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WAKE COUNTY, NC 841
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/03/2005 AT 16:09:46

BOOK:011617 PAGE:00961 - 00991

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

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR
KILARNEY POINTE**

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**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS FOR
KILARNEY POINTE**

THIS DECLARATION is made on the date hereinafter set forth by **LAUREL ISLAND PARTNERS, LLC**, a North Carolina limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 10.74472 acres of land located in the Town of Cary, Cary Township, Wake County, North Carolina, being the property acquired by Declarant by deed recorded in Book 11298, Page 2094, Wake County Registry, which Declarant is developing into a residential community known as KILARNEY POINTE (hereinafter the "Subdivision"); and

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area (hereinafter defined) within the Subdivision and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each Owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has incorporated under North Carolina law as a nonprofit corporation, Kilarney Pointe Homeowners Association, Inc., for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant declares that the real property described in **EXHIBIT A** to this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

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Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, as amended from time to time.

Section 2. "Approved Builder" shall mean and refer to one or more persons or entities in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant. At the time of execution of this Declaration, **K. Hovnanian Homes of North Carolina, Inc. ("KHOV")** is the only Approved Builder.

Section 3. "Association" shall mean and refer to **KILARNEY POINTE HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 4. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws.

Section 5. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 6. "Code" shall mean and refer to the Code of Ordinances of the Town of Cary, North Carolina, as amended from time to time, and any regulations adopted by the Town pursuant thereto.

Section 7. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision, specifically including, but without limitation, the area within any storm water easements and the facilities constructed therein which serve more than one Lot and are not maintained by any governmental authority public street right-of-way. Stormwater Control Measures may be on Common Area or in Common Area Easements. Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility or conveyed to another nonprofit entity formed for similar purposes. "Common Area Easement" shall mean and refer to Common Area as to which the Association has only an easement interest, and not a fee simple interest.

The Association has the power and authority to enter into such Stormwater Agreements, encroachment agreements and other agreements with the Town as are reasonably necessary to enable the Association to maintain Common Area, including Common Area Easements, and to perform its obligations under the Declaration. During the Declarant Control Period, the Declarant has the power and authority to enter into Stormwater Agreements, encroachment and other agreements with the Town as Declarant, in its sole discretion, determines, each of which agreements may be binding on the Association and all Owners. The Association shall accept assignment from the Declarant of all rights and obligations for maintenance of Common Area, including Common Area Easements, as described in any such agreement.

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Section 8. "Common Expense" is defined as: (i) expenses of maintenance of Common Area (including Common Area Easements) and other real or personal property owned, leased or used by the Association for the benefit of the Members (such other property being herein referred to as "other assets of the Association"), including repair, restoration and replacement thereof, and including monies allocated to reserve funds; (ii) *ad valorem* taxes and public assessments, if any, levied against the Common Area or other assets of the Association (but specifically excluding *ad valorem* taxes on real property on, under or over which the Association has only an easement or other similar right of use, except to the extent, if any, that any improvements in any such easement that are owned or maintained therein by the Association result in additional *ad valorem* taxes on such real property that would not be assessed in the absence of such improvements); (iii) premiums for hazard, liability and other insurance insuring the Common Area, other assets of the Association, or the Association, its officers, directors and employees, if any; (iv) fees and expenses of attorneys, accountants, and other persons and entities employed by the Association for Association business; (v) expenses declared to be or described as Common Expenses by the Act, or by the provisions of this Declaration, including expenses for Stormwater Control Measures; (vi) expenses determined by the Board or by the Members to be Common Expenses; and (vii) all other expenses incurred by the Association in performing its functions and providing services under this Declaration or the Articles of Incorporation or Bylaws of the Association, including operating, management and administrative expenses.

Section 9. "Declarant" shall mean and refer to **LAUREL ISLAND PARTNERS, LLC**, a North Carolina limited liability company. It shall also mean and refer to any person, firm or corporation to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

Section 10. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2010;
- (b) Not later than four months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B and Class C Members; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant and the Class C Members, by virtue of their ownership of the newly-annexed Lots and of other Lots owned by them, a sufficient number of votes (at the 9-to-1 ratio provided in Sections 2(b) and 2(c) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or
- (c) Voluntary termination of the Declarant Control Period by written instrument signed by the Declarant and recorded in the Registry, *provided, however*, that so long as KHov is an Approved Builder, Declarant may not voluntarily terminate the Declarant Control Period without the prior written consent of KHov.

