

BK012179PG00647

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PRESENTED & RECORDED ON  
09/22/2006 AT 12:43:02

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BOOK:012179 PAGE:00647 - 00716

DECLARATION OF PROTECTIVE COVENANTS

FOR

JAMISON'S RUN

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DECLARATION OF PROTECTIVE COVENANTS

FOR

JAMISON'S RUN

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EXHIBIT "D" STORMWATER MAINTENANCE PLAN

DECLARATION OF PROTECTIVE COVENANTS

FOR

JAMISON'S RUN

**THIS DECLARATION** is made on the date hereinafter set forth by **KB HOME RALEIGH-DURHAM LLC**, a Delaware limited liability company (hereinafter sometimes called "Declarant");

**WITNESSETH**

**WHEREAS**, Declarant is the owner of the real property described in Exhibit "A" attached hereto and by this reference incorporated herein; and

**WHEREAS**, Declarant desires to subject the real property described in Exhibit "A" hereof to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

**NOW, THEREFORE**, Declarant hereby declares that the real property described in Exhibit "A" attached hereto and by this reference incorporated herein is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

Article 1  
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration, shall have the following meanings:

1.1 "Articles of Incorporation" means the Articles of Incorporation of Jamison's Run Community Association, Inc., filed with the North Carolina Secretary of State and incorporated herein by this reference as may be amended from time to time.

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1.2 "Association" means Jamison's Run Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

1.3 "Board of Directors" or "Board" means the appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Non-Profit Corporation Law of the State of North Carolina.

1.4 "Bylaws" means the Bylaws of Jamison's Run Community Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference as may be amended from time to time.

1.5 "Common Property" means any and all real and personal property, and the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.6 "Community" refers to that certain real property described in Exhibit "A", attached hereto, and such additions thereto as may be made by Supplementary Declaration as provided herein.

1.7 "Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

1.8 "Declarant" means **KB HOME RALEIGH-DURHAM LLC**, a Delaware limited liability company, and its successors-in-title and assigns; provided that in a recorded instrument executed by the Declarant and the successor Declarant, such successor-in-title or assignee is designated as the Declarant hereunder by the holder of all of the rights of Declarant hereunder.

1.9 "Lot" means any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site, as shown on the recorded subdivision plat(s) for the Community. The ownership of each Lot shall include, and there shall automatically pass with the title to each Lot as an appurtenance thereto membership in the Association and all rights and interest of an Owner in the Common Property.

1.10 "Mortgage" means any and all instruments used for the purpose of encumbering or conveying title to real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.11 "Mortgagee" means the holder of a Mortgage.

1.12 "Occupant" means any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

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1.13 "Owner" means the record owner, whether one or more Persons, of the fee simple title to any Lot within the Community but does not include any Mortgagee.

1.14 "Person" includes any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under North Carolina law.

1.15 "Stormwater Maintenance Plan" means that certain Operations/Maintenance Manual and Budget for Jamison's Run Subdivision, Dry Detention Ponds, dated April 10, 2006, prepared by Spaulding & Norris, P.A., and attached hereto as Exhibit "D" and by this reference incorporated herein, for the maintenance of the stormwater control devices for the Community.

1.16 "Supplementary Declaration" means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes additional covenants, conditions, restrictions or easements on the land described therein.

1.17 "Total Association Vote" means the votes attributable to the entire membership of the Association as of the record date for such action (including votes of the Declarant), whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a majority vote is required to approve a matter (and the term Total Association Vote is not used), such matter must receive more than half of the votes cast by the members present and entitled to vote on the matter.

Article 2

Property Subject To This Declaration

2.1 Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is the real property described in Exhibit "A" attached hereto and by this reference made a part hereof.

2.2 Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until ten (10) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B" attached hereto and by this reference incorporated herein, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public records of the county where the Community is located a Supplementary Declaration describing the property being subjected. Declarant intends to annex hereto the property contained in Declarant's development plan for the development as amended from time to time which property is a portion of the property described in Exhibit "B".

However, inclusion of property on Declarant's development plan or in Exhibit "B" shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial development plan bar Declarant from subjecting such property to the Declaration. Any annexation shall be effective upon the filing for record of a Supplementary Declaration executed by the Declarant unless a later effective date is provided therein. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property. If any land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

2.3 Other Annexation. Upon the written consent of: (a) the owner(s) thereof; (b) the Declarant; and (c) the Owners of at least two-thirds (2/3) of the Lots, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the public records of the county where the Community is located a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be executed on behalf of the Association by the President of the Association whose signature shall be attested by the Secretary of the Association. The annexation shall be effective only upon the filing for record of such Supplementary Declaration, unless a later effective date is provided therein.

2.4 Withdrawal of Property. Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the Community then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community. Such amendment shall not require the vote or consent of members of the Association.

### Article 3 Association Membership and Voting Rights

3.1 Membership. Every Person who is the record owner of a fee or undivided fee interest in any Lot subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Mortgagees and the conveyance of a security interest shall not terminate the Owner's membership. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the designee of a member, but in no event shall more than one (1) office be held for each Lot owned. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association. Nothing in this Section shall restrict the number of votes cast or the number of the officers and directors appointed by the Declarant.



3.2 Voting. Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one (1) Person seeks to exercise it. The Board of Directors may suspend the voting rights of an Owner for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations.

3.3 Notice of Sale, Lease or Acquisition. Prior to the sale or lease of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser or lessee, as the case may be, and such other information as the Board may reasonably require. Upon acquisition of a Lot each new Owner shall provide the Association with written notice of the name and mailing address of the Owner and such other information as the Board may reasonably require.

#### Article 4 Assessments

4.1 Purpose of Assessments. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

4.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. Each such assessment, together with late charges, interest, costs, reasonable attorney's fees actually incurred and any Administrative Fee (as defined below), shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

Assessments shall be paid at a uniform rate per Lot in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of assessments for delinquents; provided however, (a) notwithstanding any provision in this Declaration to the contrary, assessments to pay a judgment against the Association may be made only against the Lots in the Community at the time the

judgment was entered; and (b) if any common expense is caused by the negligence or misconduct of any Owner or Occupant, the Association may assess the expenses exclusively against that Owner or Occupant's Lot. Unless otherwise provided by the Board, assessments shall be paid in annual installments. The Board may charge each Owner a service, collection, consulting or administration fee (an "Administrative Fee") in an amount to be determined by the Board from time to time in connection with the assessment and collection of the assessments provided for in this Declaration.

All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, costs, reasonable attorney's fees actually incurred and any Administrative Fee, as provided herein, when remaining unpaid for thirty (30) days or longer, shall be secured by a lien on such Lot in favor of the Association when the Association files a claim of lien in the office of the register of deeds of the county where the Lot is located in the manner provided by law, if filing of such lien is required by law, otherwise such lien shall automatically attach. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (i) liens and encumbrances recorded before the docketing of the claim of lien, and (ii) liens for real estate taxes and other governmental assessments and charges against the Lot. This Section does not affect the priority of mechanics' or materialmen's liens.

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

**4.3 General Assessments.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessment to be levied against each Lot for the year (or portion thereof in the case of the initial budget) and a notice of the meeting to consider ratification of the budget (which notice shall include a statement that the budget may be ratified without a quorum being present) to be provided to each member no more than thirty (30) days after the adoption of the budget. The date of the meeting of the members to consider ratification of the budget shall be not less than ten (10) days nor more than sixty (60) days after mailing of the budget and notice. There shall be no requirement that a quorum be present at the meeting. The meeting shall be held at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The budget is ratified and the assessment shall become effective unless disapproved at a meeting by at least seventy-five percent (75%) of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, the budget last ratified shall be continued until a new budget is ratified. Any surplus funds of the Association remaining after payment of or provision for the operating expenses of the Association, the funding of a reasonable operating expense surplus, and any prepayment of reserves may or may not be refunded or credited to the Owners in the discretion of the Board, but may be Association funds for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this

Declaration and the Bylaws. Unless otherwise provided by the Board, the general assessment shall be paid in one (1) annual installment. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

The monthly costs of operating the Association may fluctuate dramatically during each budget year. Therefore, the Board is not required to prorate the assessment obligation of any Owner who has not lived in the Community for a full year. For example, if the bulk of the costs of operating the Association are likely to be incurred in the summer months, any Owner moving into the Community after the beginning of the budget year but prior to the summer months may be required to pay full assessments.

4.4 Special Assessments. The Association may levy a special assessment if approved by two-thirds (2/3) of the Total Association Vote and the Declarant. Special assessments shall be paid as determined by the Board. The Board may permit a special assessment to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.5 Specific Assessments. The Board shall have the power to levy specific assessments as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. The Board of Directors may also specifically assess Owners for Association expenses as follows: (a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

4.6 Subordination of Liens to Mortgages. The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the property pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve an Owner of the personal

obligation to pay all assessments coming due during such period of ownership; shall not relieve such property from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of any personal obligation or relieve such property or the then Owner from liability for any assessment authorized hereunder become due after such sale and transfer.

