Del Webb at Amberly Phase 1-B (Age Restricted), Town of Cary, Wake and Chatham Counties, N.C., Prepared for Sandler at Amberly, LLC," dated March 17, 2006, prepared by Chas H. Sells, Inc. and recorded in Plat Book 2006, Pages 188-190 and re-recorded in Plat Book 2006, Pages 232-234, Chatham County Registry and Book of Maps 2006, Pages 1019-1021 and re-recorded in Book of Maps 2006, Pages 1225-1227, Wake County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-C Lots:

Lots 43-54 inclusive, Lots 153-156, inclusive, Lots 178-191, inclusive, and Lots 202-211, inclusive, as shown on that certain plat entitled "Carolina Preserve by Del Webb at Amberly Phase 1-C (Age Restricted), Town of Cary, Wake and Chatham Counties, N.C., Prepared for Sandler at Amberly, LLC," dated March 17, 2006, prepared by Chas H. Sells, Inc., and recorded in Plat Book 2006, Pages 180-181, Chatham County Registry and Book of Maps 2006, Pages 960-961, Wake County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-E Lots:

Lots 86-100, inclusive, Lots 157-177, inclusive, Lots 192-201, inclusive, and Lots 264-266, inclusive, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly Phase 1-E (Age Restricted), Town of Cary, Wake County, Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC," filed for registration July 28, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 2006, Pages 1507-1509, Wake County Registry and in Plat Book 2006, Pages 277-279, Chatham County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-F Lots:

Lots 55-85, inclusive, and Lots 141-152, inclusive, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly Phase 1-F (Age Restricted), Town of Cary, Wake County, Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC," filed for registration July 28, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 1510-1512, Wake County Registry and in Plat Book 2006, Pages 280-282, Chatham County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-A Parcel Open Space:

That certain lot or parcel of land lying and being in Wake County, North Carolina, totaling 3.761 acres (163,819 S.F.), being labeled as "Common Open Space (Parcel Open Space)" on that certain plat entitled "The Carolina Preserve by Del Webb at Amberly Phase 1-A (Age Restricted), prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 581-584, Wake County Registry, and recorded in Plat Book 2006, Pages 103-106, Chatham County Registry, and being the same as the below-described parcel:

BEGINNING AT the southwest lot corner of Lot I (100 Arvind Oaks Circle, Cary, North Carolina) as shown on that certain plat entitled, "Carolina Preserve by Del Webb at Amberly Phase 1-A (Age Restricted), Town of Cary, Wake and Chatham Counties, N.C., Prepared for Sandler at Amberly, LLC,"

dated December 5, 2005 and revised February 23, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 581-584(582-583), Wake County Registry (the "Plat") and proceeding thence North 85 degrees 56 minutes 35 seconds East a distance of 82.12 feet to a point located at the southeast lot corner of Lot 1 shown on the Plat; continuing North 85 degrees 56 minutes 35 seconds East a distance of 62.00 feet to a point located at the southeast corner of Lot 2 shown on the Plat; thence North 85 degrees 56 minutes 35 seconds East a distance of 68.56 feet to a point; thence North 60 degrees 06 minutes 09 seconds East a distance of 30.03 feet to a point located at the southeast corner of Lot 3 shown on the Plat; thence North 61 degrees 22 minutes 17 seconds East a distance of 80.32 feet to a point located at the southeast corner of Lot 4 shown on the Plat; thence North 74 degrees 35 minutes 45 seconds East a distance of 68.24 feet to a point; thence North 60 degrees 19 minutes 33 seconds East a distance of 30.00 feet to a point located at the southeast corner of Lot 5 shown on the Plat; thence North 74 degrees 35 minutes 45 seconds East a distance of 18.76 feet to a point; thence South 72 degrees 11 minutes 10 seconds East a distance of 57.77 feet to a point; thence South 16 degrees 03 minutes 27 seconds East a distance of 67.46 feet to a point; thence South 25 degrees 25 minutes 35 seconds West a distance of 135.69 feet to a point; thence South 22 degrees 35 minutes 45 seconds West a distance of 194.31 feet to a point; thence South 28 degrees 01 minutes 12 seconds West a distance of 56.00 feet to a point; thence South 55 degrees 03 minutes 51 seconds West a distance of 53.58 feet to a point; thence South 59 degrees 36 minutes 35 seconds West a distance of 52.04 feet to a point; thence South 69 degrees 22 minutes 25 seconds West a distance of 56.45 feet to a point; thence South 69 degrees 22 minutes 25 seconds a distance of 55.58 feet to a point located on the eastern right of way of Del Webb Avenue; thence following said right-of-way along a curve to the right a distance of 318.89 feet (said curve having a radius of 355.00 feet, a chord bearing of North 23 degrees 02 minutes 11 seconds West and a chord distance of 308.27 feet) to a point; thence North 02 degrees 41 minutes 50 seconds East a distance of 155.23 feet to a point, said point being the POINT AND PLACE OF BEGINNING.

Amenity Property:

All of that certain lot or parcel of land lying and being in Wake County and Chatham County, North Carolina, totaling 6.463 acres, being labeled as "Common Open Space (Parcel Open Space) - Recreation Center" on that certain plat entitled "The Carolina Preserve by Del Webb at Amberly Phase 1-A (Age Restricted)", prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 581-584, Wake County Registry, and recorded in Plat Book 2006, Pages 103- 106, Chatham County Registry, and being more particularly described as follows:

COMMENCING AT a Control Corner being an iron pipe set at the intersection of the southeasterly margin of Del Webb Avenue (Variable Public R./W) and the western margin of Yates Store Road (100' Public R/W) having NAO 83 GRID coordinates of N: 756812.324, E: 2026729.132, and continuing thence North 75 degrees 54 minutes 34 seconds West a distance of 58.41 feet to an iron pipe set; thence South 57 degrees 54 minutes 10 seconds West a distance of 107.63 feet to an iron pipe set; thence South 62 degrees 02 minutes 58 seconds West a distance of 200.52 feet to an iron pipe set; thence South 57 degrees 54 minutes 10 seconds West a distance of 165.59 feet to an iron pipe set; thence following along a curve to the left a length of 21.86 feet (said curve having a radius of 415.00 feet, a chord bearing of South 59 degrees 24 minutes 42 seconds West and a chord distance of 21.86 feet) to an iron pipe set; thence following along a curve to the left a length of 37.97 feet (said curve having a radius of 25.00 feet, a chord bearing of South 17 degrees 24 minutes 35 seconds West and a chord distance of 34.42 feet) to an iron pipe set; thence South 70 degrees 22 minutes 56 seconds West a distance of 55.24 feet to an iron pipe set; thence following a curve to the left a length of 35.46 feet (said curve having a radius of 25.00 feet, a chord bearing of North 64 degrees 43 minutes 23 seconds West and a chord distance of 32.56 feet) to an iron pipe set; thence following a curve to the right a length of

119.27 feet (said curve having a radius of 415.00 feet, a chord bearing of South 82 degrees 52 minutes 29 seconds West and a chord distance of 118.86 feet); thence following a curve to the right a length of 20.06 feet (said curve having a radius of 415.00 feet, and a chord distance of South 89 degrees 43 minutes 25 seconds West and a chord distance of 20.06 feet) to an iron pipe set, said iron pipe set being THE POINT OF BEGINNING.

Thence from said POINT OF BEGINNING South 04 degrees 10 minutes 29 seconds West a distance of 29.82 feet to a computed point; thence South 26 degrees 43 minutes 09 seconds West a distance of 14.44 feet to a computed point; thence North 71 degrees 52 minutes 27 seconds West a distance of 305.12 feet to a computed point; thence North 60 degrees 11 minutes 25 seconds West a distance of 140.21 feet to a computed point; thence North 06 degrees 57 minutes 15 seconds West a distance of 130.75 feet to a computed point; thence North 58 degrees 31 minutes 30 seconds West a distance of 127.75 feet to a computed point; thence North 83 degrees 40 minutes 31 seconds West a distance of 134.41 feet to an iron pipe set in the easterly margin of the right-of-way of Allforth Place; thence along a curve to the left along the eastern right of way of Allforth Place a length of 195.54 feet (said curve having a radius of 425.00 feet, a chord bearing of North 11 degrees 33 minutes 31 seconds West and a chord distance of 193.82 feet) to an iron pipe set; thence North 24

degrees 44 minutes 22 seconds West a distance of 240.40 feet to an iron pipe set; thence following along a curve to the right a length of 308.90 feet (said curve having a radius of 200.00 feet, a chord bearing of North 19 degrees 30 minutes 26 seconds East, and a chord distance of 279.10 feet) to an iron pipe set; thence North 63 degrees 45 minutes 15 seconds East a distance of 178.91 feet to an iron pipe set; thence along a curve to the right a length of 39.27 feet (said curve having a radius of 25.00 feet, a chord bearing of South 71 degrees 14 minutes 45 seconds East and a chord distance of 35.36 feet) to an iron pipe set in the western margin of Del Webb Avenue (variable public right-of-way) thence along said right-of-way, South 26 degrees 14 minutes 45 seconds East a distance of 197.63 feet to an iron pipe set; thence along a curve to the right a length of 237.42 feet (said curve having a radius of 470.00 feet, a chord bearing of South 11 degrees 46 minutes 28 seconds East and a chord distance of 234.91 feet) to an iron pipe set; thence South 02 degrees 41 minutes 50 seconds West a distance of 230.92 feet to an iron pipe set; thence along a curve to the left a length of 663.39 feet (said curve having a radius of 415.00 feet, a chord bearing of South 43 degrees 05 minutes 50 seconds East and a chord distance of 594.98 feet) to THE POINT OF BEGINNING (said parcel containing 6.463 acres).

Gatehouse Property:

That certain lot or parcel of land lying and being in Wake County, North Carolina, totaling 0.080 acres (3,498 S.F.), being labeled as "Common Open Space (Parcel Open Space)" on that certain plat entitled "The Carolina Preserve by Del Webb at Amberly Phase 1-A (Age Restricted)", prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 581-584(583), Wake County Registry, and recorded in Plat Book 2006, Pages 103-106(105), Chatham County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-8 Parcel Open Space:

All of that area labeled as Common Open Space (Parcel Open Space) and containing 5.565 acres, all as shown on plat entitled "Carolina Preserve by Del Webb at Amberly Phase 1-B (Age Restricted), Town of Cary, Wake and Chatham Counties, N.C., Prepared for Sandler at Amberly, LLC," dated March 17, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 1019-1021 and re-recorded in Book of Maps 2006, Pages 1225-1227, Wake County Registry and Plat Book 2006, Pages 188-190 and re-recorded in Plat Book 2006, Pages 232-234, Chatham County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-C Parcel Open Space:

All of that area labeled as Common Open Space (Parcel Open Space) and containing 1.524 acres, all as shown on plat entitled "Carolina Preserve by Del Webb at Amberly Phase 1-C (Age Restricted), Town of Cary, Wake and Chatham Counties, N.C., Prepared for Sandler at Amberly, LLC," dated March 17, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 960-961, Wake County Registry and Plat Book 2006, Pages 180-181, Chatham County Registry, to which reference is hereby made for a more particular description of same.

PHASE 1-E Parcel Open Space: That area labeled as "Common Open Space (Parcel Open Space)" and containing 2.289 acres, being located to the South of Lots 86-90 on the Phase 1-E Plat (defined herein) and to the Southeast of Lots 91-100 on the Phase 1-E Plat, all as shown on plat entitled "The Carolina Preserve by Del Webb at Amberly Phase 1-E (Age Restricted), Town of Cary, Wake County, Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC," filed for registration July 28, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 1507-1509, Wake County Registry and Plat Book 2006, Pages 277-279, Chatham County Registry (collectively, "Phase 1-E Plat"), to which reference is hereby made for a more particular description of same.