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Section 11. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Kilarney Pointe", and all amendments thereto and Restrictions, Easements, Charges And Liens For Kilarney Pointe", and all amendments thereto and supplements thereof.

Section 12. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded map of any portion of the Subdivision, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision map, any newly-platted lot shall thereafter constitute a Lot.

Section 13. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 15. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 16. "Registry" shall mean and refer to the Office of the Register of Deeds for Wake County, North Carolina.

Section 17. "Stormwater Agreement" (which term includes any other agreement, by whatever name denominated, relating to Stormwater Control Measures and required by the Code) is defined as any agreement required by the Code or the Town between the Declarant and the Town, or between the Association and the Town, or among the Declarant, the Association, and the Town, or between or among any combination of the Town, the Declarant, the Association, and one or more Owners, relating to maintenance of Stormwater Control Measures.

Section 18. "Stormwater Control Measures" is defined as any one or more of the following that serves or benefits any part or all of the Properties or is required by Code or the Town in connection with any part or all of the Properties, whether located within or outside of the Properties: (i) "stormwater drainage easements" (also referred to herein as "stormwater easements" or "drainage easements") that are shown on recorded plats of the Properties or established by written instruments recorded in the Registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot; and (ii) all "stormwater management facilities" for the Properties, including ponds, man-made or natural areas and/or planted or landscaped areas into which stormwater drains, or in which stormwater is collected, or from which it is discharged, drains, pipes, conduits, inlets, channels, dams, ditches, filter, buffers, bio-retention areas, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, collecting, controlling, transporting, conveying, handling, storing, discharging and managing stormwater. Except as otherwise provided herein, Stormwater Control Measures are part of the Common Area, as applicable, and maintenance of Stormwater Control Measures is a Common Expense. References in the Declaration to stormwater

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management include all applicable Stormwater Control Measures, Stormwater Agreements and Stormwater Maintenance Manuals.
Stormwater Maintenance Manuals.

Section 19. "Stormwater Maintenance Manual" (which term includes any other instrument or document under the Code, by whatever name denominated, addressing the same or similar matters) is defined as the specific requirements for maintenance of the Stormwater Control Measures as required by the Town.

Section 20. "Town" shall mean and refer to the Town of Cary, North Carolina.

Section 21. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use and occupancy as a residence by a single family, whether by the Owner of such Dwelling or by tenants or lessees of such Owner.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF
KILARNEY POINTE HOMEOWNERS ASSOCIATION, INC.

Section 1. Existing Property. The real property which, at the time of recording of this Declaration, is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

Section 2. Additions to Existing Property by Declarant or KHOV. At any time prior to the end of the Declarant Control Period, additional lands may be annexed by the Declarant or KHOV without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant or KHOV of a map showing such property to be annexed and recording by Declarant or KHOV of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Annexed Property. The owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who or which hold an interest merely as security for the performance of an obligation.

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Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be three (3) classes of membership with respect to voting rights: ownership of the Lots. There shall be three (3) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Declarant and Approved Builders. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

(c) Class C. Class C Members shall be all Approved Builders. Each Approved Builder shall be entitled to nine (9) votes for each Lot that it owns, so long as the Class B membership continues to exist, at which time Class C membership shall be converted to Class A membership for voting purposes (but, despite such conversion, Lots owned by an Approved Builder shall continue to be treated as Class C Lots for assessment purposes so long as such Approved Builder owns any Lots). Lots owned by a Class C Member shall be Class C Lots.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the Directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant or rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant and Approved Builders.

An Owner may lease or sublet his/her Dwelling; however, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Kilarney Pointe, recorded in the Wake County Registry. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

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Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be three (3) classes of membership with respect to voting rights: ownership of the Lots. There shall be three (3) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Declarant and Approved Builders. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns; however, such Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

(c) Class C. Class C Members shall be all Approved Builders. Each Approved Builder shall be entitled to nine (9) votes for each Lot that it owns, so long as the Class B membership continues to exist, at which time Class C membership shall be converted to Class A membership for voting purposes (but, despite such conversion, Lots owned by an Approved Builder shall continue to be treated as Class C Lots for assessment purposes so long as such Approved Builder owns any Lots). Lots owned by a Class C Member shall be Class C Lots.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the Directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any Dwelling within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant or rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant and Approved Builders.