4.7 Remedies of the Association. Any sums (including assessments or installments thereof) assessed against any Lot pursuant to this Declaration which are not paid when due shall be delinquent. Any such sums delinquent for a period of more than ten (10) days shall incur a late charge in such amount as the Board may from time to time determine (not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of any installment unpaid). The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date (the "Delinquency Notice"). The Delinquency Notice shall state: (i) the outstanding balance due as of the date of the Delinquency Notice; (ii) that the member has fifteen (15) days from the mailing of the Delinquency Notice (the "Grace Period") to pay the outstanding balance without being required to pay attorneys fees and court costs; (iii) the name of and contact information for a representative of the Association whom the member can contact to discuss a payment schedule for the outstanding balance; provided however, the Association shall not be required to permit payment of the outstanding balance in installments; and (iv) that if the outstanding balance is not paid within the Grace Period, the Association intends to seek payment of attorneys' fees and court costs. The Delinquency Notice must be sent by first class mail to the Lot of such member and, if different, to the mailing address of the member in the Association's records. If any such sums are not paid within thirty (30) days after the due date, the Board may accelerate and declare immediately due all such sums (including annual assessments or installments thereof) without any further notice being given to the delinquent Owner, and (i) to the extent permitted by applicable law, a lien, as herein provided, shall attach; and (ii) a claim of lien, as herein provided, may be filed in the office of the register of deeds of the county in which the Lot is located in the manner provided by law. Such lien shall include the late charge, interest on the principal amount due at a rate not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum, all late charges from the date first due and payable, any Administrative Fee, all costs of collection, and, if the Owner has been provided with a Delinquency Notice and failed to pay the outstanding balance set forth therein within fifteen (15) days from the mailing of the Delinquency Notice, court costs and reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. Notwithstanding anything to the contrary in this Declaration, if a member does not contest the collection of the unpaid assessments and enforcement of a lien after the expiration of the Grace Period, then reasonable attorneys fees collected by the Association in connection with such debt shall not exceed One Thousand Two Hundred and No/100 dollars (\$1,200.00) not including costs or expenses incurred; provided however, such limitation shall not apply to judicial foreclosures or to proceedings authorized under Section 116 (d) or Section 120 of Article 3 of Chapter 47F of the North Carolina General Statutes. The collection of the unpaid assessments and enforcement of the lien shall be deemed uncontested as long as the member does not dispute, contest or raise any objection, defense,

offset or counterclaim as to the amount or validity of the unpaid assessments and lien asserted or the Association's right to collect the debt and enforce the lien.

If any sum assessed against any Lot pursuant to this Declaration remains unpaid after sixty (60) days from the due date, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. The Association may foreclose the claim of lien in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes or in any other manner permitted by applicable law; provided however, (i) the Association may not foreclose the lien under Article 2A of Chapter 45 of the North Carolina General Statutes if the debt securing the lien consists solely of fines imposed by the Association, interest on unpaid fines, or attorneys fees incurred by the Association solely associated with fines imposed by the Association (such lien may be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes); and (ii) any lien securing debt consisting solely of Administrative Fees may only be enforced by judicial foreclosure as provided in Article 29A of Chapter 1 of the North Carolina General Statutes. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents, to the extent permitted by this Declaration and applicable law, the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes; or in any other manner permitted by applicable law. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance or order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to late charges, then interest and then to delinquent assessments.

4.8 Date of Commencement of Assessments. Assessments shall commence in general when the Board of Directors first determines a budget and levies assessments. The assessments provided for herein shall commence as to a particular Lot on the first to occur of the date that the Lot is first occupied for residential purposes; or is conveyed by the Declarant to an Owner who is not a builder approved by Declarant or a successor Declarant. A Lot shall be occupied for residential purposes when it has been improved with a dwelling and has been conveyed to an Owner who intends to occupy the dwelling, or, if the dwelling is occupied as a residence before

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such conveyance, the date of such occupancy. Any Lot which has been approved by Declarant for use as a model home for marketing and sales purposes shall not be deemed to be occupied for residential purposes and shall not be subject to assessments under this Declaration whether owned by Declarant or any other Person, so long as such Lot is approved for use as a model home and is not occupied for residential purposes.

4.9 Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may: (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves), and the sum of the general, special and specific assessments collected by the Association in any fiscal year (such advances shall be evidenced by promissory notes from the Association in favor of the Declarant); or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for similar loans in the local area of the Community. No Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan. Notwithstanding anything to the contrary herein, the Declarant and its affiliates may contribute assessments due from them in services or materials or a combination of services and materials, rather than in money (herein collectively called "in kind contribution"). The amount by which monetary assessments shall be decreased as a result of any in kind contribution shall be the fair market value of the contribution. If the Declarant or its affiliates, as the case may be, and the Association agree as to the value of any contribution, the value shall be as agreed. If the Association and the Declarant or its affiliates, as the case may be, cannot agree as to the value of any contribution, the Declarant or its affiliates, as the case may be, shall supply the Association with a detailed explanation of the service performed and material furnished, and the Association shall acquire bids for performing like services and furnishing like materials from three (3) independent contractors, approved by the Declarant or its affiliates, as the case may be, who are in the business of providing such services and materials. If the Association and the Declarant or its affiliates, as the case may be, are still unable to agree on the value of the contribution, the value shall be deemed to be the average of the bids received from the independent contractors.

4.10 Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

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

4.12 Initiation Fee. Upon the first sale of each and every Lot after it has been improved with a residence for which a certificate of occupancy has been issued, an initiation fee in the

amount of One Hundred Fifty and No/100 Dollars (\$150.00) shall be collected from the purchaser at the closing of such sale for the benefit of the Association, shall be placed in a specially designated reserve account and shall be for the purpose of insuring that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors.

Article 5

Maintenance; Common Property

5.1 Association's Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair and replacement of all landscaping and improvements situated on the Common Property. The Association shall also maintain (whether or not constituting Common Property): (a) all Community entry features whether or not such entry features are on a Lot, privately owned property or public right-of-way, including entry area landscaping and any irrigation system and the expenses for water and electricity, if any, provided to all such entry features; (b) all Community green space and open space; (c) all storm water detention/retention ponds and storm water drainage facilities serving the Community, if and to the extent the same are not maintained on an ongoing basis by a government body, and otherwise in accordance with the Stormwater Maintenance Plan; and (d) pedestrian paths or walking trails located in the Community, if any. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or outside the Community and to enter into easements and covenant to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, shall be assessed against the Owner as a specific assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard.

5.2 Owner's Responsibility. Except for maintenance performed on a Lot by the Association pursuant to Section 5.1, if any, all maintenance of the Lot and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; and repairing and painting (or other appropriate external care) of improvements located on a Lot. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and

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expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof or in an emergency situation, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject, shall, to the extent permitted by applicable law, become and be a lien against the Lot, and shall be collected as provided herein for the collection of assessments.

5.3 Conveyance of Common Property to Association; No Implied Rights. Declarant may transfer or convey to the Association at any time and from time to time any personal property and any interest in improved or unimproved real property. Such conveyance shall be deemed to be accepted by the Association upon delivery of any personal property or upon recordation of an instrument of conveyance of any interest in real property, and the property shall thereafter be Common Property to be used and, if and as provided in Section 5.1 hereof, maintained by the Association for the benefit of its members. So long as Declarant owns any property primarily for development and/or sale in the Community or Declarant has the right unilaterally to annex additional property to the Declaration, Declarant may, upon written notice to the Association, require the reconveyance by the Association to Declarant of any Common Property or any portion thereof, improved or unimproved, at no charge to Declarant, without a vote of the Owners/members of the Association, if the Common Property or portion thereof is: (i) found by Declarant to have been conveyed in error, (ii) needed by Declarant to make adjustments in property boundary lines, or (iii) reasonably determined by Declarant to be needed by Declarant due to changes in the overall scheme of development for the Community. The Association hereby constitutes and appoints Declarant as its agent and attorney-in-fact to accept/make on behalf of the Association any such conveyance and reconveyances and to execute on behalf of the Association any and all documents, including, without limitation, deeds, necessary or convenient to effectuate and document any such conveyances and reconveyances, and all acts of such attorney-in-fact are hereby ratified. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise. The Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section and shall have no duty or obligation to convey any property or property rights to the Association regardless of whether or not any such property has been made available for the use of Owners. Declarant may reserve, by lease, license, easement or otherwise such rights of use and enjoyment in and to all or any portion of the property so conveyed as Declarant may reasonably require so long as such reservation is not materially inconsistent with the overall scheme of development for the Community. Neither the recordation of any subdivision plat nor the use by the Owners or maintenance by the Association of any property shall create any rights, easements or licenses, in the Association or the Owners, express or implied, unless and until any such property rights, easements or licenses are conveyed by the Declarant or the owner of such property to the Association or the Owners, as the case may be, by an instrument recorded in the public records of the county where the Community is located.



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5.4 Partition. The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.5 Condemnation. In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within sixty (60) days after such taking, an alternative plan is approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of the Declarant. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.6 Liability. Owners, Occupants and their guests shall use the Common Property and open space maintained by the Association at their own risk and shall assume sole responsibility for their personal belongings used or stored there. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on any of the foregoing property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association or from any portion of the Common Property, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant.