PHASE 1-F Parcel Open Space:

That area labeled as "Common Open Space (Parcel Open Space)" and containing 3.458 acres, being located to the Northwest of Lots 55-58 on the Phase 1-F Plat (defined herein), to the West of Lots 58, 59, 68, 69, 74-76, 79 and 80 on the Phase 1-F Plat, and to the South of Lots 80-85 on the Phase 1-F Plat, all as shown on plat entitled "The Carolina Preserve by Del Webb at Amberly Phase 1-F (Age Restricted), Town of Cary, Wake County, Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC," filed for registration July 28, 2006, prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 1510-1512, Wake County Registry and Plat Book 2006, Pages 280-282, Chatham County Registry (collectively, "Phase 1-F Plat"), to which reference is hereby made for a more particular description of same.

**The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-A
Lots 267-305 (inclusive) and .0144 acres of Common Open Space:**

BEING ALL OF those certain Jots or parcels of land lying and being in Wake and Chatham Counties, North Carolina and being more particularly described as follows:

Lots 267-305 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-A, 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 of Maps 2006 at Pages 01726-01727, Wake County Public Registry and in Plat Book 2006 at Pages 0308-0309, Chatham County Public Registry (the "Phase 2-A Plat"), AND

INCLUDING, that area labeled as "Common Open Space (Parcel Open Space)" and containing 0.144 acres, being bordered on the South by Lot 302, on the West by Lot 301 and on the Northeast by margin of Fenmore Place (50' Public R/W), all as shown on the Phase 2-A Plat.⁴³

**The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-D
Lots 212-228 (inclusive) and Lots 236-248 (inclusive)
And 0.589 acres of Common Open Space**

**The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-A
1.444 acres of Common Open Space**

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County and Wake County, North Carolina and being more particularly described as follows:

1. Phase 1-D

a. LOT LEGAL DESCRIPTION

Lots 212-228 (inclusive) and Lots 236-248 (inclusive) as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-D, 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 of Maps 2006 at Pages 1828-1829, Wake County Public Registry and in Plat Book 2006 at Pages 335-336, Chatham County Public Registry, AND

b. COMMON AREA LEGAL DESCRIPTION:

All that area labeled as "Common Open Space (Parcel Open Space)" and containing 0.589 acres all as shown on plat entitled "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-D, 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 of Maps 2006 at Pages 1828-1829, Wake County Public Registry and in Plat Book 2006 at Pages 335-336, Chatham County Public Registry.

2. Phase 2-A

COMMON AREA LEGAL DESCRIPTION:

That certain lot or parcel of land Being labeled as "Common Open Space" (totaling 2.117 acres) on that certain plat titled "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-A, Town of Cary, Wake County, Williams Township, Chatham County, N.C.", prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Pages 1726-1727, Wake County Registry and recorded in Plat Book 2006, Pages 308-309, Chatham County Registry ("Phase 2A Plat").

LESS AND EXCEPT the 30 foot Streetscape (Common Element totaling .529 acres) on that certain plat titled "Revision Map Carolina Preserve by Del Webb at Amberly Phase 2-A (Age Restricted), Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C.", prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2006, Page 1982, Wake County Registry and recorded in Plat Book 2006, Page 379, Chatham County Registry, to which reference is hereby made for a more particular description of same.

FURTHER LESS AND EXCEPT that area labeled as "Common Open Space" (Parcel Open Space) and containing 0.144 acres, being bordered on the South by Lot 302, on the West by Lot 301 and on the Northeast by margin of Fenmore Place (50' Public R/W), all as shown on the Phase 2-A Plat referenced above.

⁴³ Revised by First Supplemental Declaration Wake County Registry, Book 1285 and Page 249 and Chatham County Registry, Book 12164, Page 321

Containing a net area of 1.444 acre⁴⁴

**The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-D
Lots 229-235 (inclusive)**

BEING **Lots 229-235 (inclusive)**, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-D, 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 Plat Book 2006, Pages 335-336, Chatham County Registry and in Book of Maps 2006, Pages 1828-1829, Wake County Registry, to which reference is hereby made for a more particular description of same.⁴⁵

**The Carolina Preserve by Del Webb at Amberly (Age Restricted)
Phase 1-G Lots 101-140 (inclusive)
and
Phase 1-A Lots 17-20 (inclusive)**

BEING ALL OF those certain lots or parcels of land lying and being in Chatham and Wake County, North Carolina and being more particularly described as follows:

1. Lots 101-140 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-G, 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 Plat Book 2007, Pages 60-62, Chatham County Registry and in Book of Maps 2007, Pages 329-331, Wake County Registry, to which reference is hereby made for a more particular description of same.

2. Lots 17-20 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 1-A, Lots 17-20, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC", prepared by Chas H. Sells, Inc., and recorded in Plat Book 2006, Pages 371-372, Chatham County Registry and in Book of Maps 2006, Pages 1951-1952, Wake County Registry, to which reference is hereby made for a more particular description of same.⁴⁶

**PULTE HOME CORPORATION
Carolina Preserve by Del Webb at Amberly (Age Restricted)**

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

- 1. Phase 2-B
- a. LOT LEGAL DESCRIPTION

Lots 489-509 (inclusive), and Lots 587-623 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-B, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C.", prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 199-202, Chatham County Registry, and recorded in Book of Maps 2007, Pages 1201-1204, Wake County Registry, to which reference is hereby made for a more particular description of same.

- b. COMMON AREA LEGAL DESCRIPTION

That certain lot or parcel of land being labeled as "Common Open Space" (totaling 4.781 acres) on that certain plat titled "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-B, Town of Cary, Wake County, Williams Township, Chatham County, N.C.", prepared by Chas H. Sells, Inc., and recorded in Book of Maps 2007, Pages 1201-1204, Wake County Registry and recorded in Plat Book 2007, Pages 199-202, Chatham County Registry

- 2. Phase 2-C
- a. LOT LEGAL DESCRIPTION

⁴⁴ Revised by Operation of Second Supplemental Declaration Wake County Registry, Book 012164 Page 321 and Chatham County Registry, Book 1290, Page 0464
⁴⁵ Revised by operation of Third Supplemental Declaration Wake County Registry, Book 012369, Page 00955 and Chatham County Registry Book 01313, Page 249.
⁴⁶ Revised by operation of Fourth Supplemental Declaration Wake County Registry Book 012399; Page 02337 and Chatham County Registry Book 01316; Page 0359.

Lots 375-412 (inclusive); Lots 429-437 and Lots 476-488 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-C, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C.", prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 270-273, Chatham County Registry, and recorded in Book of Maps 2007, Pages 1623-1626, Wake County Registry, to which reference is hereby made for a more particular description of same.

b. COMMON AREA LEGAL DESCRIPTION

That certain lot or parcel of land being labeled as "Common Open Space (Parcel Open Space)" (totaling **4.445 acres**) on that certain plat titled "Carolina Preserve by Del Webb at Amberly Phase 2-C (Age Restricted), Town of Cary, Wake County, Williams Township, Chatham County, N.C.," prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007 at Pages 270-273, Chatham County Public Registry and in Book of Maps 2007 at Pages 1623-1626, Wake County Public Registry.

3. Phase 1-G

COMMON AREA LEGAL DESCRIPTION:

That certain lot or parcel of land being labeled as "Common Open Space" (totaling 5.116 acres) on that certain plat titled "Carolina Preserve by Del Webb at Amberly Phase 1-G (Age Restricted), Town of Cary, Wake County, Williams Township, Chatham County, N.C.," prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 60-62, Chatham County Registry and recorded in Book of Maps 2007, Pages 329-331, Wake County Registry ("Phase 1G Plat").

LESS AND EXCEPT that area labeled as "Common Open Space" (Common Element) and containing 0.579 acres, as shown on that certain plat titled "Carolina Preserve by Del Webb at Amberly Phase 1-G (Age Restricted), Subdivision of Common Open Space, Town of Cary, Wake County, Williams Township, Chatham County, N.C.," prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 231, Chatham County Registry and recorded in Book of Maps 2007, Pages 1405, Wake County Registry ("Phase 1G Subdivision Plat").

Containing a net area of **4.537 acres**⁴⁷

PULTE HOME CORPORATION

Carolina Preserve by Del Webb at Amberly (Age Restricted)

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

1. Phase 2-C

LOT LEGAL DESCRIPTION

Lots 413-428 (inclusive); Lots 438-475 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 2-C, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C.", prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 270-273, Chatham County Registry, and recorded in Book of Maps 2007, Pages 1623-1626, Wake County Registry, to which reference is hereby made for a more particular description of same.

2. Phase 2-D

A LOT LEGAL DESCRIPTION

Lots 306-374 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly Phase 2-D (Age Restricted), Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC", prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 338-340, Chatham County Registry, and recorded in Book of Maps 2007, Pages 2171-2173, Wake County Registry, to which reference is hereby made for a more particular description of same.

b. COMMON AREA LEGAL DESCRIPTION

That certain lot or parcel of land being labeled as "Common Open Space (Parcel Open Space)" (totaling **0.22 acres**) on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly Phase 2-D (Age

⁴⁷ Revised by operation of Fifth Supplemental Declaration Wake County Registry Book 012671, Page 02569 and Chatham County Registry Book 01350, Page 0458.

Restricted), Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC”, prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 338-340, Chatham County Registry, and recorded in Book of Maps 2007, Pages 2171-2173, Wake County Registry, to which reference is hereby made for a more particular description of same.⁴⁸

**Carolina Preserve by Del Webb at Amberly (Age Restricted)
Lots 542-571 (inclusive)
Phase 2-E**

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

Lots 542-571 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly Phase 2-E (Age Restricted), Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC", prepared by Chas H. Sells, Inc., and recorded in Plat Book 2007, Pages 515-518, Chatham County Registry, and recorded in Book of Maps 2007, Pages 2861-2864, Wake County Registry, to which reference is hereby made for a more particular description of same.⁴⁹

**PULTE HOME CORPORATION
Carolina Preserve by Del Webb at Amberly (Age Restricted)
Lots 510-541 (inclusive) Lots 572-586 (inclusive)
and 6.939 acres common open space
Phase 2-E**

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

a. LOT LEGAL DESCRIPTION

Lots 510-541 (inclusive), and Lots 572-586 (inclusive), as shown on that certain plat, to which reference is hereby made for a more particular description of the same, entitled, "Re-Recording of Carolina Preserve by Del Webb at Amberly Phase 2-E (Age Restricted), Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC”, prepared by Chas H. Sells, Inc., and recorded in Plat Book 2008, Pages 85-88, Chatham County Registry (which plat is a re-recording of the plat recorded in Plat Book 2007, Pages 515-518) and is also recorded in Book of Maps 2008, Pages 485-488, Wake County Registry (which plat is a re-recording of the plat recorded in Book of Maps 2007, Pages 2861-2864).

b. COMMON AREA LEGAL DESCRIPTION

1. That certain lot or parcel of land being labeled as "C.O.S." and being located to the East of Curzon Drive and to the North and West of Beckingham Loop, all as shown on that certain plat, to which reference is hereby made for a more particular description of the same, entitled, "Re-Recording of Carolina Preserve by Del Webb at Amberly Phase 2-E (Age Restricted), Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC”, prepared by Chas H. Sells, Inc., and recorded in Plat Book 2008, Pages 85-88 (86), Chatham County Registry (which plat is a re-recording of the plat recorded in Plat Book 2007, Pages 515-518) and is also recorded in Book of Maps 2008, Pages 485-488 (486), Wake County Registry (which plat is a re-recording of the plat recorded in Book of Maps 2007, Pages 2861-2864); and

2. That certain lot or parcel of land situated in Williams Township, Chatham County, North Carolina, Town of Cary, Wake County and being a portion of the Common Open Space (COS) for Phase 2-E of Carolina Preserve by Del Webb at Amberly, and being more particularly described as follows:

Commencing at an iron pipe at the southeast corner of Lot 554 and being the **TRUE PLACE OF BEGINNING** for the parcel herein described;

Thence N08-44-23E, 197.52 feet along the common line with Lot 554 to a point;
Thence N74-21-51W, 276.53 feet along the common line with Lots 555 & 556 to a point;
Thence S28-07-35W, 126.51 feet along the common line with Lot 556 to a point;
Thence S19-49-24W, 28.46 feet along the common line with Lot 557 to a point;
Thence N81-17-11W, 226.00 feet along the common line with Lots 572-574 to a point;
Thence S49-17-33W, 479.43 feet along the common line with Lots 574-580 to a point;

⁴⁸ Revised by operation of Sixth Supplemental Declaration Wake County Registry Book 012805, Page 00945 and Chatham County Registry Book 01366; Page 0841.