An Owner may lease or sublet his/her Dwelling; however, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Kilarney Pointe, recorded in the Wake County Registry. Tenant acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

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ARTICLE IV
PROPERTY RIGHTS
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Common Area providing access, utilities or for stormwater drainage to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or another governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the Association, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, that: (i) the exchange is approved by eighty percent (80%) of the Members present and voting at a meeting of the Members duly called for the purpose of approving such exchange, provided, however, that, unless required by applicable law, Member approval shall not be required if the sole purpose of the exchange is to eliminate an encroachment; and (ii) the exchange is approved by the Town, if required.

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Section 2. Delegation of Use.

- (a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.
- (b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Wake County, North Carolina.
- (c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that Declarant will convey to the Association title to those portions of the Common Area to be owned in fee by the Association. Declarant hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself, the Declarant and their respective successors and assigns, an easement over, under, across and through the Common Area so long as any of them own any Lot within the Properties, for the purpose of constructing any improvements on the Common Area and/or the Lots as it or they deem necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Common Area by Declarant or an Approved Builder shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Town or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Common Area. It is the intent of Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

- (a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation from any Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

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It is the intent of the Declarant that a Common Area Easement shall be maintained in the

~~It is the intent of the Declarant that a Common Area Easement shall be maintained in the~~
same state as when the Lot upon which such Easement lies was conveyed to an Owner (other than the Declarant), except for changes authorized or approved in writing by the Declarant or the Association. If an Owner of a Lot on which a Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be an individual assessment against such Owner's Lot and shall be collected in the same manner and shall incur the same late charges, interest, and costs of collection as set forth in Section 8 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein and in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area Easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association. The Association shall be responsible for stormwater management and maintenance of Stormwater Control Measures as provided in the Declaration and in any applicable Stormwater Agreement.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (or to any person or entity who or which has been designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) special assessments; (4) individual assessments for fines for violations of Association rules and regulations or for misuse and damage to the Common Areas by an Owner or his family members, tenants, agents, contractors and guests; (5) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (6) stormwater assessments as provided in Section 6 of this Declaration; (7) late payments and

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penalties and interest on unpaid assessments; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.
allowed to be imposed by this Declaration.

All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the office of the Clerk of Superior Court of Wake County in the manner provided in said Section, shall be a continuing lien upon the Lot against which such assessment is made until paid in full. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s) or firm(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and other charges shall continue to be a lien upon the Lot against which the assessment or charge was made until such amounts due are paid in full.

Any monetary fines imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall be deemed a special assessment against such Owner's Lot and shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

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

Section 3. Maximum Annual Assessment. Until December 31, 2006, the Maximum Annual Assessment shall be \$650.00 for each Class A Lot. The Maximum Annual Assessment for Class B and Class C Lots shall be one-fourth (1/4) of the Maximum Annual Assessment for a Class A Lot.

(a) Beginning on January 1, 2007, and on January 1 of each year thereafter, the Maximum Annual Assessment for Class A Lots shall automatically be increased by ten percent (10%) of the Maximum Annual Assessment for the previous year.

(b) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is approved by the Class B and Class C Members and by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment incident to a merger of consolidation as provided in §47F-2-121 of the Act.

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Section 4. Date of Commencement of Annual Assessments; Amount of Assessments;
Section 4. Date of Commencement of Annual Assessments; Amount of Assessments;
Certificate of Payment; Ratification of Budgets. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month immediately following that date on which the Lot is subjected to this Declaration.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. The annual assessment for Class B Lots and for Class C Lots shall be one-fourth (1/4) of the assessment for Class A Lots, provided, however, that any Lot which contains a Dwelling occupied by any person as a residence shall be assessed at the Class A rate. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors or management company may determine, furnish a certificate signed by an officer of the Association or the management company employed by the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not in excess of the Maximum Annual Assessment, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for