Article 6  
Architectural Standards

6.1 General. No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement, and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless installed by the Declarant or an affiliate of the Declarant, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder. However, modifications to the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior doors and shutters of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant or its affiliates, nor to improvements to the Common

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Property by or on behalf of the Association; provided, however, this Article shall apply to any otherwise unaffiliated builder under this Declaration. This Article may not be amended without the written consent of the Declarant until (a) the Declarant no longer has the right to unilaterally annex additional property to the Community; and (b) each Lot has been improved with a dwelling for which a certificate of occupancy has been issued.

6.2 Architectural Control Committee. The Architectural Control Committee ("ACC") of the Association shall consist of three (3) members. Until Declarant's rights are terminated in accordance with Section 11.5 of this Declaration, the Declarant shall have the right to appoint and remove the members of the ACC. Prior to the termination of the rights of Declarant hereunder, the ACC may in its sole discretion relinquish architectural control as to certain types of improvements or modifications to an advisory ACC while retaining control over all other building and construction in the Community. For example and without limitation, the ACC may relinquish control over modifications of existing structures to an advisory ACC while retaining all authority to review and approve new home construction. Any right, power or authority of the ACC which may be relinquished to the Association prior to the termination of the rights of Declarant hereunder shall be by written recorded instrument only and no such right, power or authority shall be relinquished by implication or otherwise. The establishment of an advisory ACC shall not be deemed to be a relinquishment by Declarant of any of its right, power and authority hereunder.

Upon the termination of all rights of Declarant hereunder, the Board of Directors shall appoint an ACC, which shall have all such jurisdiction over architectural control within the Community under this Article.

6.3 Guidelines and Procedures. Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the ACC. Such plans and specifications shall be of sufficient detail to allow the ACC to make its review and, to the extent required by the ACC, shall show the nature, kind, shape, height, materials and location of the proposed improvement. The ACC may adopt written design and development guidelines and application and review procedures (the "Architectural Guidelines"). The ACC shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the Architectural Guidelines. The ACC shall make the Architectural Guidelines available to Owners and builders who seek to engage in construction upon all or any portion of the Community and such Owners and builders shall conduct their operations strictly in accordance therewith. If the ACC fails to approve or to disapprove submitted plans and specifications within thirty (30) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the ACC, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ACC shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions.

The ACC and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within twelve (12) months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the ACC for reconsideration.

6.4 Limitation of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the ACC assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither the ACC, the Association, nor the officers, directors, members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against the ACC, the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.5 No Waiver. The approval of the ACC of any proposals plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.6 Variances. Notwithstanding anything to the contrary contained herein, the ACC shall be authorized to grant individual variances from any of the provisions of this Declaration and the Architectural Guidelines if it determines that waiver of application or enforcement of the provision in a particular case is dictated by unique circumstances, such as, but not limited to, topography, natural obstructions, hardship, aesthetic considerations or environmental considerations and would not be inconsistent with the overall scheme of development for the Community. No variance shall (a) be effective unless in writing, (b) be inconsistent with the overall scheme of development for the Community, or (c) prevent the ACC from denying a variance in other similar circumstances. For purposes of this provision, the inability to obtain approval of any governmental agency or the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.7 Enforcement. Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ACC, an Owner shall, at its own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work.

Should an Owner fail to remove and restore as required, the ACC and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a specific assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the ACC from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the ACC, the Association or the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this Article. In addition to any other remedies available to the ACC, in the event of noncompliance with this Article, the ACC may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the ACC shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

Article 7  
Use Restrictions and Rules

7.1 Rules and Regulations. The Board of Directors may, from time to time, with the consent of Declarant and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote and the consent of Declarant.

7.2 Residential Use. Each Lot shall be used for single-family residential purposes exclusively. For the purposes of this restriction a "single-family" means a group of individuals related by blood, marriage, adoption, or guardianship, or not more than six (6) persons not so related, living together as a single housekeeping unit. Leasing of a Lot for single-family residential occupancy shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant in residence at the Lot may conduct business activities within the dwelling so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-

time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity.

7.3 Leasing. Lots may be leased for single-family residential purposes. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association and obligate the Occupants to comply with the foregoing.

7.4 Signs. No sign of any kind shall be erected or displayed within the Community without the prior written approval under Article 6 hereof. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure. Notwithstanding anything provided herein to the contrary, no sign shall be displayed on or from within any structure on a Lot.

7.5 Vehicles; Parking. Vehicles shall be parked only in appropriate parking areas serving the Lot or other designated areas, if any. All parking shall be subject to such rules and regulations as the Board may adopt. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term "parking areas" shall refer to the number of garage parking spaces and if and only if, the Occupants of a Lot have more vehicles than the number of garage parking spaces, those excess vehicles which are an Occupant's primary means of transportation on a regular basis may be parked on the driveway on the Lot. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community by the Board of Directors. Any towed vehicle, boat, personal water craft, recreational vehicle, motor home, trailer, motorcycle, minibike, scooter, go-cart, golf cart, commercial truck, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage or other area designated by the Board, for periods longer than twenty-four (24) hours may be removed from the Community by the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. Commercial vehicles may not be visibly parked or stored on any Common Property or any Lot. Construction, service, and delivery vehicles are exempt from this provision while providing service or making a delivery to a Lot or the Common Property. Commercial vehicles are defined as any type of vehicle used for a specific business or commercial purpose; bearing any indicia of commercial use, including but not limited to, writings, logos, or signage of a business or commercial nature; equipped with external racks, ladders, or tool boxes; or having visible work equipment stored in or on the vehicle. It is the Lot Owner's responsibility to see that their guests and tenants obey the vehicle parking rules and restrictions.

7.6 Animals and Pets. No animals, livestock or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof.

7.7 Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, screaming, shouting, excessively loud talking, fighting, raucous behavior, insobriety, playing loud music or television, use of any alarm, equipment, or device, mechanical or otherwise which creates or produces excessively loud sounds or any vibrations, or any conduct which creates any noxious or offensive odors outside a home shall be permitted, located, used or placed on any Lot, or any portion thereof. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be such as would affect an ordinary, reasonable person as determined in a particular instance by the Board.

7.8 Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.9 Antennas. No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install the following on a Lot: (a) antennae designed to receive direct broadcast satellite services, including direct-to-home satellite services or to receive or transmit fixed wireless signals via satellite, that are one meter or less in diameter; (b) antennae designed to receive video programming services via multi-point distribution services or to receive or transmit fixed wireless signals other than via satellite that are one meter or less in diameter or diagonal measurement; or (c) antennae that are designed and intended to receive television broadcast signals. Owners shall install any permitted antennae on the rear of the dwelling unless an acceptable quality signal cannot otherwise be obtained.

7.10 Tree Removal. No trees that are more than four (4) inches in diameter at a point twelve (12) inches above the ground and no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot without prior written approval pursuant to Article 6 hereof. Owners shall also comply with any local ordinance and zoning condition applicable to tree removal. In the event of a conflict between the provisions of this Section and any local ordinance or zoning condition, the more restrictive provision shall govern. This provision shall not apply to the removal of trees by the Declarant or the Association.

7.11 Drainage. Catch basins, retention ponds, detention ponds, drainage swales and drainage easement areas are for the purpose of controlling the natural flow of water only. No obstruction or debris shall be placed in these areas. Owners shall not obstruct or alter the drainage flows within the Community after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. All rubbish, trash and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right for itself to dump and bury rocks on property within the Community as needed for efficient construction; provided, however, such rocks shall not be buried in the buildable area of a lot. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community except by the Declarant.

7.14 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval in accordance with the provisions of Article 6 hereof. Declarant, however, hereby expressly reserves the right to subdivide and/or revise and re-record the subdivision plat of any Lot(s) with the consent of the Owner of the affected Lot(s) and to approve the revision and re-recording of any plat of any Lot(s) owned by any builder or developer, including, but not limited to, changing any Lot to Common Property or creating a public or private street over any Lot or property that was formerly a Lot, without the consent of any Person, other than the Owner(s) of such property.

7.15 Firearms. The use or discharge of firearms in the Community is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns and other guns of any type, regardless of size.

7.16 Fences. Except as herein provided, no fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof. Guidelines detailing acceptable fence styles

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or specifications may be issued pursuant to Article 6, but in no event may a chain link or barbed wire fence be approved; provided, however, the Declarant and the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

7.17 Utility Lines. Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community, except for temporary lines as required during construction and lines installed by or at the request of the Declarant.

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

7.19 Lighting. Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) one decorative post light; (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; (e) front house illumination of model homes; or (f) other lighting approved under and pursuant to Article 6 hereof.

7.20 Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any Lot. Exterior sculpture, fountains, flags or similar items must be approved under and pursuant to Article 6 hereof.

7.21 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Declarant or the ACC, as the case may be, in accordance with the provisions of Article 6 hereof.