⁴⁹ Revised by operation of Seventh Supplemental Declaration Wake County Registry Book 012886, Page 02194 and Chatham County Registry Book 01376, Page 1072

Thence S02-16-26W, 31.93 feet along the common line with Lot 580 to a point;
 Thence S52-11-19E, 112.47 feet along the common line with Lot 580 to a point;
 Thence 217.05 feet along the westerly right-of-way of Beckingham Loop and the arc of a curve to the left, having a chord bearing and distance of S18-40-44W, 213.04 feet to a point;
 Thence S00-27-12E, 84.23 feet along the westerly right-of-way of Beckingham Loop to a point;
 Thence S89-32-48W, 127.18 feet along the common line with Lot 581 to a point;
 Thence S00-28-02E, 370.18 feet along the common line with Lots 581-586 to a point;
 Thence S23-05-42E, 97.26 feet along the common line with Lot 586 to a point;
 Thence S24-38-27E, 39.72 feet to a point;
 Thence S55-25-07W, 352.41 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence N52-02-57W, 217.74 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence N21-14-44W, 149.74 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence N80-49-44E, 416.50 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence NQ0-28-02W, 506.96 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence S88-47-11E, 98.88 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence N02-16-26E, 262.94 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence N49-17-33E, 743.27 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence S74-21-51E, 505.11 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence S15-38-09W, 49.74 feet along the common line with United States of America Department of the Army Corps of Engineers to a point;
 Thence S28-07-35W, 225.26 feet along the common line with United States of America Department of the Army Corps of Engineers to the TRUE PLACE OF BEGINNING generally shown for illustrative purposes on a map entitled, "Re-Recording of Carolina Preserve by Del Webb at Amberly — Phase 2E (Age Restricted) Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., prepared for Sandler at Amberly, LLC," prepared by Chas. H. Sells, Inc., and recorded in Plat Book 2008, Pages 85-88, Chatham County Registry (which plat is a re-recording of the plat recorded in Plat Book 2007, Pages 515-518), and is also recorded in Book of Maps 2008, Pages 485-488, Wake County Registry (which plat is a re-recording of the plat recorded in Book of Maps 2007, Pages 2861-2864)⁵⁰

The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 2V Villas Subdivision,
 Lots 642-655 (inclusive) and Lots 666-675 (inclusive)
 and 2.051 acres of Common Open Space

BEING ALL OF those certain lots or parcels of land lying and being in Wake and Chatham Counties, North Carolina and being more particularly described as follows:

BEING ALL OF those certain tracts or parcels of land designated as Lots 642-655 (inclusive) and Lots 666-675 (inclusive), as shown 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", dated March 3, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of Chas H. Sells, Inc., and recorded in Book of Maps 2008 at Pages 1478-1482, Wake County Public Registry and in Plat Book 2008 at Pages 0252-0256, Chatham County Public Registry, which plats are referenced for a more particular description.

and

BEING ALL OF those certain tracts or parcels of land designated as "Common Open Space (Parcel Open Space)" or "C.O.S" and containing approximately 2.051 acres as shown 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", dated March 3, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of Chas H. Sells, Inc., and recorded in Book of Maps 2008 at Pages 1478-1482, Wake County Public Registry and in Plat Book 2008 at Pages 0252- 0256, Chatham County Public Registry, which plats are referenced for a more particular description.⁵¹

⁵⁰ Revised by Operation of Eighth Supplemental Declaration Wake County Registry Book 012997; Page 02500 and Chatham County Registry Book 01390, Page 0768.

⁵¹ Revised by Operation of Ninth Supplemental Declaration Wake County Registry Book 013223, Page 02445 and Chatham County Registry Book 01419, Page 1101.

**The Carolina Preserve by Del Webb at Amberly (Age Restricted),
Phase 2V Villas Subdivision,
Lots 624-641 (inclusive) and Lots 656-665 (inclusive)
and 9.499 acres of Common Open Space**

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

I. LOTS:

Those certain tracts or parcels of land designated as Lots 624-641 (inclusive) and Lots 656-665 (inclusive), as shown 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", dated March 3, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of Chas H. Sells, Inc., and recorded in Book of Maps 2008 at Pages 1478-1482, Wake County Public Registry and in Plat Book 2008 at Pages 0252-0256, Chatham County Public Registry, and that certain plat entitled, "Recombination and Easement Dedication Lots 624/625 and 666/667, The Carolina Preserve by Del Webb at Amberly Phase 2V Villas, Town of Cary, Wake County, Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, LLC and Pulte Homes, dated August 20, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells, Transportation & Infrastructure, and recorded in Book of Maps 2008 at Pages 2179-2180, Wake County Public Registry and in Plat Book 2008 at Pages 0380-0381, Chatham County Public Registry.

The above-described plat are hereby referenced for a more particular description of the property.

AND

II. COMMON AREA:

Those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

- (1) That certain tract or parcel of land designated as "Common Open Space (Parcel Open Space)" or "C.O.S." containing approximately 4.264 acres, and being the only portion of Common Open Space (Parcel Open Space) shown on the "Plat" (defined below) that abuts Lots 624-641 between the rights of way of Del Webb Avenue (60' Public R/W) and being located between Hornchurch Loop (50' Public R/W) (to the northwest) and the right of way of Yates Store Road (100' Public R/W) (to the southeast),

As shown 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", dated March 3, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of Chas H. Sells, Inc., and recorded in Book of Maps 2008 at Pages 1478-1482, Wake County Public Registry and in Plat Book 2008 at Pages 0252-0256, Chatham County Public Registry (collectively, the "Plat")- The Plat is hereby referenced for a more particular description of such property.

AND

- (2) That certain tract or parcel of land designated as "Common Open Space (Parcel Open Space)" containing approximately 5.235 acres as shown on the Plat, and being the only portion of Common Open Space (Parcel Open Space) shown on the Plat that is located to the north west of Del Webb Avenue (60' Public R/W) (the "5.235 Acre Parcel"). The Plat is hereby referenced for a more particular description of the 5.235 Acre Parcel.

The 5.235 Acre Parcel is the same property as is more particularly described as follows:

BEGINNING AT A rebar set at the point of intersection of the northwest margin of the right-of-way of Del Webb Avenue (60' Public R/W) and the northeast property corner of Lot 659 (as shown on the Plat), and from said point of beginning: leaving said right-of-way and continuing N 34° 58' 31" W 168.67 feet to a rebar set at the northeast property corner of Lot 659; thence S 55° 01' 29" W 76.00 feet to a control corner set iron pipe with aluminum cap (having ground coordinates of N: 759,321.75 and E: 2,025,592.08); thence S 63° 36' 09" W 383.46 feet to a control corner set iron pipe with aluminum cap (having ground coordinates of N: 759,151.26 and E: 2,025,248.61); thence S 30° 24' 08" E 4.98 feet to a rebar set; thence S 57° 16' 37" W 83.01 feet to a rebar set at the southwest property corner of Lot 646; thence S 32° 43' 23" E 120.00 feet to a rebar set; thence S 40° 14' 23" E 49.48 feet to a rebar set at the point of intersection of the

northwest margin of the right-of-way of Del Webb Avenue (60' Public R/W) and the southern property corner of Lot 646;

Thence continuing with the right-of-way of Del Webb Avenue (60' Public R/W) along the arc of a curve to the left having a radius of 385.00 feet, a chord bearing of S 24° 02' 26" W and a chord distance of 348.33 feet, and an arc length of 361.46 feet to a rebar set; thence S 02° 51' 21" E 7.90 feet to an iron pipe found; thence N 62° 01' 54" W 279.35 feet to an iron pipe found; thence N 57° 46' 59" E 66.01 feet to an iron pipe found; thence N 26° 46' 47" E 532.77 feet to an iron pipe found and labeled "A"; thence N 58° 20' 14" E 524.51 feet to an iron pipe found and labeled "B"; thence N 82° 46' 20" E 120.87 feet to a rebar set; thence N 42° 43' 47" E 254.97 feet to a rebar set;

Thence continuing with the right-of-way of Del Webb Avenue (60' Public R/W) along the arc of a curve to the left having a radius of 545.00 feet, a chord bearing of S 03° 23' 49" W and a chord distance of 300.22 feet, and an arc length 304.15 feet to a rebar set at the point of intersection of the northwest margin of the right-of-way of Del Webb Avenue (60' Public R/W) and a property corner of Lot 665; thence N 71° 43' 58" W 9.61 feet to a rebar set; thence N 17° 57' 30" W 101.69 feet along the eastern property line of Lot 665 to a rebar set at the northeast property corner of Lot 665; thence S 72° 02' 30" W 74.25 feet to a rebar set; thence S 31° 01' 13" W 7.62 feet to a rebar set; thence S 17° 57' 30" E 70.75 feet to a rebar set; thence N 56° 32' 40" W 76.78 feet to a rebar set at the northwest property corner of Lot 663; thence S 33° 27' 20" W 80.00 feet to a rebar set at the southwest property corner of Lot 662;

Thence S 56° 32' 40" E 172.56 feet to a rebar set at the point of intersection of the northwest margin of the right-of-way of Del Webb Avenue (60' Public R/W) and the southeast property corner of Lot 662; thence continuing with the right-of-way of Del Webb Avenue (60' Public R/W) along the arc of a curve to the left having a radius of 545.00 feet, a chord bearing of S 34° 26' 03" W and a chord distance of 25.87 feet, and an arc length of 25.87 feet to a rebar set at the point of intersection of the northwest margin of the right-of-way of Del Webb Avenue (60' Public R/W) and the northeast property corner of Lot 661; thence N 48° 29' 26" W 166.58 feet to a rebar set at the northeast property corner of Lot 661; thence S 41° 30' 34" W 76.00 feet to a rebar set at the southwest property corner of Lot 660; thence S 48° 29' 26" E 168.85 feet to a rebar set at the point of intersection of the northwest margin of the right-of-way of Del Webb Avenue (60' Public R/W) and the southeast property corner of Lot 660; thence continuing with the right-of-way of Del Webb Avenue (60' Public R/W) along the arc of a curve to the left having a radius of 545.00 feet, a chord bearing of S 46° 22' 48" W and a chord distance of 49.18 feet, and an arc length of 49.19 feet to a rebar set at the point of BEGINNING⁵²

PULTE HOME CORPORATION

The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 3A Subdivision Lots 968-1065 (inclusive)

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows: Those certain tracts or parcels of land designated as Lots 968-1065 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 3A Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, L.L.C.", dated September 30, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 398-401, Wake County Public Registry and in Plat Book 2009 at Pages 68-71, Chatham County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.

PULTE HOME CORPORATION The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 3A Subdivision Approximately 5.863 acres common open space

and

The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 3B Exempt Subdivision Approximately 20.909 acres

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows: Those certain tracts or parcels of land

⁵² Revised by Operation of Tenth Supplemental Declaration Wake County Registry Book 013325, Page 01409 and Chatham County Registry Book 01434, Page 0420.

designated as "Common Open Space (Open Space) or C.O.S.," containing approximately 5.863 acres, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 3A Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, L.L.C.," dated September 30, 2008, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 398-401, Wake County Public Registry and in Plat Book 2009 at Pages 68-71, Chatham County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.

AND

That certain tract or parcel of land designated as "Phase 3B," containing approximately 20.909 acres, as shown on that certain plat entitled, "Boundary Survey, The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 3B Exempt Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, L.L.C.," dated February 10, 2009, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 404-405, Wake County Public Registry and in Plat Book 2009 at Pages 73-74, Chatham County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.⁵³

The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 3D Subdivision Lots 1066-1103 (inclusive)

BEING ALL OF those certain lots or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

Those certain tracts or parcels of land designated as Lots 1066-1103 (inclusive), as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 3D Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, L.L.C.," dated February 2, 2009, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 636-637, Wake County Public Registry and in Plat Book 2009 at Pages 108-109, Chatham County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.