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repayment of indebtedness and interest thereon, or for payment of any other non-recurring expense, *provided that* any such assessment shall have the same assent of the Members as provided in Section *provided that* any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and further provided that the special assessments for Class B Lots and Class C Lots shall always be one-fourth (1/4) of the special assessment for a Class A Lot. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Stormwater Assessment. Notwithstanding anything to the contrary in the Declaration, and in keeping with the obligation of the Association under Section 47F-3-107(a) of the Act to be "responsible for causing the common elements to be maintained, repaired, and replaced when necessary and to assess the lot owners as necessary to recover the costs of such maintenance, repair, or replacement", (i) if the Board determines that the amount required in any calendar year to pay for the Association's obligation for stormwater management, including maintenance of Stormwater Control Measures and payment of sums due from the Association under any Stormwater Agreement, would cause the Association's total expenses for that calendar year to exceed the amount that would be due and payable to the Association if all Lots (including those owned by Declarant) were assessed in the amount of the Maximum Annual Assessment for that calendar year (such excess amount of total expenses for that calendar year being referred to in this Section as "excess expenses"), and (ii) the Board determines that there are not sufficient reserve funds available both to pay the excess expenses and continue to have an adequate amount of reserve funds, and (iii) the Maximum Annual Assessment has been imposed for that calendar year on all Lots owned by Class A Members of the Association, and (iv) during the Declarant Control Period, Declarant has paid to the Association (and/or paid Association expenses) for that calendar year an amount equal to the Maximum Annual Assessment that would be applicable to all Lots owned by Declarant and Class C Members if the Declarant or Class C Member were a Class A Member, then the Board may assess, as an additional assessment for that calendar year, a "stormwater assessment" in an amount sufficient to pay for the excess expenses. The amount of such stormwater assessment shall be determined and assessed against all Lots as if the Declarant and each Class C Member were a Class A Member of the Association at that time. The payment due dates for such stormwater assessment shall be as determined by the Board and shall be enforceable against Owners and their Lots in the same manner as annual assessments. Provided, however, that during the Declarant Control Period, no such stormwater assessment shall be valid unless the same shall have been consented to in writing by the Declarant, and further provided that, except as may be necessary to account for different Stormwater Control Measures and/or Stormwater Agreements (or other agreements related to stormwater) applicable to different Lots as allowed in the Declaration, all stormwater assessments shall be the same for all Lots. Any stormwater assessment for excess expenses is in addition to all other assessments provided for herein.

Section 7. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all Members not less than fifteen (15) days nor more than forty-five (45) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (2) of the required quorum at the preceding meeting.

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Section 8. Effect of Nonpayment of Assessments; Remedies. An assessment not paid within fifteen (15) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at a rate established by the Board of Directors from time to time, but in no event shall such rate be greater than eighteen percent (18%) per annum or the maximum rate allowable by law, whichever is less, and the Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or, file a lien against such Owner's Lot as provided in §47F-3-116 of the Act and, to the extent permitted by the Act, foreclose such lien, and shall have the right and power to take such action as is necessary to conduct such foreclosure and convey the Lot to the purchaser at the foreclosure proceeding, including, without limitation, the right to appoint a trustee or to request appointment of a commissioner to conduct the foreclosure. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to residential use shall be exempt from said assessments.

Section 11. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 12. Declarant's Obligation to Fund Operating Deficits. Subject to the provision of Section 6 hereof, during the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments. Declarant, at its option, may pay such expenses directly to the person or entity providing the services or materials or pay to the Association the amounts necessary to fund the operating deficit. Any monies paid at any time or by the Declarant or an Approved Builder for

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or on behalf of the Association shall be credited against past or future assessments due from the Declarant or such Approved Builder, as appropriate.

Declarant or such Approved Builder, as appropriate.

ARTICLE VI MAINTENANCE OF LOTS AND COMMON AREA

Section 1. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit erected thereon, and the cost of such exterior maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

Section 3. Stormwater Management. Except for maintenance responsibilities (i) placed on Owners by this Declaration or the Code, or (ii) assumed or undertaken by other persons or entities (for example, the Town), the Association shall maintain the Stormwater Control Measures and the cost of such maintenance shall be part of the Common Expenses. As used in the immediately preceding sentence, the word "maintain" includes provision for maintenance of, which may include financial contributions toward maintenance of Stormwater Control Measures located on and/or shared with other properties not subject to the Declaration. Provided, however, such maintenance obligations shall cease and terminate, or be reduced proportionally, temporarily or permanently as applicable, at such time (if ever) that the Town accepts responsibility to maintain, in whole or in part, the Stormwater Control Measures for the Properties, or some other person or entity is providing the necessary maintenance therefor (for example, pursuant to an agreement with the Association which may require monetary payments to such person or entity by the Association). Following any such assumption of maintenance by the Town or other person or entity, the Association may continue to provide maintenance to the extent that the Town or other person or entity fails to provide adequate maintenance, in the opinion of the Board, and shall continue to provide maintenance for those portions of the Stormwater Control Measures with respect to which the Town or such other person or entity has not assumed maintenance