7.22 Swimming Pools. No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.23 Gardens, Play Equipment and Garden Pools. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals) or garden pool shall be erected on any Lot without the prior written approval in accordance with the provisions of Article 6 hereof.

7.24 Mailboxes. All mailboxes serving Lots shall be approved in accordance with the provisions of Article 6 hereof. Identical replacement mailboxes may be installed without further approval; but no modification to or change in mailboxes may be made unless approved in accordance with the provisions of Article 6 hereof.

7.25 Clotheslines. No exterior clotheslines of any type shall be permitted upon any Lot.



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7.26 Entry Features. Owners shall not alter, remove or add improvements to any entry features constructed by the Declarant or a builder approved thereby on any Lot, or any part of any easement area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.27 Window Treatments. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white, off-white or neutral in color, or, in the event of wooden blinds or shutters, natural or lightly stained wood.

7.28 Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure may be used as a residence, either temporarily or permanently, without written approval in accordance with the provisions of Article 6 hereof. However, this Section shall not be construed to prevent Declarant and those engaged in development, construction, marketing, property management or sales in the Community from using sheds, trailers or other temporary structures for any of the foregoing purposes. In addition, nothing in this Declaration shall be construed to prevent Declarant from developing, constructing, marketing, or maintaining model homes or speculative housing within the Community.

7.29 Buffer Areas and Protective Yards. Except with prior written approval pursuant to Article 6 hereof, any area shown on any recorded subdivision plat(s) for the Community as a "Buffer Area" or a "Protective Yard" shall be left in an undisturbed, natural state and no improvements may be constructed, erected, placed or allowed to remain thereon except utility lines and easements and pedestrian and vehicular access ways (including streets and roads); provided, however, Declarant and the Association and the Owner of any Lot adjacent to such areas (with prior written approval pursuant to Article 6 hereof) may mow, plant trees, flowers and shrubs in such areas, subject to further provisions of this paragraph. In addition to the requirements of the Declaration, Buffer Areas and Protective Yards are subject to ordinances and regulations imposed by the City of Raleigh; therefore, the consent of the City of Raleigh Authorities may be required for certain activities. For all areas within the Community designated as "Neuse Riparian Buffers" (hereafter "NRBs"), all Owners, the Declarant and the Association shall abide by all local, state and federal regulations concerning such NRBs, including, but not limited to, those rules contained in the North Carolina Administrative Code at 15A N.C.A.C. §§ 2B.0233 through .0242.

7.30 Stream and Wetlands Buffer. Land-disturbing activities, including without limitation, the removal of vegetation and trees, shall not be conducted within any stream or wetlands buffer area within the Community, if any, as shown on any recorded subdivision plat(s), except with prior written approval under Article 6 hereof and compliance with North Carolina law, including, without limitation, the Raleigh City Code.

7.31 Wetlands, Ponds and Streams. All ponds, streams, wetlands and storm water retention or detention ponds within the Community shall be aesthetic amenities used for storm water drainage only; no other use thereof, including, without limitation, fishing, boating,

swimming, ice skating, playing, or use of personal floatation devices, and other recreation, shall be permitted without the written consent of the Board of Directors. The Association and/or the Declarant shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the wetlands, ponds or streams within the Community. For this purpose, "wetlands" means any area labeled as wetlands on a recorded plat(s) for the Community or otherwise designated as wetlands by the Declarant or the Board of Directors. No Owner shall have any right to place rocks, stones, trash, garbage, sewage, waste water, rubbish, debris, ashes or other refuse in any wetlands, ponds or streams within the Community. Applicable governmental agencies, the Declarant and the Association shall have the sole right to control the water level of any body of water located within the Community and to control the growth and eradication of plants, fowls, reptiles, animals, fish and fungi in and around any wetlands, ponds and streams within the Community. Owners shall have no riparian or littoral rights with respect to the waters in any pond or stream within the Community and shall not be permitted to withdraw water from any pond or stream as may exist in the Community without the prior written consent of the Board of Directors.

7.32 Pedestrian Paths. Except as herein provided, pedestrian paths within the Community, if any, shall be used as foot paths only. Unless otherwise determined by the Board of Directors, bicycles, roller blades, skate boards, go-carts, minibikes, scooters or motorcycles, with or without electric motors, or similar wheeled means of transportation or recreation shall not be permitted on the paths in the Community. Provided, however, this provision shall not prohibit the use of a path by any person with a disability by the use of a wheelchair or other necessary transportation device, and further provided that the Board of Directors may adopt such rules as may be deemed appropriate concerning the use of the paths. This provision shall not apply to concrete sidewalks located along the public streets within the Community, if any.

Article 8  
Insurance and Casualty Losses

8.1 Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain all insurance required by Chapter 47F of the North Carolina General Statutes or any other applicable law. Without limiting the generality of the foregoing, the Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements located on the Common Property or required to be maintained by the Association under Article 5 hereof (a "Property Insurance Policy"). This insurance shall cover all risks, loss or damage commonly insured against including, without limitation, fire or other hazards, including extended coverage, vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all risk" coverage in like amounts.

If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Property (a "Liability Policy"). The Liability Policy shall have a

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combined single limit of at least One Million and NO/100 Dollars (\$1,000,000.00). If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

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

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

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

coverage and flood insurance, if and to the extent necessary to satisfy the requirements of The Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

8.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on all structures located on such Owner's Lot and a liability policy covering damage or injury occurring on the Owner's property. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times.

8.3 Damage and Destruction -- Insured by Association.

(a) In General. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessary to comply with applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to property required to be covered by insurance written in the name of the Association shall be repaired or reconstructed unless, (i) the Community is terminated, (ii) repair or reconstruction would be illegal under any state or local health or safety statute or ordinance, or (iii) within sixty (60) days after the casualty, at least eighty percent (80%) of the Total Association Vote and the Owner or Owners of any damaged Lot or Lots otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the insurance proceeds attributable to the damaged Common Property shall be used to restore it to its natural state and it shall be maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition. The remainder of the insurance proceeds, if any, shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all Lots.

8.4 Damage and Destruction -- Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction.

Article 9  
Mortgage Provisions

9.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any 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 an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Audit. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

9.3 No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Article 10  
Easements

10.1 General. Each Lot shall be subject to those easements, if any, shown or set forth on the recorded subdivision plats for the Community, as amended from time to time as well as the easements now or hereafter established by the Declarant in this Declaration or by any other document recorded in the public records of the county where the Community is located.

10.2 Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

(a) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Common Property for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;

(b) the right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least eighty percent (80%) of the Lots (other than Declarant) and the consent of Declarant, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community (Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of Declarant or any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community.);

(c) the right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;

(d) the right of the Association to convey or transfer all or any portion of the Common Property upon the approval of the Owners of at least eighty percent (80%) of the Lots (other than Declarant) and the Declarant;

(d) all other rights of the Association, the Declarant, Owners and Occupants set forth in this Declaration, in any Supplementary Declaration or in any deed conveying Common Property to the Association; and

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

10.3 Easements for Utilities. There is hereby reserved to the Declarant and granted to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Declarant or the Association might decide to have installed to serve the Community. Declarant, the Association or the designee of any of them, as the case may be, may alter drainage and water flow, install, repair, replace and maintain or authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board shall have the right to grant such easement.

10.4 Easement for Emergency Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons and to inspect for the purpose of ensuring compliance with this Declaration, any Supplementary Declaration, Bylaws, and rules, which right may be exercised by any member of the Board, the officers, agents, employees, and managers of the Association in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in an emergency situation and in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association, but shall not authorize entry into any single family dwelling without permission of the Owner.

10.5 Easement for Association Maintenance. Declarant hereby grants to the Association a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder, including, without limitation, an easement across any Lot for access to the open space located in the Community in order to mow, landscape or otherwise maintain such open space. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.6 Easements for Maintenance and Repair of Lots. Declarant hereby expressly reserves and creates reciprocal appurtenant easements between adjacent Lots for the purpose of maintaining or repairing the improvements, including, without limitation, landscaping, located on each Lot. Such easements shall extend on a Lot a distance of not more than five (5) feet as measured from the dwelling structure located on the adjacent Lot to a line perpendicular to such structure at such point (but such easements shall not extend on, over or across any structures on a Lot). The easements shall be used only for such period of time as is reasonably necessary in order to complete the needed maintenance or repair. The Owner of the Lot exercising the easement right shall be liable for the prompt repair of any damage to the Lot over which the



easement is exercised which is caused by the maintenance or repair work. The damaged portions of such Lot shall be restored to substantially the same condition as existed prior to the damage. Such easements shall be appurtenant to and run with title to each Lot for the benefit of the Owner of such Lot, but shall not be sold, mortgaged, leased or otherwise granted or conveyed separate and apart from such Lot.