The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 3D Subdivision
Approximately 1.831 acres of Common Open Space And Phase 3B Subdivision Approximately
6.993 acres of Common Open Space

BEING ALL OF those certain tracts or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows: Those certain tracts or parcels of land designated as "C.O.S." containing approximately 1.831 acres, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 3D Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Sandler at Amberly, L.L.C.," dated February 2, 2009, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 636-637, Wake County Public Registry and in Plat Book 2009 at Pages 108-109, Chatham County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.

And

BEING ALL OF those certain tracts or parcels of land lying and being in Chatham County, North Carolina and being more particularly described as follows: Those certain tracts or parcels of land designated as "C.O.S." containing approximately 6.993 acres, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 3B Subdivision, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C., Prepared for Pulte Home Corporation.," dated March 23, 2009, prepared by

⁵³ Revised by Operation of Eleventh Supplemental Declaration Wake County Registry Book 013547, Page 00287 and Chatham County Registry Book 01462, Page 0491

David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 779-781, Wake County Public Registry and in Plat Book 2009 at Pages 139-141, Chatham County Public Registry. The above-described plat is hereby referenced for a more particular description of Tract 2.⁵⁴

PULTE HOME CORPORATION Carolina Preserve by Del Webb at Amberly (Age Restricted)
Phase 3C (42.50 acres), Phase 3E (25.633 acres) and Phase 3F (27.203 acres) Total sum 95.336
acres

and

Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 4 Subdivision
17.20 acres

1. Phase 3C

BEING ALL OF that certain lot or parcel of land lying and being in Chatham County, North Carolina and being more particularly described as follows:

BEGINNING AT AN EXISTING 1/2 INCH REBAR ON THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND MARQUIS HOMES AND COMPANY (DB 1347, PG. 108 CHATHAM COUNTY REGISTER OF DEEDS), SAID POINT BEING LOCATED S53°08'41"W, 2,675.94 FEET FROM AN EXISTING 'A' INCH REBAR WITH A CAP IN THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD HAVING NC GRID COORDINATES N: 761,696.02, E: 2,026,651.97 AND BEING LOCATED S34°28'10"W, 14,586.41 FEET (GRID) FROM N.C.G.S. "HOPSON" HAVING NC GRID COORDINATES Y(N): 773,721.47 AND X(E): 2,034,907.39 PER BM 2008, PG. 2177-2178 (WAKE COUNTY) AND BM 2008, PG. 378-379 (CHATHAM COUNTY), SAID POINT BEING THE TRUE PLACE OF BEGINNING FOR THE PARCEL HEREIN DESCRIBED:

THENCE S01°22'57"W, 121.56 FEET TO AN EXISTING 1/2 INCH REBAR ON THE NORTHERN RIGHT-OF-WAY OF MARSALIS WAY;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 575.00 FEET, AN ARC LENGTH OF 162.80 FEET, AND A CHORD BEARING AND DISTANCE OF S83°17'47"W, 162.26 FEET ALONG THE NORTHERN RIGHT-OF-WAY OF MARSALIS WAY TO AN EXISTING 1/2 INCH REBAR;

THENCE S01°24'27"W, 50.00 FEET TO AN EXISTING 1/2 INCH REBAR;

THENCE S04°12'26"W, 48.66 FEET TO AN EXISTING 1/2 INCH REBAR;

THENCE S09°57'06"E, 191.89 FEET TO AN EXISTING 1/2 INCH REBAR;

THENCE S39°44'49"E, 543.41 FEET TO AN EXISTING 1/2 INCH REBAR;

THENCE S07°59'20"W, 131.04 FEET TO AN EXISTING 1/2 INCH REBAR;

THENCE S20°36'10"E, 159.46 FEET TO AN EXISTING 1/2 INCH REBAR ON THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND THE UNITED STATES OF AMERICA (NO DEED REFERENCE, CHATHAM COUNTY PIN: 9792-35-0720);

THENCE ALONG THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND THE UNITED STATES OF AMERICA THE FOLLOWING COURSES AND DISTANCES:

⁵⁴ Revised by Operation of Twelfth Supplemental Declaration Wake County Registry Book 013627, Page 02389 and Chatham County Registry Book 01471, Page 0966.

S49°11'08"W, 372.86 FEET TO A POINT;

S87°27'36"W, 559.52 FEET TO A POINT;

N81°43'00"W, 440.90 FEET TO A POINT;

S85°36'42"W, 567.23 FEET TO A POINT, A COMMON CORNER WITH JAMES B. SLADE (DB 96E, PG. 48 CHATHAM COUNTY REGISTER OF DEEDS);

THENCE ALONG THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND JAMES B. SLADE THE FOLLOWING COURSES AND DISTANCES:

N13°13'06"W, 405.63 FEET TO A POINT;

S88°54'32"E, 226.77 FEET TO A POINT;

N31°19'34"E, 278.79 FEET TO A POINT;

N01°55'16"E, 253.93 FEET TO A POINT ON THE EASTERN RIGHT-OF-WAY OF PITTARD-SEARS ROAD;

THENCE ALONG THE ALONG THE EASTERN RIGHT-OF-WAY OF PITTARD-SEARS ROAD THE FOLLOWING COURSES AND DISTANCES;

ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1,934.74 FEET, AN ARC LENGTH OF 67.68 FEET, AND A CHORD BEARING AND DISTANCE OF N42°07'14"E, 67 67 FEET TO A POINT;

N41°07'08"E, 152.91 FEET TO A POINT;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 547.97 FEET, AND ARC LENGTH OF 142.00 FEET, AND A CHORD BEARING AND DISTANCE OF N48°34'05"E 141 61 FEET TO A POINT;

N55°59'05"E, 71.09 FEET TO A POINT;

THENCE LEAVING SAID RIGHT-OF-WAY N82°02'44"E, 21.85 FEET TO A POINT;

THENCE N76°04'05"E, 53.76 FEET TO A POINT;

THENCE N65°07'11"E, 54.42 FEET TO A POINT;

THENCE N58°52'52"E, 52.70 FEET TO A POINT;

THENCE N55°02'34"E, 60.81 FEET TO A POINT;

THENCE N54°32'25"E, 50.82 FEET TO A POINT;

THENCE N53°01'20"E, 52.37 FEET TO A POINT;

THENCE N50°30'08"E, 50.94 FEET TO A POINT;

THENCE N49°36'54"E, 20.44 FEET TO A POINT, A COMMON CORNER WITH MARQUIS HOMES AND COMPANY (DB 1347, PG. 108 CHATHAM COUNTY REGISTER OF DEEDS); THENCE S88°37'03"E, 638.63 FEET ALONG THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND MARQUIS HOMES AND COMPANY TO THE POINT AND PLACE OF BEGINNING, CONTAINING 1,851,324 SQUARE FEET / 42.500 ACRES FOR THE PARCEL HEREIN DESCRIBED.

The above described real property may be referred to herein as Phase 3C.

And

2. Phase 3E

BEING ALL OF that certain lot or parcel of land lying and being in Chatham County, North Carolina and being more particularly described as follows: BEGINNING AT AN EXISTING ½ INCH REBAR WITH A CAP IN THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD, SAID POINT BEING LOCATED N60°31'44"W, 1,031.53 FEET FROM AN EXISTING ½ INCH REBAR WITH A CAP IN THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD HAVING NC GRID COORDINATES N: 761,696.02, E: 2,026,651.97 AND BEING LOCATED S34°28'10"W, 14,586.41 FEET (GRID) FROM N.C.G.S. "HOPSON" HAVING NC GRID COORDINATES Y(N): 773,721.47 AND X(E): 2,034,907.39 PER BM 2008, PG. 2177-2178 (WAKE COUNTY) AND BM 2008, PG. 378- 379 (CHATHAM COUNTY), SAID POINT BEING THE TRUE PLACE OF BEGINNING FOR THE PARCEL HEREIN DESCRIBED:

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 45.41 FEET, AND A CHORD BEARING AND DISTANCE OF S05°42'42"W, 41.20 FEET ALONG THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD AND THE WESTERN RIGHT-OF-WAY OF DEL WEBB AVENUE TO AN EXISTING ½ INCH REBAR;

THENCE ALONG THE WESTERN RIGHT-OF-WAY OF DEL WEBB AVENUE THE FOLLOWING COURSES AND DISTANCES: S49°04'46"W, 128.99 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1,200.00 FEET, AN ARC LENGTH OF 259.36 FEET, AND A CHORD BEARING AND DISTANCE OF S42°53'16"W, 258.85 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 46.01 FEET, AND A CHORD BEARING AND DISTANCE OF S80°38'08"W, 41.63 FEET TO AN EXISTING ½ INCH REBAR;

S33°36'09"W, 50.01 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 45.55 FEET, AND A CHORD BEARING AND DISTANCE OF S11°55'38"E, 41.30 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1,200.00 FEET, AN ARC LENGTH OF 430.37 FEET, AND A CHORD BEARING AND DISTANCE OF S21°17'45"W, 428.07 FEET TO AN EXISTING ½ INCH REBAR;

THENCE LEAVING SAID RIGHT-OF-WAY S39°41'29"W, 172.95 FEET TO AN EXISTING ½ INCH REBAR;

THENCE S29°41'29"W, 69.17 FEET TO AN EXISTING ½ INCH REBAR;

THENCE S12°28'42"E, 247.40 FEET TO AN EXISTING ½ INCH REBAR;

THENCE S50°43'08"E, 135.65 FEET TO AN EXISTING 1/4 INCH REBAR ON THE WESTERN RIGHT-OF WAY OF DEL WEBB AVENUE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 1,200.00 FEET, AN ARC LENGTH OF 458.97 FEET, AND A CHORD BEARING AND DISTANCE OF

S25°00'04"E, 456.18 FEET ALONG THE WESTERN RIGHT-OF-WAY OF DEL WEBB AVENUE TO AN EXISTING ½ INCH REBAR;

THENCE S35°57'29"E, 11.76 FEET ALONG THE WESTERN RIGHT-OF-WAY OF DEL WEBB AVENUE TO AN EXISTING ½ INCH REBAR;

THENCE LEAVING SAID RIGHT-OF-WAY S12°15'12"W, 294.97 FEET TO AN EXISTING ½ INCH REBAR ON THE NORTHERN RIGHT-OF-WAY OF MARSALIS WAY;

THENCE S54°02'31"W, 39.70 FEET ALONG THE NORTHERN RIGHT-OF-WAY OF MARSALIS WAY TO AN EXISTING ½ INCH REBAR;

THENCE WITH THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 575.00 FEET, AN ARC LENGTH OF 292.14 FEET, AND A CHORD BEARING AND DISTANCE OF S68°35'49"W, 289.01 FEET ALONG THE NORTHERN RIGHT-OF-WAY OF MARSALIS WAY TO AN EXISTING ½ INCH IRON PIPE, A CONTROL CORNER FOR THE CAROLINA PRESERVE BY DEL WEBB AT AMBERLY PHASE 3B PER BM 2009, PG. 779-781 (WAKE COUNTY) AND BM 2009, PG. 139-141 (CHATHAM COUNTY);

THENCE N01°24'27"E, 405.29 FEET TO AN EXISTING ½ INCH IRON PIPE;

THENCE N06°36'43"E, 284.64 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N85°59'32"W, 224.15 FEET TO AN EXISTING ½ INCH REBAR ON THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND MARQUIS HOMES AND COMPANY (DB 1347, PG. 108 CHATHAM COUNTY REGISTER OF DEEDS);

THENCE ALONG THE COMMON LINE BETWEEN SANDLER AT AMBERLY, LLC AND MARQUIS HOMES AND COMPANY THE FOLLOWING COURSES AND DISTANCES:

N04°00'28"E, 492.89 FEET TO A POINT;

N84°23'00"W, 141.25 FEET TO A POINT;

N00°51'58"E, 1,314.45 FEET TO AN EXISTING ½ INCH REBAR ON THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD;

THENCE ALONG THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD THE FOLLOWING COURSES AND DISTANCES:

S85°18'24"E, 297.11 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 900.02 FEET, AN ARC LENGTH OF 346.91 FEET, AND A CHORD BEARING AND DISTANCE OF S74°15'52"E, 344.77 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 777.02 FEET, AN ARC LENGTH OF 346.71 FEET, AND A CHORD BEARING AND DISTANCE OF S50°26'21"E, 343.84 FEET TO AN EXISTING ½ INCH REBAR;

THENCE S37°39'23"E, 29.27 FEET TO THE POINT AND PLACE OF BEGINNING, CONTAINING 1,116,557 SQUARE FEET/ 25.633 ACRES FOR THE PARCEL HEREIN DESCRIBED.

The above described real property may be referred to herein as Phase 3E.

and

3. Phase 3F

BEING ALL OF that certain lot or parcel of land lying and being in Chatham and Wake Counties, North Carolina and being more particularly described as follows:

BEGINNING AT AN EXISTING ½ INCH REBAR WITH A CAP IN THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD HAVING NC GRID COORDINATES Y(N): 761,696.02, X(E): 2,026,651.97 AND BEING LOCATED S34°28'10"W, 14,586.41 FEET (GRID) FROM N.C.G.S. "HOPSON HAVING NC GRID COORDINATES Y(N): 773,721.47 AND X(E): 2,034,907.39 PER BM 2008, PG. 2177-2178 (WAKE COUNTY) AND BM 2008, PG. 378-379 (CHATHAM COUNTY), SAID POINT BEING THE TRUE PLACE OF BEGINNING FOR THE PARCEL HEREIN DESCRIBED:

THENCE S34°08'04"E, 50.34 FEET ALONG THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD AND THE WESTERN RIGHT-OF-WAY OF YATES STORE ROAD TO A POINT;

THENCE ALONG THE WESTERN RIGHT-OF-WAY OF YATES STORE ROAD THE FOLLOWING COURSES AND DISTANCES:

S12°04'04"W, 892.43 FEET TO A POINT;

ALONG THE ARC OF A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 454.30 FEET, A RADIUS OF 3,085.77 FEET, AND A CHORD BEARING AND DISTANCE OF S07°51'00"W, 453.89 FEET TO AN EXISTING REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 426.53 FEET, A RADIUS OF 1,259.39 FEET, AND A CHORD BEARING AND DISTANCE OF S13°20'06"W, 424.49 TO AN EXISTING ½ INCH REBAR, THE NORTHEAST CORNER OF THE CAROLINA PRESERVE BY DEL WEBB AT AMBERLY PHASE 2V DESCRIBED AS "POINT C" PER BM 2008, PG. 1478- 1482 (WAKE COUNTY) AND BM 2008, PG. 252-256 (CHATHAM COUNTY);

THENCE N66°57'46"W, 85.39 FEET TO AN EXISTING ½ INCH REBAR;

THENCE S61°04'45"W, 317.22 FEET AN EXISTING ½ INCH REBAR ON THE EASTERN RIGHT-OF-WAY OF DEL WEBB AVENUE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 166.99 FEET, A RADIUS OF 605.00 FEET, AND A CHORD BEARING AND DISTANCE OF N23°12'51"W, 166.46 FEET ALONG THE EASTERN RIGHT-OF-WAY OF DEL WEBB AVENUE TO AN EXISTING ½ INCH REBAR, THESE OUTHEAST CORNER OF THE CAROLINA PRESERVE BY DEL WEBB AT AMBERLY PHASE 3D PER BM 2009, PG. 636-637 (WAKE COUNTY) AND BM 2009, PG. 108-109 (CHATHAM COUNTY);

THENCE N05°02'33"E, 255.79 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N04°32'03"E, 482.55 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N03°49'09"W, 194.79 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N29°53'30"W, 14.31 FEET TO AN EXISTING 14 INCH REBAR, A COMMON CORNER OF THE CAROLINA PRESERVE BY DEL WEBB AT AMBERLY PHASE 3D PER BM 2009, PG. 636-637 (WAKE COUNTY) AND BM 2008, PG. 108-109 (CHATHAM COUNTY) AND THE CAROLINA PRESERVE BY DEL WEBB AT AMBERLY PHASE 3A PER BM 2009, PG. 398-401 (WAKE COUNTY) AND BM 2009, PG. 68-71 (CHATHAM COUNTY);

THENCE N06°31'01"W, 147.38 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N82°48'43"E, 23.63 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N15°19'55"W, 210.48 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N19°12'30"E, 164.98 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N32°45'56"E, 171.68 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N60°35'20"W, 112.70 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N52°23'00"W, 172.37 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N42°43'00"W, 120.92 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N46°01'07"W, 87.58 FEET TO AN EXISTING ½ INCH REBAR;

THENCE N50°22'14"W, 110.71 FEET TO AN EXISTING 14 INCH REBAR ON THE EASTERN RIGHT-OF-WAY OF DEL WEBB AVENUE;

THENCE ALONG THE EASTERN RIGHT-OF-WAY OF DEL WEBB AVENUE THE FOLLOWING COURSES AND DISTANCES:

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 85.26 FEET, A RADIUS OF 1,140.00 FEET, AND A CHORD BEARING AND DISTANCE OF N43°43'33"E, 85.24 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 48.31 FEET, A RADIUS OF 30.00 FEET, AND A CHORD BEARING AND DISTANCE OF S87°05'44"E, 43.26 FEET TO AN EXISTING ½ INCH REBAR;

N48°12'34"E, 50.00 FEET TO AN EXISTING 14 INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 47.62 FEET, A RADIUS OF 30.00 FEET, AND A CHORD BEARING AND DISTANCE OF N03°36'36"E, 42.77 FEET TO AN EXISTING 1/2 INCH REBAR;

N49°04'46"E, 77.29 FEET TO AN EXISTING ½ INCH REBAR;

ALONG THE ARC OF A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 46.79 FEET, A RADIUS OF 30.00 FEET, AND A CHORD BEARING AND DISTANCE OF S86°14'22"E, 42.19 FEET TO AN EXISTING ½ INCH REBAR ON THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 945.06 FEET, A RADIUS OF 1,250.00 FEET, AND A CHORD BEARING AND DISTANCE OF S63°12'44"E, 922.71 FEET ALONG THE SOUTHERN RIGHT-OF-WAY OF O'KELLY CHAPEL ROAD TO THE POINT AND PLACE OF BEGINNING, CONTAINING 1,184,963 SQUARE FEET / 27.203 ACRES FOR THE PARCEL HEREIN DESCRIBED.

The above described real property may be referred to herein as Phase 3F.

The above-described Phase 3C, Phase 3E and Phase 3F are also depicted on the Exhibit Map attached hereto as Exhibit A-1 and incorporated herein by this reference.

The above-described Phase 3C, Phase 3E and Phase 3F are a part of that real property described as Tract 3 on those certain plats recorded in Plat Book 2001, Page 252 of the Chatham County Registry and in Book of Maps 2001, Page 1253 of the Wake County Registry ("Tract 3").

and

Phase 4 - Tract 1

BEING ALL OF that certain lot or parcel of land lying and being in Wake County, North Carolina and being more particularly described as follows:

That certain tract or parcel of land designated as "Phase 4, Tract 1" containing approximately 7.050 acres, as shown on that certain plat entitled, "Boundary Survey, The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 4 Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Prepared for Sandler at Amberly, L.L.C.", dated June 2, 2009, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 747-749, Wake County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.

Phase 4 - Tract 2

BEING ALL OF that certain lot or parcel of land lying and being in Wake County, North Carolina and being more particularly described as follows:

That certain tract or parcel of land designated as "Phase 4, Tract 2" containing approximately 10.150 acres, as shown on that certain plat entitled, "Boundary Survey, The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 4 Subdivision, Current Owner: Sandler at Amberly, L.L.C., Town of Cary, Wake County, N.C., Prepared for Sandler at Amberly, L.L.C.", dated June 2, 2009, prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2009 at Pages 747-749, Wake County Public Registry. The above-described plat is hereby referenced for a more particular description of the property.⁵⁵

**Carolina Preserve by Del Webb at Amberly (Age Restricted)
Phase 6A (14.345 acres), Phase 6B (16.098 acres) and Phase 6C (15.890 acres)**

Phase 6A

BEING ALL OF the real property lying and being in the Town of Cary, Wake County, North Carolina and in Williams Township, Chatham County, North Carolina, being more particularly described as follows:

That certain tract or parcel of land designated as "Phase 6A" containing approximately 14.345 acres, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 6A Recombination and Subdivision and Phase 6 Town of Cary Stormwater Control Structure and Access Easement Dedication, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C. Prepared for Pulte Home Corporation", prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2011 at Pages 15-17, Wake County Public Registry and in Book of Maps 2011, at Pages 2-4, Chatham County Registry; and re-recorded in Book of Maps 2011 at Pages 414-416, Wake County Public Registry and in Book of Maps 2011, at Pages 54-56 Chatham County Registry. The above-described plat is hereby referenced for a more particular description of the property.

SAVE AND EXCEPT the portion of the above-described property consisting of 0.188 acres of public street right-of way dedicated to the Town of Cary as indicated on the above —described plat.

Phase 6B

BEING ALL OF the real property lying and being in the Town of Cary, Wake County, North Carolina and in Williams Township, Chatham County, North Carolina, being more particularly described as follows:

That certain tract or parcel of land designated as "Phase 6B" containing approximately 16.098 acres, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 6B Subdivision, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C. Prepared for Pulte Home Corporation", prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2011 at Pages 638-640, Wake County Public Registry and in Book of Maps 2011, at Pages 103-106, Chatham County Registry. The above-described plat is hereby referenced for a more particular description of the property.

⁵⁵ Revised by Operation of Thirteenth Supplemental Declaration Wake County Registry Book 013847, Page 01325 and Chatham County Registry Book 01500, Page 0222.

SAVE AND EXCEPT the portion of the above-described property consisting of 2.790 acres of public street right-of way dedicated to the Town of Cary as indicated on the above-described plat.

Phase 6C

BEING ALL OF the real property lying and being in the Town of Cary, Wake County, North Carolina and in Williams Township, Chatham County, North Carolina, being more particularly described as follows:

That certain tract or parcel of land designated as "Phase 6C" containing approximately 15.890 acres, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 6C Subdivision, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C. Prepared for Pulte Home Corporation", prepared by David K. Brubaker, Professional Land Surveyor, of WSP -Sells Transportation & Infrastructure, recorded in Book of Maps 2012 at Pages 474-477, Wake County Public Registry and in Book of Maps 2011, at Pages 82-85, Chatham County Registry. The above-described plat is hereby referenced for a more particular description of the property.

SAVE AND EXCEPT the portion of the above-described property consisting of 3.174 acres of public street right-of way dedicated to the Town of Cary as indicated on the above —described plat.⁵⁶

BEING ALL OF the real property lying and being in the Town of Cary, Wake County, North Carolina and in Williams Township, Chatham County, North Carolina, more particularly described as follows:

Parcel 1

Being Lots 1402 through 1413, inclusive, as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 6A Recombination and Subdivision and Phase 6 Town of Cary Stormwater Control Structure and Access Easement Dedication, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C. Prepared for Pulte Home Corporation", prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2011 at Pages 15-17, Wake County Public Registry and in Book of Maps 2011, at Pages 2-4, Chatham County Registry; and re-recorded in Book of Maps 2011 at Pages 414-416, Wake County Public Registry and in Book of Maps 2011, at Pages 54-56 Chatham County Registry. The above-described plat is hereby referenced for a more particular description of the property.

Parcel 2.