10.7 Easement for Drainage. There is hereby reserved by the Declarant and granted to the Association an easement upon, across, above and under all storm water drainage easement areas as shown on the recorded subdivision plat(s) for the Community for access, ingress, egress, installation, alteration, repairing, replacing, and maintaining the storm water drainage system and related facilities serving the Community or any portion thereof. This easement shall include the right to construct and maintain catch basins, retention ponds, detention ponds, drainage swales, storm sewers, storm drains, sloping banks, cut or fill. In addition, there is hereby reserved to the Declarant and granted to the Association a blanket easement across all Lots for creating and maintaining satisfactory drainage in the Community; provided, however, such easement area shall not include any portion of a Lot within the outer perimeter of the dwelling structure. It is anticipated that increased storm water run-off across downstream Lots will result from the construction of impervious surface within the Community. Neither the Declarant, the Association nor any other builder or Owner constructing according to plans and specifications approved under Article 6 hereof shall have any liability to any Owner due to the increased flow or increased velocity of surface water resulting from approved construction within the Community.

10.8 Easement During Construction and Sale Period. Notwithstanding any provisions now or hereafter contained in this Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, Architectural Guidelines, and amendments thereto, Declarant reserves an easement across the Community for Declarant and any builder approved thereby to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required or convenient for Declarant's and such builder's development, construction and sales activities related to property hereby and hereafter subjected to this Declaration or nearby property being developed by Declarant or such builder, including, but not limited to: the right to place or authorize the placement of marketing and directional signs on Lots or right-of-way at street intersections within the Community; the right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Community, including, without limitation, any Lot; the right to tie into any portion of the Community with streets, driveways, paths, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, cable television, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to grant easements over, under, in or on the Community, including without limitation the Lots, for the benefit of neighboring properties for the purpose of tying into and/or otherwise connecting and using sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to convert Lots (with the consent of the Owner thereof) to Common Property and/or streets; the right to construct recreational facilities, utilities and other improvements on Common

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Property; the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, model residences and sales offices. Declarant and any builder approved thereby may use residences, offices or other buildings owned or leased by Declarant or such builder as model residences and sales offices and may also use Community recreational facilities, if any, as a sales office without charge. This Section shall not be amended without the written consent of Declarant until the rights of Declarant hereunder have terminated as herein provided.

10.9 Easement for Entry Features. There is hereby reserved to the Declarant and granted to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features for the Community, over and upon any portion of a Lot containing such entry features as may be more fully described on a recorded subdivision plat for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and the right to grade the land under and around the same.

Article 11  
General Provisions

11.1 Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plat(s) for the Community and in the deed to such Owner's Lot, if any. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, including, without limitation, reasonable attorney's fees actually incurred, maintainable by the Association, the Declarant or an aggrieved Owner. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or Architectural Guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2 Occupants Bound. All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and Architectural Guidelines. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not timely paid, the fine may then be levied against the Owner.

11.3 Self-Help. In addition to any other remedies provided for herein, the Association, the Declarant, the ACC or their respective duly authorized agents shall have the power to enter

upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after giving any notice required herein or by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a specific assessment.

11.4 Duration. The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually, unless and until terminated by the agreement of the Owners of at least eighty (80%) percent of the Lots as provided in the North Carolina Planned Community Act. It is the intention of the Declarant that the Declaration exist and continue until terminated as provided herein, and that it constitute an exception to any automatic termination or expiration provision that might be applicable under the Real Property Marketable Title Act as contained in Chapter 47B of the North Carolina General Statutes, or under any successor or replacement statute or any other applicable law that would or could terminate the Declaration other than in the manner provided for termination herein. Accordingly, the Association, in its discretion, may at any time and from time to time, re-record in the land records of the county where any portion of the Community is located the Declaration or some memorandum or other notice hereof in order to continue the Declaration in full force and effect and/or to qualify the Declaration as an exception to any such automatic termination or expiration provision of the Real Property Marketable Title Act or any other applicable law.

11.5 Termination of Rights of Declarant. The rights of Declarant to take, approve or consent to actions under this Declaration, the Articles of Incorporation and the Bylaws shall cease and be of no further force and effect upon the earlier of: (a) the date that the Declarant no longer owns any property in the Community and, in the case of Declarant, Declarant no longer has the right to unilaterally annex additional property to the Community as provided herein and a certificate of occupancy has been issued for a dwelling on each Lot in the Community; or (b) the date of recording by Declarant in the real estate records of the county where the Community is located of a written instrument terminating all of Declarant's rights hereunder.

11.6 Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company, including, without limitation, the U.S. Department of Housing and Urban Development and the U.S. Department of Veterans Affairs, to insure or guarantee Mortgage loans on the Lots subject

to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Lot unless the Owner of such Lot consents thereto in writing. Further, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder nor shall it adversely affect title to any Lot without the consent of the affected Owner. In addition to the above, this Declaration may be amended upon the affirmative vote or written agreement of the Owners to which at least sixty-seven (67%) percent of the Total Association Vote is allocated and the consent of Declarant. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the Declarant to any amendment shall be evidenced by the execution of said amendment by Declarant. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and North Carolina law were given.

11.7 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

11.8 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and, to this end, the provisions of this Declaration are declared to be severable.

11.9 Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

11.10 No Merger. There shall be no merger of any of the covenants, conditions, restrictions or easements created or reserved hereby with the fee estate of Declarant, by reason of the fact that Declarant may own or hold the estate or interest both encumbered and benefited by such covenants, conditions, restrictions or easements and no such merger shall occur unless and until Declarant while owning all of the estate or interests shall execute a written statement or instrument affecting such merger and shall duly record the same.

11.11 Notices. Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed to an Owner at the address of the Lot and to the Declarant or the Association at the address of their respective registered agent on file with the Secretary of State of the State of North Carolina. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or

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delivered in person, including delivery by Federal Express or other reputable private courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or the date of receipt shown on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent.

11.12 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11.13 No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or disability.

11.14 Indemnification. To the fullest extent allowed by the Non-Profit Corporation Law of the State of North Carolina, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. 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, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

11.15 Variations. Notwithstanding anything to the contrary contained herein, the Board of Directors shall be authorized to grant individual variations from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto, if it determines that waiver of application or enforcement of the provision in a particular case is warranted and would not be inconsistent with the overall scheme of development for the Community.

11.16 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote and the consent of Declarant. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without

limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, (d) counterclaims brought by the Association in proceedings instituted against it, or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for goods or services to which the Association is a party. This Section shall not be amended unless such amendment is made unilaterally by the Declarant as provided herein or is approved by the percentage votes necessary to institute proceedings as provided above.

11.17 Security. ALL OWNERS, OCCUPANTS, GUESTS, LICENSEES, AND INVITEES, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, AND THE ACC DO NOT REPRESENT OR WARRANT THAT ANY SAFETY OR SECURITY MEASURES WILL BE IMPLEMENTED IN THE COMMUNITY OR, IF IMPLEMENTED, THAT SUCH SAFETY OR SECURITY MEASURES MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY SUCH SAFETY OR SECURITY MEASURES WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THEY ARE DESIGNED. EACH OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, THE BOARD OF DIRECTORS AND THE ACC ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, GUEST, LICENSEE, AND INVITEE ASSUMES ALL RISKS OF PERSONAL INJURY AND PROPERTY DAMAGE AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, THE BOARD OF DIRECTORS, AND THE ACC, HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, GUEST, LICENSEE, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY SAFETY OR SECURITY MEASURES IMPLEMENTED OR APPROVED.

11.18 Agreements. Subject to the prior approval of Declarant all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Declarant herein hereby executes this instrument under seal, this 22<sup>nd</sup> day of September, 2006.

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

By: *Patricia E. Hanchette*  
Patricia E. Hanchette, Division President

NORTH CAROLINA

Wake COUNTY

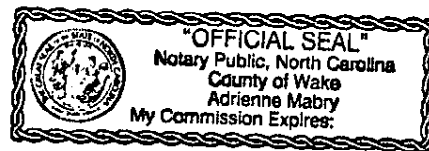
I, a Notary Public of the County and State aforesaid, certify that Patricia E. Hanchette personally appeared before me this day and acknowledges that she is the Division President of KB Home Raleigh-Durham LLC, a Delaware limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its Division President.

Witness my hand and official stamp or seal, this 22<sup>nd</sup> day of Sept., 2006.