Being (i) Lots 1253 through 1258, inclusive; (ii) Lots 1265, 1267, 1268, 1340, and 1341, (iii) Lots 1343 through 1361, inclusive, (iv) Lots 1370, 1371, and 1373 through 1379, inclusive, and (v) Lots 1386, 1388 through 1393, inclusive, and Lot 1395, all as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted), Phase 6B Subdivision, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C. Prepared for Pulte Home Corporation", prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2011 at Pages 638-640, Wake County Public Registry and in Book of Maps 2011, at Pages 103-106, Chatham County Registry. The above-described plat is hereby referenced for a more particular description of the property.⁵⁷

Carolina Preserve by Del Webb at Amberly (Age Restricted)

BEING ALL OF the real property lying and being in the Town of Cary, Wake County, North Carolina and In Williams Township, Chatham County, North Carolina, more particularly described as follows:

Being Lot 1361 as shown on that certain plat entitled, "The Carolina Preserve by Del Webb at Amberly (Age Restricted) Phase 6B Subdivision, Current Owner: Pulte Home Corporation, Town of Cary, Wake County, N.C., Williams Township, Chatham County, N.C. Prepared for Pulte Home Corporation", prepared by David K. Brubaker, Professional Land Surveyor, of WSP - Sells Transportation & Infrastructure, recorded in Book of Maps 2011 at Pages 638-640, Wake County Public Registry and in Book of Maps 2011, at Pages 103-106, Chatham County Registry. The above-described plat is hereby referenced for a more particular description of the property.⁵⁸

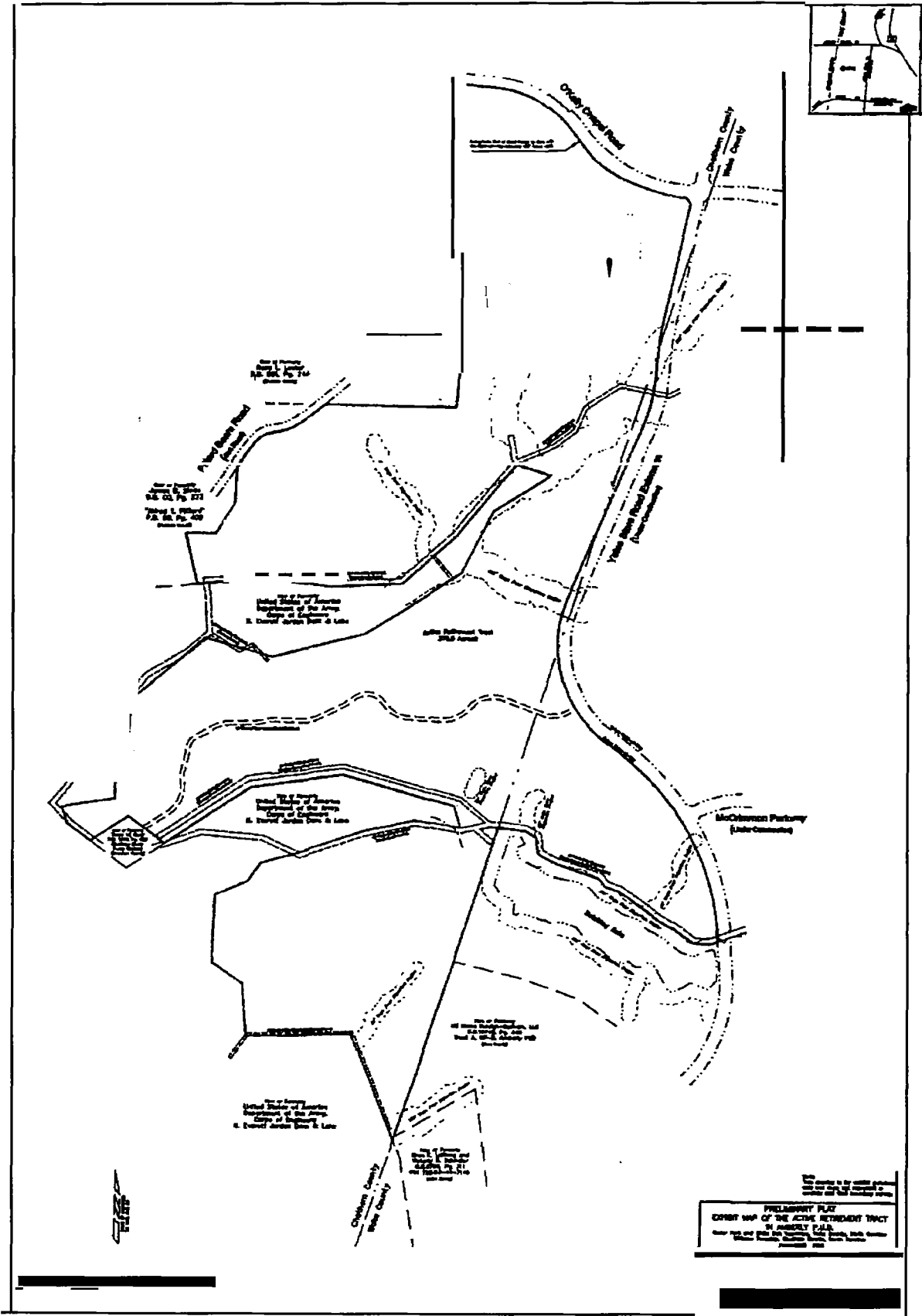
⁵⁶ Revised by Operation of Fourteenth Supplemental Declaration and Fourth Amendment to Declaration in Wake County Registry Book 014967, Page 02011 and Chatham County Registry Book 01645, Page 1122.

⁵⁷ Revised by Operation of Fifteenth Supplemental Declaration and Fourth Amendment to Declaration in Wake County Registry Book 015373, Page 01284 and Chatham County Book 1699, Page 0130.

⁵⁸ Revised by operation of Sixteenth Supplemental Declaration Wake County Registry, Book 015457, Page 01940 and Chatham County Registry Book 01711, Page 0744.

Exhibit B

Land Subject to Annexation



This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

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 estop 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 Neighborhood 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 use of Common Areas is prohibited. The term "firearms or other weapons" includes, but not limited it, "B-B" guns, pellet guns, knives, swords, cross-bows and other firearms or other weapons of all types, regardless of size.⁵⁹

(e) **Nuisances.** No Owner shall engage in any activity which materially

⁵⁹ Revised by Sixth Amendment to Declaration, Wake County Book 015537 Page 01764 and Chatham County Book 01723 Page 0407

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 for living in recreational activities.⁶⁰

(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 of 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) Flags and flagpoles are prohibited except as provided herein. Owners may use a bracket or other approved device to attach and display one (1) flag on the front of the Dwelling Unit and one (1) flag on the rear of the Dwelling Unit; provided, however, the only flags that are permitted to be attached to a Dwelling Unit are the flags of the United States of America and the State of North Carolina, which are further described below.

U.S. Flag: Owners may display the flag of the United States of America, as defined Chapter 1, Title 4 of the U.S. Code, that is no larger than 4-foot x 6-foot. The flag must be displayed in accordance with applicable provisions of Chapter 1, Title 4 of the U.S. Code or any rule or custom pertaining to the proper display or use of the flag of the United States as established pursuant to such chapter or any otherwise applicable provision of law.

N.C. Flag: Owners may display one (1) flag of North Carolina, as defined in Chapter 144, Section 1 of the North Carolina General Statutes, that is no larger than 4-foot x 6-foot. The flag must be displayed in accordance with rule or custom pertaining to the proper display or use of the flag of North Carolina.

⁶⁰Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556; Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

In addition, Owners may place one (1) decorative flag in a mulched area in the front yard space of the Lot or adjacent to the mailbox post, and one (1) such flag in a mulched area in the rear yard space of the Lot. For purposes of this section, the term “decorative flag” means a flag that is no larger than 13 inches by 18 inches, and is used to celebrate the current season, a holiday, or a sports team, or is the flag of the United States or North Carolina as both are defined above. Decorative flags that constitute holiday flags are further restricted by rules related to holiday decorations.⁶¹

(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 guidelines⁶²;

(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. No sign shall be erected within the Community except as follows:

- i. Entrance signs, street signs, and other directional or traffic-related signs erected by Declarant or the Board within the Community;
- ii. Signs erected by the Board;
- iii. One “for sale” or “for rent” sign subject to number, size, location, and appearance requirements set forth in the Design Guidelines;
- iv. Security/alarm signs subject to number, size, location, and appearance requirements set forth in the Design Guidelines; and
- v. Political signs as defined herein. A political sign may only be posted 45 days before a state or federal election in which citizens of Wake or Chatham Counties are generally permitted to vote and must be removed within seven (7) days after the close of polls on election day. Political signs may be placed only in a mulch bed within an Owner’s Lot. The Association will permit up to five (5) political signs with the maximum dimensions of 24 inches by 24 inches each to be placed within a mulch bed on a Lot unless any applicable town or county ordinance that regulates the size and number of political signs on residential property allows more signs or larger signs, in which case the ordinance shall control. Because Carolina Preserve crosses county lines, Owners may apply restrictions of any county or town in which any portion of Carolina Preserve is located for purposes of determining applicable ordinances, regardless of where the Owner’s Lot is located. For the purposes of this provision, "political sign" means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on the election ballot.

The term “sign” refers to any sign, poster, banner, flag (excluding those flags permitted in Section (h)(v)), placard, billboard, balloon, or similar object inscribed with words, designs, marks, or graphics that is displayed to or visible by the public. ⁶³

(k) Holiday Decorations. Holiday decorations may be displayed on a Lot, however, additional requirements for Holiday Decorations maybe set forth in the Design Guidelines and no Holiday Decorations and no holiday decorations in violation of such

⁶¹ Revised by Seventh Amendment to Declaration Wake County Book 018448 Page 01879 and Chatham County Book 02204 Page 0905

⁶²Revised by Third Amendment to Declaration Wake County Book 013436 Page 00163 and Chatham County Book 01450 Page 0556; and further Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

⁶³ Revised by Sixth Amendment to Declaration Wake County Book015537 Page 01764 and Chatham County Book 01723 Page 0407 and further Revised by Seventh Amendment to Declaration Wake County Book 018448, Page 01879 and Chatham County Book 02204 Page 0905

requirements shall be permitted on a Lot/ Unit⁶⁴.

(l) Antennas and Satellite Dishes. Unless otherwise permitted under federal law, only one satellite dish antenna measuring one meter or less in diameter may be erected on any Lot. 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:⁶⁵

(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) One satellite dish antenna measuring one meter or less in diameter may be erected on any lot. Residents are encouraged to place any satellite dish antenna in the back yard, on the back or side of the house below the roofline, if reception is available at that location. 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) Unightly 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.⁶⁶

(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

⁶⁴Revised by Sixth Amendment to Declaration Wake County Book 015537 Page 01764 and Chatham County Book 01723 Page 0407

⁶⁵Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

⁶⁶Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

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.⁶⁷

(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).**

⁶⁷ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

Exhibit D

By-Laws of Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc.

BY-LAWS

OF

CAROLINA PRESERVE BY DEL WEBB AT AMBERLY
HOMEOWNERS ASSOCIATION, INC.

BY-LAWS
OF
CAROLINA PRESERVE BY DEL WEBB AT AMBERLY HOMEOWNERS
ASSOCIATION, INC.

ARTICLE I
Name, Principal Office, and Definitions

1.1 Name. The name of the Association shall be Carolina Preserve by Del Webb at Amberly Homeowners Association, Inc. (the "Association").

1.2 Principal Office. The principal office of the Association shall be located in Wake County, State of North Carolina. The Association may have such other offices as the Board may determine or as the affairs of the Association may require.

1.3 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Carolina Preserve by Del Webb at Amberly filed in the office of the Register of Deeds of Wake County and Chatham County, North Carolina (as the same may be amended from time to time, the "Declaration").

1.4 Purpose. The purpose of the Association shall be to own, operate, improve and maintain the recreational and other common areas within the Community, to provide recreational facilities and educational, social or recreational programs and activities, and to carry out other functions for the maintenance and governance of Carolina Preserve by Del Webb at Amberly, an age-restricted community for adults fifty-five (55) and older, including without limitation, the establishment of rules and regulations for the use of the Common Areas, including any improvements and amenities located thereon; the distribution among Members of the costs associated with the ownership, operation, improvement and maintenance of the Common Areas, including any improvements and amenities located thereon; and the promotion of the health, safety, pleasure, recreation and welfare of the Occupants and Members within the Community.

ARTICLE II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1 Membership. Every Owner shall be a Member of the Association. The provisions pertaining to membership in the Declaration are incorporated herein by this reference.

2.2 Place of Meetings. Meetings of the Association shall be held within the Properties or at such other suitable place within Wake County or Chatham County, State of North Carolina as may be designated by the Board.

2.3 Annual Meetings. The initial meeting of the Members of the Association ("Initial Meeting") shall be held within thirty (30) days after the end of the Declarant Control Period. After the Initial Meeting, regular annual meetings shall be set by the Board so as to occur at least thirty (30) days but not more than one hundred twenty (120) days before the close of the Association's fiscal year on a date and at a time set by the Board. During the Declarant Control Period informational meetings of the Members shall be held as provided in the Declaration.

2.4 Special Meetings. The President may call a special meeting of the Members. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least ten percent (10%) of the Dwelling Units.

2.5 Notice of Meetings. The Association's Secretary shall cause written notice stating the

place, day, and hour of any Association meeting to be delivered by hand delivery or United States mail, postage prepaid, to each Member, or, if permitted by North Carolina law, by facsimile, computer, fiber optics, cable, or other similar communication devices, or such other manner which is reasonably calculated, as determined in the discretion of the Board, to provide personal notice to the Members entitled to notice. Such notice shall be delivered not less than ten (10) nor more than fifty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting.

In the case of a special meeting or when otherwise required by applicable law or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No other business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, computer, fiber optics, cable, or such other similar communication device, notice shall be deemed to be delivered when transmitted to the Member at his or her address or number as it appears on the Association's records. The failure of any Member to receive actual notice of a meeting of the Members shall not affect the validity of any action taken at such meeting.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, the Members who represent a majority of the votes present at the meeting may adjourn the meeting to a date not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

2.8 Attendance at Meetings/Voting. Any Member may be present at any meeting of the Members, but voting rights shall be allocated by Dwelling Unit, and if multiple Members represent a Dwelling Unit such Members shall come to a consensus on how to cast a given vote; provided, however, that during the Declarant Control Period, unless expressly provided in the Declaration or these By-Laws, all voting rights shall be vested exclusively in the Declarant and the Members shall have no voting rights. From and after the end of the Declarant Control Period, each Dwelling Unit shall be entitled to one (1) vote. Voting for Directors by the Members may be conducted by ballots mailed to the Members. Such ballots shall be returned to the Secretary by the date specified on the ballot. The Board shall determine the method of voting, the form of all ballots, the wording of questions thereon and the deadline for return of ballots. The Board may include on ballots any questions on which it seeks an advisory vote. Any other matters may be voted on by mail-in ballot to the extent not prohibited by applicable law.

2.9 Proxies. Members may vote in person or by proxy. Each proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Proxies may be delivered to the Secretary by personal delivery, U.S. mail or telecopy to any Board member or the professional management agent, if any. Unless otherwise provided in the proxy, a proxy shall cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be

valid more than eleven (11) months after its execution. Every proxy shall be revocable and shall automatically cease upon conveyance of the Dwelling Unit which the Member represents.

2.10 Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

2.11 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of the Members (in person or by proxy) representing at least twenty-five percent (25%) of the total votes in the Association shall constitute a quorum at all meetings of the Association.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting. All meetings shall be conducted in accordance with Roberts Rules of Order, as amended from time to time.

ARTICLE III

Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1 Governing Body: Composition. The affairs of the Association shall be governed by a board of Directors (the "Board"), each member of which (a "Director") shall have one (1) equal vote. Except with respect to Directors appointed by the Declarant during the Declarant Control Period, each Director shall be an Owner, a Member or a Resident of a Dwelling Unit who has completed, prior to being elected to the Board, such training and committee or other service requirements as may be established by the Board; provided, however, no more than one (1) representative from a Dwelling Unit may serve on the Board at the same time.

3.2 Number of Directors. The number of Directors shall be not less than three (3) nor more than five (5), as provided in Section 3.5. The initial Board shall consist of three (3) Directors as identified in the Articles of Incorporation.

3.3 Directors During Declarant Control Period. During the Declarant Control Period all of the Directors shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant. During the Declarant Control Period, the Declarant may from time to time appoint one(!) or more Owners to act as non-voting counselors to the Board or as voting members of the Board. Directors during the Declarant Control Period are not required to be Members.

3.4 Nomination of Directors. Except with respect to Directors appointed by the Declarant, nominations for election to the Board shall be made in accordance with policies and procedures established, from time to time, by the Board. Non-members are not eligible to serve on the Board after the expiration of the Declarant Control Period. Such policies and procedures may include, but are not limited to, requiring a specified number of signatures as a precondition to appearing on the ballot or permitting nominations through a Nominating Committee.

The Board shall establish policies and procedures for nominations no later than ninety (90) days prior to any election. Except with respect to "write-in candidates" or nominations made from the floor at any meeting, nominations shall be made no later than forty-five (45) days before the election shall be held.

The Board shall provide for as many nominations on each slate for election to the Board as it, in its discretion, shall determine.

For any election, the Board may, but shall not be obligated to, appoint a Nominating Committee. If appointed, the Nominating Committee shall consist of three (3) or more persons and a Chairperson, who shall be a member of the Board. The remaining members of the Nominating

Committee shall be Members or Residents.

3.5 Election and Term of Office. At the Initial Meeting of the Members, the Members shall elect a full Board of five (5) Directors. The three (3) candidates receiving the greatest number of votes shall each serve a two (2) year term and the two (2) candidates receiving the next greatest number of votes shall each serve a one (1) year term. Thereafter, each Director shall serve a two (2) year term. Each Director shall hold office until his term expires or until his successor shall have been elected and qualified. Directors may succeed themselves in office, but no Director shall serve more than three (3) terms in succession. In all elections for members of the Board, the Member for each Dwelling Unit shall be entitled to the number of votes equal to the number of Directors to be elected (cumulative voting shall not be permitted).

3.6 Removal of Directors/ Vacancies.

(a) Any Director may be removed, with or without cause, by action of the Members. Any Director whose removal is sought shall be given notice prior to any meeting called and noticed for that purpose. Upon removal of a Director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of such Director.

(b) Any Director who has three (3) consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the Directors present at a regular or special meeting of the Board at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term.

(c) In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.

B. Meetings.

3.7 Organizational Meetings. The Board shall hold a meeting within thirty (30) days after each annual meeting of the Members.

3.8 Meetings. Regular meetings of the Board may be held at such time and place as the Board shall determine, but at least one (1) such meeting shall be held each quarter. Special meetings of the Board shall be held when requested by the President, Vice President or any two (2) Directors.

3.9 Notice of Meetings. Notice of the time and place of a regular or special meeting shall be communicated to Directors as provided in this Section. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by one (1) of the following methods: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by facsimile, computer, fiber optics, or any such other communication device. All such notices shall be transmitted to the Director's acknowledged telephone or facsimile number, or acknowledged e-mail address or shall be sent to the Director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox not less than four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, facsimile, or other device shall be delivered, telephoned, or transmitted at least seventy-two (72) hours before the time set for the meeting.

3.10 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Quorum of Board of Directors. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12 Compensation. No Director shall receive any compensation from the Association for acting as such; provided however, any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

3.13 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of meetings of the Board, recording all resolutions adopted by the Board and all transactions and proceedings occurring at such meetings. All meetings shall be conducted in accordance with Roberts Rules of Order, as amended from time to time.

3.14 Attendance at Meetings by Members. Members may attend meetings of the Board only if, and to the extent, permitted by the Board in its discretion. It is not the intention that Members shall have the right to attend meetings of the Board in the same manner as provided for members of homeowner associations under the North Carolina Planned Communities Act. However, the Chairman of each Neighborhood Committee shall be given notice of, and the right to attend, each meeting of the Board for informational purposes only. Also, the Board shall hold informational meetings from time to time, but not less frequently than once each year, to which all Members shall be invited and at which the Board shall report to the Members on what the Board has worked on and accomplished since the preceding meeting and shall open the meeting for questions and comments from Members.

3.15 Action Without a Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the proceedings of the Board.

3.16 Telephonic Participation. One (1) or more Directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those Directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

C. Powers and Duties.

3.17 Powers. The Board shall have all of the powers and duties necessary and appropriate for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these By-Laws, or North Carolina law directed to be done and exercised

exclusively by the Members.

3.18 Duties. The duties of the Board shall include, without limitation:

(a) preparation and adoption of annual budgets and establishing each Owner's share of the Common Expenses, Limited Common Area Expenses, if any⁶⁸;

(b) levying and collecting assessments from the Owners to fund the Common Expenses, Limited Common Area Expenses, if any⁶⁹;

(c) levying and collecting Assessments;

(d) providing for the operation, care, upkeep, and maintenance of the recreational and other areas of common responsibility;

(e) providing for recreational, educational and social activities for the Members;

(f) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(g) depositing all funds received on behalf of the Association in a bank depository which the Board shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the Director's best business judgment, in depositories other than banks;

(h) making and amending rules and regulations, including use restrictions, and establishing penalties for infractions thereof;

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

(j) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas, and Neighborhood Facilities in accordance with the Declaration and these By-Laws;

(k) subject to limitations provided for in the Declaration, enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by the Board and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(l) obtaining and carrying property, liability and commercial crime insurance, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(m) paying all taxes and/or assessments which are or could become a lien on the Common Area or Neighborhood Facilities or a portion thereof;

(n) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

(o) keeping books with detailed accounts of the receipts and expenditures of the Association;

(p) making available (at a reasonable cost) to any prospective purchaser of a Dwelling Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Dwelling Unit, current copies of the Governing Documents and annual financial statements

⁶⁸ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

⁶⁹ Revised by Fifth Amendment to Declaration Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762

of the Association;

(q) permitting utility suppliers to use portions of the Common Areas and Neighborhood Facilities reasonably necessary to the ongoing development or operation of the Properties;

(r) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles, and these By-Laws; and

(s) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.19 Right of the Declarant to Disapprove Actions. During the Declarant Control Period, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the judgment of the Declarant, would tend to impair rights of the Declarant or its designees under the Declaration or these By-Laws, or interfere with development, construction or marketing of any portion of the Properties, or diminish the level of services being provided by the Association. This right to disapprove is in addition to, and not in lieu of, any right to approve or disapprove specific actions of the Association, the Board or any committee as may be granted to the Declarant in the Declaration or these By-Laws. During the Declarant Control Period, the following shall apply:

(a) The Declarant shall be given written notice of all meetings of the Association, the Board or any committee thereof, including Neighborhood Committees, and of all proposed actions of the Association, the Board or any committee thereof to be approved at such meetings or by written consent in lieu of a meeting. Such notice shall be given by certified mail, return receipt requested, by personal delivery at the address the Declarant has registered with the Secretary of the Association, as it may change from time to time, or by confirmed facsimile transmission at the facsimile number the Declarant has registered with the Secretary of the Association, as it may change from time to time, which notice complies with the requirements for Board meetings set forth in these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting.