[STAMP/SEAL]

*Adrienne Mabry*  
Notary Public

My Commission Expires: 12-11-2006



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EXHIBIT "A"

Property Description

Beginning at an existing iron pipe on the eastern right of Fox Road (SR 2042) (60' R/W), said iron pipe being North 51°06'18" East 5,380.90 feet from NCGS monument "Citizen", said monument having NC grid coordinates (NAD 83) of N=764,572.729, E=2,124,233.265, thence from said beginning, with said right of way, North 01°15'17" East 81.78 feet to a point, thence North 01°34'45" East 122.94 feet to a new iron pipe, thence leaving said right of way North 88°47'17" East 177.63 feet to an existing iron pipe, thence North 01°07'56" West 146.75 feet to a new iron pipe, thence North 85°26'30" East 118.14 feet to an existing iron pipe, thence North 00°30'20" East 131.10 feet to an existing iron pipe, thence North 88°35'29" East 715.16 to an existing iron pipe, thence South 00°23'24" West 839.90 feet to an existing iron pipe on the northern right of way of Jefferson Lane (60' R/W), thence with said right of way South 88°45'45" West 562.56 feet to an existing iron pipe, thence leaving said right of way North 09°04'06" West 45.64 feet to a new iron pipe, thence South 89°46'04" West 242.90 feet to a new iron pipe, thence South 00°49'58" West 15.00 feet to an existing iron pipe, thence North 89°08'48" West 202.62 feet to a point on the eastern right of Fox Road (SR 2042) (60' R/W), thence with said right of way North 01°03'03" East 40.24 feet to a point, thence North 01°23'45" East 54.69 feet to a point, thence North 01°18'14" East 58.32 feet to a point, thence North 01°53'41" East 49.96 feet to a point, thence North 01°06'59" East 48.21 feet to a point, thence North 01°25'54" East 37.06 feet to a point, thence North 01°15'17" East 18.35 feet to the point and place of Beginning containing 17.486 acres more or less



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EXHIBIT "B"

Additional Property Which May Unilaterally  
Be Submitted To This Declaration by Declarant

ALL THAT TRACT OR PARCEL OF LAND lying and being in Wake County, North Carolina, adjacent to the real property described in the foregoing Exhibit "A" to the Declaration of Protective Covenants for Jamison's Run or contiguous to other real property hereafter subjected to the Declaration. Adjacent property shall include property in the immediate vicinity of any property subjected to the Declaration even though separated by, without limitation, a public or private road, stream, pond or other body of water or a right-of-way of any kind.

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EXHIBIT "C"

BYLAWS

OF

JAMISON'S RUN COMMUNITY ASSOCIATION, INC.

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BYLAWS  
OF  
JAMISON'S RUN COMMUNITY ASSOCIATION, INC.

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BYLAWS

OF

JAMISON'S RUN COMMUNITY ASSOCIATION, INC.

Article 1

Name, Membership, Applicability and Definitions

1.1 Name. The name of the corporation shall be Jamison's Run Community Association, Inc. (hereinafter sometimes referred to as the "Association").

1.2 Membership. The Association shall have one class of membership, as is more fully set forth in that certain Declaration of Protective Covenants for Jamison's Run (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3 Definitions. The words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article 2

Association: Meetings, Quorum, Voting, Proxies

2.1 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

2.2 Annual Meetings. There shall be an annual meeting of the members at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

2.3 Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association upon the delivery of a petition signed and dated by members entitled to cast at least ten percent (10%) of the Total Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4 Record Date. The Board of Directors shall fix in advance a record date for a determination of members entitled to notice of and to vote at any meeting of members or any adjournment thereof, or to make a determination of members for any other purpose, such date to

be not more than seventy (70) days before the date on which the particular action requiring such determination of members is to be taken.

2.5 Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Lot of each member (as shown in the records of the Association as of the record date) a notice of each annual or special meeting of the Association stating the date, time and place where it is to be held and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes and any proposal to remove a director or officer and matters that shall be approved by the members under Sections 55A-8-31, 55A-8-55, 55A-10-03, 55A-10-21, 55A-11-04, 55A-12-02, or 55A-14-02 of the North Carolina Nonprofit Corporation Act and, for a special meeting, the purpose thereof. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) (or if the notice is mailed by other than first class, registered or certified mail not less than thirty (30)) nor more than sixty (60) days before a meeting. If any meeting of the members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the North Carolina Nonprofit Corporation Act or other applicable law (the "Governing Law"), notice of the adjourned meeting shall be given to persons who are members of record as of the new record date.

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, signed by the member, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of lack of notice or defective notice, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

2.7 Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice unless the meeting is adjourned to a date a more than One Hundred Twenty (120) days after the date fixed for the original meeting, in which case a new record date must be set in accordance with 55A-7-07 of the North Carolina Nonprofit Corporation Act. Notwithstanding any provision to the contrary in the Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-half (1/2) the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

2.8 Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of

the members who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of members shall be available for inspection by any member or a member's agent or attorney at the Association's principal office or at such other reasonable place as may be specified in the notice. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

2.9 Voting. The voting rights of the members shall be as set forth in the Articles of Incorporation and the Declaration, and such voting rights are specifically incorporated herein.

2.10 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxy appointment forms shall be in writing, dated, and filed with the person presiding over a meeting before the appointed time of each meeting. A Proxy is void if not dated. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of actual notice by the person presiding over a meeting of the revocation of the proxy or the of the death or judicially declared incompetence of the member; (b) receipt by the person presiding over a meeting of a subsequent appointment form signed by the member; or (c) the expiration of eleven (11) months from the date of the proxy appointment form.

2.11 Quorum. The presence, in person or by proxy, of members entitled to cast at least ten percent (10%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

2.12 Action Without A Formal Meeting. Any action required or permitted to be approved by the members may be approved without a meeting if one (1) or more consents in writing setting forth the action so taken, shall be signed and dated by members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first member signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all members who did not sign a consent. Each signed consent shall be included in the minutes of meetings of members filed in the permanent records of the Association.

2.13 Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum

required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

### Article 3

#### Board of Directors: Number, Powers, Meetings

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors. Directors shall be natural persons who are eighteen (18) years of age or older. Except for directors appointed by the Declarant, each director must reside in the Community and be a member or the spouse of a member; provided, however, no Person may serve on the Board at the same time with such Person's spouse or any co-Owner or Occupant of such Person's Lot.

3.2 Directors Appointed by Declarant. The Declarant shall have the right to appoint or remove any director or directors of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of ten (10) years after the date of recording of the Declaration; (b) the date on which all of the Lots planned by Declarant to be a part of the Community shall have been improved with a dwelling and conveyed to an Owner for occupancy as a residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. The directors appointed by the Declarant need not be Owners or residents in the Community. The total number of lots planned by Declarant for the Community shall initially be the number of Lots shown on the Declarant's land use plan for the development as it may be amended from time to time. Inclusion of property on the land use plan shall not obligate the Declarant to subject such property to the Declaration, nor shall exclusion of property from the initial land use plan bar Declarant from subjecting such property to the Declaration. The final total number of Lots planned for the Community shall be the actual number of Lots shown on the recorded subdivision plat(s) for the Community regardless of any different number of Lots shown from time to time on the land use plan.

3.3 Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and/or directors of the Association as provided above, the Board of Directors shall consist of from one (1) to three (3) directors as determined by Declarant in writing from time to time. Thereafter, the Board shall consist of three (3) or five (5) directors, who shall be elected as provided below.

3.4 Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

3.5 Election and Term of Office. After the Declarant's right to appoint directors or officers terminates, the Association shall call a special meeting (or take action under Section 2.12



or Section 2.13 in lieu of a meeting) and the members shall elect three (3) or five (5) directors, as determined by the Board, as follows: the initial term of two (2) directors (or three (3) directors in the event the total number of directors is five (5)) shall be fixed at two (2) years, and thereafter successors shall be elected to a term of two (2) years; the initial term of one (1) director (or two (2) directors in the event the total number of directors is five (5)) shall be fixed at one (1) year, and thereafter successors shall be elected to a term of two (2) years. At annual meetings thereafter, directors shall be elected as necessary to fill vacant seats on the Board. A quorum must be present at the meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidates receiving the most votes shall be elected. The Association shall publish the names and addresses of the members of the Board of Directors within thirty (30) days of their election.

3.6 Removal of Directors. At any regular or special meeting of the Association duly called at which a quorum is present, any one (1) or more of the members of the Board of Directors, other than a member appointed by the Declarant, may be removed, with or without cause, by a majority of all persons present and entitled to vote at such meeting and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by Declarant.

3.7 Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors. Each Person so selected shall serve the unexpired portion of the term.

3.8 Organization Meetings. The first meeting of a newly elected Board of Directors shall be held within ten (10) days after the election at such time and place as the directors may conveniently assemble.

3.9 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, provided that, after the right of Declarant to appoint the directors terminates, at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

3.10 Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; or (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the

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Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the time set for the meeting. Notices given by personal delivery or telephone shall be given at least two (2) days before the day set for the meeting.

3.11 Waiver of Notice. The business transacted at any meeting of the Board of Directors, 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 quorum is present at the beginning of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, 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 at the beginning of the meeting shall constitute the decision of the Board of Directors.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

3.14 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. At regular intervals, the Board shall provide members an opportunity to speak about their issues or concerns. The Board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

3.15 Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

3.16 Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

3.17 Telephonic Participation. One or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.18 Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by law, the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised by the members. In addition to the duties imposed by these Bylaws or by any

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resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending rules and regulations;

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

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(j) keeping books with detailed accounts of the receipts and expenditures of the Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and

(k) authorization of contracts on behalf of the Association.

3.19 Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon ninety (90) days' written notice. The Board of Directors shall not delegate any power or authority of the Board to the managing agent or any other Person.

3.20 Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Association; provided, however, except as otherwise provided in the Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed ten percent (10%) of the annual budget of the Association.