(b) The Declarant shall be given the opportunity at each such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. The Declarant, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any officer or Director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions, but shall not extend to the requiring of any action or counteraction on behalf of any committee, the Board, or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented in accordance with these By-Laws. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20 Management. The Association shall have no compensated employees, other than the Lifestyle Director (for the purpose of overseeing social programs for Owners, as more

particularly described in other of the Governing Documents) and such persons as may be required for the staff of the Lifestyle Director, as determined in the Board's discretion. Notwithstanding the foregoing sentence, the Board may choose to hire a Lifestyle Director and their associated staff as independent contractors, as opposed to employees. It is acknowledged that until the end of the Declarant Control Period, the hiring and retention of a Lifestyle Director and their associated staff shall be within the discretion of Declarant, which may delegate this decision to the Association at its option. The Board may, but shall not be required to, contract with a professional management company at an amount established by the Board to perform such duties and services as the Board shall authorize for the Association; provided, however, that during the Declarant Control Period the management company may not be terminated by the Board without the prior written consent of the Declarant. The Declarant, or an affiliate of the Declarant, may be employed as the management company. The Board may delegate to such management company such powers as are necessary to perform its assigned duties, but shall not delegate policy making authority. The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the management company, if any, which might arise between meetings of the Board.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed; provided however, that any "shortage" shall be calculated on a cash basis of accounting as provided in the Declaration;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) the following financial and related information shall be regularly prepared by the

Board and copies made available to all Members of the Association at the expense of the Association:

(i) The Board shall cause a reserve budget and an expense budget (collectively referred to as the "Budget") for the Association (which shall include the budget for each of the Neighborhoods, if any, and all Common Areas and Limited Common Areas), to be prepared for each fiscal year of the Association. The Board shall post written notice in a prominent place within Carolina Preserve at Amberly that the Budget is available at the business office of the Association or at another suitable location within Carolina Preserve at Amberly. If any Member requests a copy of the Budget, the Association shall provide one (1) copy to the Member without charge by first-class United States mail and deliver such copy within seven (7) days of such request.

(ii) The Board shall cause an annual financial statement or annual audit report ("Financial Statement") to be prepared in accordance with generally accepted accounting principles within one hundred twenty (120) days after close of the Association's fiscal year. The Board shall post written notice in a prominent place within Carolina Preserve at Amberly that the Financial Statement is available at the business office of the Association or at another suitable location within Carolina Preserve at Amberly. If any Member requests a copy of the Financial Statement, the Association shall provide one (1) copy to the Member without charge by first-class United States mail and deliver such copy within seven (7) days of such request. The

Financial Statement shall consist of:

(A) a balance sheet as of the end of the fiscal year;

(B) an income and expense statement for the fiscal year (this statement shall include a schedule of assessments received and receivables identified by the numbers of the Dwelling Units and the names of the Owners assessed); and

(C) a statement of changes in financial position for the fiscal year.

Such Financial Statement shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant.

(iii) The Board shall do the following at least quarterly:

(A) cause a current reconciliation of the Association's operating accounts to be made and review the same;

(B) cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(C) review the current year's actual reserve revenues and expenses compared to the current year's Budget;

(D) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(E) review an income and expense statement for the Association's operating and reserve accounts; and

(F) review the delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent.

3.22 Borrowing. The Association, acting through its Board, shall have the power to borrow money for any legal purpose; provided, the Board shall obtain the approval by vote or written consent of Members representing at least a majority of the total votes if the proposed borrowing is for the purpose of making discretionary capital improvements or purchasing additional capital assets and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross Common Expenses of the Association for that fiscal year. No mortgage lien shall be placed on any portion of the Common Area or a Neighborhood Facility without the affirmative vote or written consent of Members representing at least a majority of the total votes of Dwelling Units entitled to use such portion.

3.23 Rights of the Association. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominium associations, cooperative associations, non-condominium homeowners associations and other owners or residents associations, both within and outside Carolina Preserve at Amberly.

3.24 Enforcement.

(a) Notice. Prior to imposition of any sanction as provided in the Declaration, the Board or, if so directed by the Board, the covenants committee, if any, is established by the Board pursuant to Article V, or the management agent shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that

the alleged violator may present a written request for a hearing to the Board or the covenants committee, if any, within fifteen (15) days of the notice; and a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received by the Board or the covenants committee, if any, within such time period. If a timely request for a hearing is not received by the Board or the covenants committee, if any, the sanction stated in the notice shall be imposed; provided the Board or the covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured or if a cure is diligently commenced within the fifteen (15) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted fifteen (15) day period, the hearing shall be held before the covenants committee, if any, or if none, before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. If a hearing is held before a covenants committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the management agent, President, or Secretary of the Association within fifteen (15) days after the hearing date.

3.25 Board Training. Each Director shall attend a Board training seminar within the first six (6) months he or she serves as a Director. Such seminar shall educate the Directors about their responsibilities and duties and may be live, video or audio tape, or other format. The Board shall offer the seminar at a time reasonably convenient for the subject Director. In conjunction with this requirement, prior to serving as a Director, each board member shall certify in writing that he or she has read and understands the Governing Documents.

3.26 Board Standards. In the performance of their duties, Directors and officers shall act as fiduciaries and are subject to insulation from liability provided for Directors and officers of corporations by North Carolina laws and as otherwise provided in the Governing Documents.

As defined herein, a Director shall be acting in accordance with the business judgment rules so long as the Director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly disclosed any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A Director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and non-discriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV

Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President, Vice President, Secretary, and Treasurer shall be elected from among the members of the Board; other officers may, but need not, be members of the Board. The Board may appoint such other officers, including without limitation, one (1) Master Delegate, one (1) or more Assistant Secretaries and one (1) or more Assistant Treasurers, as it shall deem desirable and as the affairs of the Association may require, each of

whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine. An officer may hold more than one (1) office at any given time, but there shall be no less than two (2) officers holding the offices of President, Vice President, Treasurer and Secretary at any given time.

4.2 Election and Term of Office. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following the election of Board members.

4.3 Removal and Vacancies. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting. The Secretary (or the managing agent) shall keep the minutes of all meetings of the Association and the Board and shall have charge of such books and papers as the Board may direct. In the Secretary's absence, any officer directed by the Board shall perform all duties incident to the office of secretary. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

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

4.6 Agreements, Contracts, Deeds, Leases, Checks, etc.; Amendments to Declaration. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board. The President and Vice President shall each have the authority to execute amendments to the Declaration on behalf of the Association. The Secretary, or its designee, shall prepare, certify and record amendments to the Declaration. Every amendment to the Declaration shall be recorded in Wake County and Chatham County, unless otherwise provided in G.S. § 47F-2-117.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of Directors under Section 3.12 hereof.

ARTICLE V **Committees Designated by the Board**

5.1 General. The Board may establish such committees and as it deems appropriate to perform such tasks and functions as the Board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, however, any committee member, including the committee chair, may be removed by the vote of a majority of the Directors. Each committee shall operate in accordance with the terms of the resolution establishing such committee.

5.2 Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a covenants committee consisting of at least three (3) and no more than seven (7) members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws. The Board may also appoint a subcommittee consisting

of at least three (3) and no more than seven (7) members to function as the jury or trier of facts for all hearings held pursuant to Section 3.24.

5.3 Modifications Committee. The Board shall appoint a Modification Committee as provided in Section 9.2 of the Declaration.

ARTICLE VI

Neighborhood Committees

6.1 Committee Members. Subject to Section 6.10 below, after the end of the Declarant Control Period each Neighborhood Committee shall consist of three (3) members (each a "Neighborhood Committee Member"). The Neighborhood Committee Members shall be elected by a vote of the Members who represent Dwelling Units in the Neighborhood, which vote shall be taken at the annual meeting of the Members of the Association. At the Initial Meeting (defined in Section 2.3 above) a full committee of three (3) members shall be elected. Each Member shall cast three (3) votes for each Dwelling Unit which he or she represents, but cumulative voting shall not be permitted. Each of the three (3) candidates receiving the highest number of votes shall each be elected as a Neighborhood Committee Member. Each Neighborhood Committee Member shall serve a one (1) year term. Each Neighborhood Committee Member shall hold office until his or her term expires or until his or her successor shall have been elected and qualified. A Neighborhood Committee Member may succeed himself or herself in office. After the end of the Declarant Control Period, each Neighborhood Committee Member shall be an Owner of, or Member which represents, a Dwelling Unit in the Neighborhood.

6.2 Term. Subject to Section 6.10 of these By-Laws, each Neighborhood Committee Member shall serve as such until his successor is elected and qualified.

6.3 Chairman. One (1) member of each Neighborhood Committee shall be appointed chairman of the Neighborhood Committee by a majority vote of the members of the Neighborhood Committee. The Chairman of each Neighborhood Committee shall receive notice of Board meetings and shall have the right to attend each Board meeting for the purpose of consulting with, and advising the Board of, matters relating to the Neighborhood which the Neighborhood Committee represents and the activities of the Neighborhood Committee.

6.4 Quorum. A majority of the Neighborhood Committee Members from time to time shall constitute a quorum. Except as otherwise expressly provided herein or in the Declaration, any action may be taken upon the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

6.5 Annual Meeting. Each Neighborhood Committee shall hold an annual meeting within ten (10) days after the annual meeting of the Members at such place as shall be fixed by the Neighborhood Committee Members at the annual meeting of the Members, and no further notice shall be necessary to such members in order legally to constitute such meeting, providing a quorum shall be present.

6.6 Regular Meetings. Regular meetings of a Neighborhood Committee shall be held at such time and place as shall be determined at the annual meeting or, from time to time, by a majority of the members of the Neighborhood Committee. Notice of regular meetings of the Neighborhood Committee shall be given to each Neighborhood Committee Member, personally or by mail, telephone, facsimile, or electronic mail, at least three (3) days prior to the day named for any such meeting and such notice shall state the time and place of such regular meeting.

6.7 Special Meetings. Special meetings of a Neighborhood Committee may be called by the chairman on three (3) days notice to each member, given personally or by mail, telephone, facsimile, or electronic mail, which notice shall state the time, place and purpose of the meeting. Special meetings of a Neighborhood Committee shall be called by the Chairman in like manner and on like notice on the written request of at least one-third (1/3) of the members then serving on the Neighborhood Committee.

6.8 Counseling Committees. Each Neighborhood Committee, by resolution adopted by the Neighborhood Committee, may designate one (1) or more counseling committees made up of members of Neighborhood Committee Members or Owners of Dwelling Units in the Neighborhood. Any such committee shall act in a counseling capacity only and shall not have the power to bind or speak for the Neighborhood Committee, the Board, or the Association. The duties and functions of any such counseling committee, its term, and its membership shall be provided from time to time by the Neighborhood Committee.

6.9 Powers. Each Neighborhood Committee shall consult with and advise the Board, in connection with the administration of the affairs of their Neighborhood and their Neighborhood Facility and shall have all of the powers set forth in the Declaration, plus such other powers as the Board may from time to time delegate to the Neighborhood Committee.

6.10 Declarant Control. During the Declarant Control Period, the rights, duties and powers of each Neighborhood Committee shall be exercised by the Declarant.

ARTICLE VII **Miscellaneous**

7.1 Fiscal Year. The fiscal year of the Association shall be July 1 through June 30 unless otherwise established by Board resolution.

7.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles, the Declaration, or these By-Laws.

7.3 Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

7.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Dwelling Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Dwelling Unit: the Declaration, By-Laws, and Articles, any amendments to the foregoing, the rules of the Association, the membership register, the most recent Financial Statement, the current Budget, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make a copy of relevant documents at the expense of the Association in furtherance of such Director's duties as a Director.

7.5 Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage

prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Dwelling Unit of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

7.6 Indemnification. The Association shall indemnify every officer, Director, and committee member against all expenses, including counsel fees, reasonably incurred by them and each of them in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, Director, or committee member of the Association.

The officers, Directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Directors 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. The Association shall indemnify and forever hold each such officer, Director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, Director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and Directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7 Amendment.

(a) **By Declarant.** During the Declarant Control Period, Declarant may unilaterally amend these By-Laws for the same purposes as it may amend the Declaration, as provided therein. Thereafter, these By-Laws may be amended in accordance with Section 7.7(b).

(b) **By Board.** Except as provided above, these By-Laws may be amended only by resolution duly adopted by the Board and, during the Declarant Control Period only, consented to in writing by the Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective when adopted unless otherwise provided in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its adoption or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

During the Declarant Control Period, no amendment may remove, revoke, or modify any power, right or privilege of Declarant without the written consent of Declarant or the assignee of any such power, right or privilege.

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.

ⁱ “The Declaration is further amended to remove any reference to Neighborhoods, Neighborhood Assessments, Neighborhood Declarations, Neighborhood Expenses, and Neighborhood Representatives” Various definitions and text have been removed as revised by the Fifth Amendment to the Declaration- Section 6 as recorded in Wake County Book 015457 Page 01959 and Chatham County Book 1711 Page 0762.