3.21 Fining and Suspension Procedure. Notwithstanding any provision in the Declaration or these Bylaws to the contrary, the Board shall not impose a fine (a late charge shall not constitute a fine) or suspend a member's privileges or services provided by the Association unless and until the following procedure is followed:

(a) Notice. Written notice shall be delivered to the member by first class or certified mail sent to the address of the member shown on the Association's records, specifying:

(1) the nature of the violation, the fine or suspension to be imposed and the date, not less than ten (10) days from the date of the notice, that the fine or suspension will take effect;

(2) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine or suspension imposed;

(3) the name, address and telephone numbers of a person to contact to challenge the fine or suspension;

(4) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(5) that all rights to have the fine or suspension reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) Hearing. If a hearing is requested, it shall be held before the Board of Directors in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. No fine in excess of one hundred dollars (\$100.00) per day for each day more than five (5) days after the decision that the violation occurred shall be imposed by the Board of Directors.

Article 4  
Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall also be directors.

4.2 Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association, the officers of the Association

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shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term. The Association shall publish the names and addresses of the officers of the Association within thirty (30) days of their election.

4.3 Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the board of directors.

4.4 Salaries. The officers shall receive no compensation.

4.5 Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

4.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and directors. The immediate supervision of the affairs of the Association shall be vested in the President. It shall be the President's duty to attend to the business of the Association and maintain strict supervision over all of its affairs and interests. The President shall have the authority to prepare, execute, certify and record any amendment to the Declaration made on behalf of the Association. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Association, and shall manage and operate the business of the Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.7 Vice President. The Vice President(s), if any, shall act in the President's absence or disability and shall have all powers, duties, and responsibilities provided for the President when so acting, and shall perform such other duties as shall from time to time be imposed upon any Vice President by the Board or delegated to a Vice President by the President.

4.8 Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors; notify the members and directors of meetings as provided by these bylaws and North Carolina law; have custody of the seal of the Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Association in the absence or disability of the Treasurer.

4.9 Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Association, and shall faithfully account for the Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and

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other assets of the Association in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Association consistent with the needs of the Association to disburse such money and assets in the course of the Association's business. The Treasurer shall perform the duties of the Secretary of the Association in the absence or disability of the Secretary.

4.10 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. 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.

#### Article 5 Committees

Advisory committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Declaration are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Declaration, these Bylaws or the Non-Profit Corporation Law of the State of North Carolina.

#### Article 6 Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2 Parliamentary Rules. *Roberts Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration or these Bylaws.

6.3 Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation and the Bylaws (in that order) shall prevail.

6.4 Books and Records. The Association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. The Association shall make an annual income and expense statement and balance sheet available to all Lot Owners at no charge and within seventy-five (75) days after the close of the fiscal year to which the information relates. A more extensive compilation, review, or audit of the Associations books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the Board or by the affirmative vote of a majority of the Lot Owners present and voting in person or by proxy at any annual or special meeting of the Association duly called for that purpose.

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6.5 Amendment. These Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on the Lots subject to the Declaration; or (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration. In addition, these Bylaws may be amended upon the affirmative vote of at least two-thirds (2/3) of the Total Association Vote and the consent of Declarant.

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EXHIBIT "D"

Stormwater Maintenance Plan

*[STORMWATER MAINTENANCE PLAN BEGINS ON FOLLOWING PAGE]*





**OPERATIONS / MAINTENANCE MANUAL  
 and BUDGET**

**for**

**JAMISON'S RUN SUBDIVISION**

**DRY DETENTION PONDS**

*RALEIGH, NORTH CAROLINA*

**Prepared For:**

**KB Home Raleigh-Durham, LLC  
 2610 Wycliff Road, Suite 102  
 Raleigh, North Carolina 27607**

**Prepared By:**

**Spaulding & Norris, PA  
 972 Trinity Road  
 Raleigh NC 27607**

**DATE: April 10, 2006  
 PROJECT: 589-05**



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**PROJECT INFORMATION AND SUMMARY**

**PROJECT LOCATION:** Jamison's Run  
5720 Fox Road  
Raleigh, North Carolina

**DATE CONSTRUCTED:** 2006

**RECEIVING WATERSHED:** Neuse River

**CONTRACTOR:**

**Impoundment:** Not known at this time

**MATERIAL SUPPLIES:**

**Outlet Pipes:** Pond #1: 36 LF of 12" RCP  
Pond #2: 44 LF of 18" RCP

**Risers:** Standard NCDOT precast concrete drop inlets (2' x 2')  
See plans dated 4-07-06 for the depth of each box and the  
location of inlet and outlet pipes for each pond.

**OPERATIONS AND MAINTENANCE MANUAL AND BUDGET  
JAMISON'S RUN SUBDIVISION  
DRY DETENTION PONDS**

The following maintenance schedule shall be applied to the watershed protection devices for the Jamison's Run subdivision.. These devices consist of two dry detention ponds.

The dry detention ponds shall be constructed as part of the Jamison's Run project. The dry ponds will be considered as shared facilities between the single family lot owners and the Homeowners Association (HOA) since each lot will be individually owned and the subdivision will have an HOA in place.

Storm water from the development will be collected via storm drainage systems, which will direct the runoff into the detention ponds before discharging. The runoff from the ponds will be released into level spreaders before entering into a 50' Neuse River buffer of an existing stream located on site. The level spreaders are designed for diffuse flow only and were not used for nitrogen loading reduction.

See plans prepared by Spaulding & Norris, PA, dated April 7, 2006 for layout and design of the dry detention ponds.

## **I. MAINTENANCE OF EMBANKMENTS**

### **A. Vegetation**

The embankments will have a ground cover of fescue grass mixture, which if properly maintained will prevent erosion and provide an easy surface for inspection. Grass should be fertilized every October and April.

1. **Re-Seeding** - Periodically re-seeding may be required to establish grass on areas where seed did not take or has been destroyed. Before seeding, fertilizer (12-12-12) should be applied at a minimum rate of 12 to 15 pounds per 1,000 SF. The seed should be evenly sewn at a rate of three pounds per 1,000 SF. The seed should be covered with soil to the depth of approximately 1/4". Immediately following the planting, the area should be mulched with straw.

2. **Mowing** - Grass mowing, brush cutting and removal of weed vegetation will be necessary for the proper maintenance of the embankments. All embankment slopes should be mowed when the grass exceeds 6" in height. Acceptable methods include the use of weed whips or power brush cutters and mowers.

### **B. Erosion**

Erosion occurs when the water concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The dams and the area around the outlet pipes should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the embankment. Rills and gullies should be filled with suitable soil compacted and then seeded. Methods described in Section I-A, on vegetation, should be used to properly establish the grass surface. Where eroded areas are detected, the cause of the erosion should be addressed to prevent a continued maintenance problem. Frequently, problems result from the concentration of runoff to one point of the embankment crest instead of a uniform distribution of runoff. This can be corrected by reshaping the crest to more evenly distribute the runoff to areas which are not experiencing erosion problems. The top of the dams should not be allowed to be used for pedestrian or bicycle traffic.

1. **Abutment Areas** - The abutment is the line formed where the embankment fill comes into contact with the existing slope. Runoff from rainfall concentrates in these gutter areas and can reach erosive velocities because of the steep slopes. If a normal strand of grass cannot be maintained on the abutments, additional measures may be needed such as jute matting to provide for the establishment of a good ground cover.

2. Upstream embankment slope - Erosion problems can develop on the upstream face of the dam due to the water level fluctuation in the pond. This is a result of a combination of wave actions and ground saturation, which occurs from the elevated water levels. The erosion generally occurs as the water level falls and the saturated ground becomes subjected to the wave action. If erosion becomes a problem, it may necessitate the installation of a stone armoring along the zone subject to fluctuating water level. This would consist of 18" of NCDOT Class B stone for erosion control underlain with Mirafi 140 geotextile fabric. It should be centered at the point of the erosion problem and covering an area two feet above and below the approximate center of the eroded area.

#### C. Seepage

1. Detection - Seepage may vary in appearance from a soft wet area to a flowing spring. It may show up first as only an area where the vegetation is more lush and darker green. Cattails, reeds, mosses and other marsh vegetation often become established in a seepage area. The downstream abutment areas where the embankment fill and natural ground interface are very common locations for seepage. Also, the contact between the embankment and the spillway conduit is a very common location, which is generally attributed to poor compaction around the conduit. Due to the way in which conduits are put in, this is generally most evident on the underside of the conduit. Slides may result from excessively saturated embankment slopes. The natural foundation area immediately downstream of the dam abutment should also be inspected to ensure that "piping" is not occurring underneath the embankment. "Piping" may appear as a "boil" evident as a spring carrying soil. The soil usually deposits around the boil area and is evident by the sedimentary deposits accompanying it. The movement of the water itself is not dangerous but if soil particles are being carried with it, then it can create a shortcut for the piping of soil.

#### D. Cracks, Slides, Sloughing and Settlement

1. Cracks - The entire embankment should be inspected for cracks. Short, isolated cracks are usually not significant, but larger (wider than 1/4"), well defined cracks indicate a serious problem. There are two types of cracks: transverse and longitudinal.

Transverse cracks appear crossing the embankment and indicate difference of settlement within the embankment. These cracks provide avenues for seepage and piping could develop.

Longitudinal cracks run parallel to the embankment and may signal the early stages of a slide. In recently built structures, these cracks may be indicative of poor compaction or poor foundation preparation resulting in consolidation after construction.

2. Slides - Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch shaped cracks are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.

3. Settlement - Settlement occurs both during construction and after the embankment has been completed and placed in service. To a certain degree this is normal and should be experienced. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the foundation or perhaps the lower part of the embankment. Settlement accompanied by cracking often precedes the failure.

4. What to do if seepage, cracks, slides, or settlement are detected:

If any of the above items are detected there may be signs of significant problems which could lead to the failure of the structure. A geotechnical or civil engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions for correcting them. If the professional is not immediately able to inspect the dam, then the bottom drain should be opened and the water level lowered to remove the risk of failure until a professional can observe these problems.

#### E. Rodent Control

Generally in this urban environment, rodents are not a problem. Rodents such as ground hogs, muskrats, and beavers are attracted to dams and reservoirs and can be quite dangerous to structural integrity and proper performance of the embankment and spillway. Groundhog and muskrats thrive on burrowing in the man-made earth embankments which become pathways for seepage. In the event that burrows are detected within the dam then the rodents should be dealt with by removal.

## **II. OPERATION**

### **A. Record Keeping**

Operation of a dam should include recording of the following:

1. **Annual Inspection Reports** - A collection of written inspection reports should be kept on record in Section III of this manual. Inspection should be conducted annually. Copies should be provided to the City of Raleigh Stormwater Management Section of the Engineering Department.
2. **Observations** - All observations should be recorded. Where periodic inspections are performed following significant rainfall events, these inspections should be logged into the Periodic Inspection, Operation & Maintenance Form in Section III of this manual. Significant rainfall can be defined as a One-year storm event, or rainfall of approximately 3" in a 24 hour period.
3. **Maintenance** - Written records of maintenance and/or repairs should be recorded on the Periodic Inspection, Operation and Maintenance Form in Section III of this manual.
4. **Other Operational Procedures** - The owner should maintain a complete and up-to-date set of plans (as-built drawings) and all changes made to the dam over time should be recorded on the as-builts.

### **C. Sedimentation and Dredging**

Sedimentation from establishing areas tributary to the pond will eventually result in the reduction of the retention pool and eventually will have to be removed. The frequency of this sediment removal can be reduced by ensuring that the tributary areas be stabilized with a vegetative ground cover such that it restrains erosion. This would include a periodic application of fertilizer and our other treatments necessary to promote a stable ground cover and minimize sedimentation to the ponds. The maintenance on these ponds requires that when the sediment accumulates to a depth 6 inches the sediment must be removed and the original pond restored. The frequency of required sediment removal is estimated to be every five years. For aesthetic purposes it may be desirable to maintain it prior to this point. Generally the dredging process begins with the removal of as much water as is possible from the deposited silt so the material can be excavated with conventional equipment for trucking offsite. The removed material should be hauled offsite to a suitable landfill site or mounded somewhere on site and stabilized with ground cover sufficient to restrain erosion.



### **III. INSPECTION, OPERATION AND MAINTENANCE CHECKLISTS**

The slopes of the dry detention ponds shall be mowed according to the season. The maximum grass height shall be 6 inches. The dry detention outlet structures shall be kept in good working order. In the case the ownership of the dry detention ponds transfers, the current owner shall, within thirty days of the transfer of ownership, notify the City of Raleigh Engineering Dept., Stormwater Management Division of such ownership transfer. This property and the watershed protection devices are also subject to the operation and maintenance manual filed relative to this project site.

#### **MONTHLY MAINTENANCE**

1. Check and clear orifice of any obstructions.
2. Check pond side slopes; remove trash and repair eroded areas before the next rainfall.

#### **QUARTERLY MAINTENANCE**

1. Clear any trash and clear piping of any obstructions.
2. Check outlet pipes for any undercutting of impoundment. Repair if necessary.
3. Repair damaged or broken pipes.
4. Check rip rap for sediment. Remove sediment if necessary.
5. Check level spreaders and repair if necessary.

#### **SEMI-ANNUALLY**

1. Check to see if accumulation of sediment has occurred and remove accumulated sediment from bottom of detention pond as necessary to maintain full pond capacity.
2. Inspect rip-rap for movement and erosion.
3. Inspect for dam slides, cracks, rodent burrows, sloughs, seepage, and settlement. Improvements to the embankment shall be made immediately.

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**DRY STORMWATER DETENTION PONDS  
JAMISON'S RUN SUBDIVISION, RALEIGH, NORTH CAROLINA  
INSPECTORS**

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**EXHIBIT 1**

April 10, 2006

**Mr. Ben Brown**  
**City of Raleigh**  
 219 Fayetteville Street  
 Raleigh, North Carolina

**RE: JAMISON'S RUN SUBDIVISION - SINKING FUND COST ESTIMATE & BUDGET**

Dear Mr. Brown,

The following information is provided as an Engineer's Estimate for the Construction and Maintenance of watershed protection devices for the above referenced project. This information corresponds to the stormwater devices illustrated in the Construction Drawings dated April 7, 2006, and prepared by Spaulding & Norris. Stormwater runoff will be detained through the use of two dry detention ponds. Maintenance of these devices shall be in accordance with the Operation and Maintenance Manual approved by the City of Raleigh.

**CONSTRUCTION COSTS****Section 1 - Site Work**

<u>Quantity</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Price</u>	<u>Cost</u>
1	LS	Dry Pond #1 Construction	\$4,500.00	\$4,500.00
1	LS	Dry Pond #2 Construction	\$9,500.00	\$9,500.00
0.66	AC	Permanent Seed and Mulch	\$1,500.00	\$990.00
2	EA	Level Spreader	\$2,500.00	\$5,000.00

Section 1 Sub-Total: \$19,990.00

**Section 2 - Outlet Structure**

<u>Quantity</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Price</u>	<u>Cost</u>
36	LF	12" Reinforced Concrete Pipe	\$18.00	\$648.00
44	LF	18" Reinforced Concrete Pipe	\$22.00	\$968.00
1	EA	12" RC Flared End Section	\$750.00	\$750.00
1	EA	18" RC Flared End Section	\$820.00	\$820.00
2	EA	2' x 2' Concrete Riser Structure	\$1,750.00	\$3,500.00
21	TN	Class "B" Rip-Rap (Outlet Stabilization)	\$40.00	\$840.00

Section 2 Sub-Total: \$7,526.00

Total Construction Costs: **\$27,516.00**

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Note: The Unit Price for the 2' x 2' Concrete Riser Structure includes the orifices, and anti-floatation footings as detailed in the construction drawings. The Unit Price for the Class "B" Rip-Rap items include the materials and placement of filter fabric under the stone.

### SINKING FUND CONTRIBUTION CALCULATIONS

#### DEVELOPER CONTRIBUTION

Note: One-time lump sum payment of 15% of the total cost of replacement from the above total construction cost.

Initial Payment:  $\$27,516 \times 15\% = \underline{\$4,127.40}$

Note: Annual payments totalling 85% of the total cost of replacement from the above total construction cost. Two-thirds of the total cost of replacement shall be contributed over the first 5 years.

$\$27,516 \times 0.67 = \$18,435.72 - \$4,127.40 = \underline{\$14,308.32}$

Year 1 :	\$2,861.67
Year 2 :	\$2,861.67
Year 3 :	\$2,861.66
Year 4 :	\$2,861.66
Year 5 :	\$2,861.66

**\$14,308.32**

Note: Annual payments totalling 85% of the total cost of replacement from the above total construction cost. One-third of the total cost of replacement shall be contributed over the last 5 years.

Year 6 :	\$1,816.05
Year 7 :	\$1,816.05
Year 8 :	\$1,816.06
Year 9 :	\$1,816.06
Year 10 :	\$1,816.06

**\$9,080.28**

**PROPOSED BUDGET**

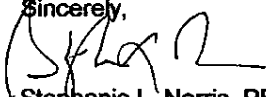
**ESTIMATED ANNUAL MAINTENANCE COSTS**

<u>Quantity</u>	<u>Unit</u>	<u>Description</u>	<u>Unit Price</u>	<u>Cost</u>
1	LS	Liability Insurance	\$200.00	\$200.00
1	LS	Inspection and Record Keeping	\$500.00	\$500.00
1	LS	Mowing and Trash Removal	\$1,000.00	\$1,000.00
1	LS	Sediment Removal (Pond and Rip-Rap)	\$200.00	\$200.00
1	LS	Annual Over-seed and Fertilizer	\$300.00	\$300.00

Total Annual Maintenance Costs: **\$2,200.00**

Per Section 1.7-Maintenance of the City of Raleigh Stormwater Management Manual, the Developer shall enter into an agreement with the City of Raleigh regarding the operation and maintenance of stormwater control facilities. The Developer must establish an escrow account, whose length of time to fund and fund amount may vary depending on the design and materials of the stormwater control device. The City shall determine the fund amount and length of time to fund.

Please advise if you have any questions. Please contact me at (919) 854-7990.

Sincerely,  
  
Stephanie L. Norris, PE  
Spaulding & Norris, PA

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

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