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responsibility, or following termination of the Town's or such person's or entity's maintenance responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measure or responsibility. The Owner of any Lot on, over or through which any Stormwater Control Measure of portion thereof, is located shall be responsible for the following with respect thereto: (i) mowing of grass with reasonable frequency, where applicable, unless the Association assumes such responsibility; and (ii) removal of debris and other materials to the best of the Owner's ability, where such debris or materials has impeded or threatens to impede the free flow of stormwater on, over or through the Stormwater Control Measures located on the Lot. Such Owner's responsibility shall include notification of the Association of any defects in any fencing surrounding or within any such Stormwater Control Measures, any debris or other matter which the Owner reasonably believes is beyond the Owner's ability to remove, and any excessive erosion within any such Stormwater Control Measure. The Owner of a Lot on which a Stormwater Control Measure is located shall not obstruct it or interfere with its normal and intended operation. Notwithstanding anything to the contrary herein, each Owner of a Lot, and not the Association, shall be responsible for maintenance of all Stormwater Control Measures located on and used exclusively in connection with such Owner's Lot or the improvements thereon, including guttering, and pipes and drains for transportation of stormwater from such Lot into any other Stormwater Control Measures.

Declarant, during the Declarant Control Period, and thereafter, the Association, subject to any approval required by the Town, may at any time and from time to time grant, relocate, abandon and/or release one or more stormwater drainage easements in the Properties, subject to the following: (i) the grant of any such stormwater drainage easement also shall be consented to in writing by the Owners of all portions of the Properties on which such stormwater drainage easement is located, unless the new location of the stormwater drainage easement is shown on a previously recorded plat of such portions of the Properties, in which event the consent of the Owners is not required and the Declarant or the Association, as applicable, may grant the stormwater drainage easement by written instrument; (ii) no such relocation, abandonment or release shall materially adversely affect the portions of the Properties on which the stormwater drainage easement then is located or the portions of the Properties served thereby, or if it does have such material adverse effect it is consented to in writing by the Owners of all portion of the Properties on which such stormwater drainage easement is located and which are served thereby; and (iii) no such grant, relocation, abandonment or release shall materially adversely affect the Stormwater Control Measures for the Properties. The provisions of this paragraph also are applicable to any access easement over any portion of the Properties that provides pedestrian or vehicular access from a public street right of way or other public easement or facility to and from any Stormwater Control Measures.

With respect to its obligations under this Section, the Association shall pay, post, provide for or comply with all bonds and other financial obligations required by the Code or any applicable agreements, including Stormwater Agreements, executed by the Association (or, during the Declarant Control Period, by the Declarant on behalf of the Association for later assignment to the Association), and the Association (and, during the Declarant Control Period, the Declarant on behalf of the Association) may enter into agreements, including Stormwater Agreements, with the Town, another association that exists for purposes similar to those of the Association, or any other person or entity with respect to inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating and managing any part or all of the stormwater on, to, or from the Properties and/or any or all of the Stormwater Control Measures for the Properties, whether such Stormwater Control Measures are located within or outside of the Properties. Such agreements,

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including Stormwater Agreements, shall be binding on all Owners (or, with respect to Limited Common Area, all Owners to whose portion of the Properties such Limited Common Area is allocated), and may require payments from the Association or the Owners whose Lots are served by the applicable Stormwater Control Measures for the services provided by the Town, such other association, or such other person or entity in inspecting, monitoring, measuring, collecting, controlling, transporting, handling, storing, discharging, operating or managing any part or all of such stormwater and/or Stormwater Control Measures, and such agreements, including Stormwater Agreements, may include all other terms and obligations required by the Code. In connection with the foregoing purposes expressed in this paragraph, the Association (and, during the Declarant Control Period, the Declarant on behalf of the Association) may grant rights over, in, under, upon and through any and all stormwater drainage easements in the Properties, and may grant rights over, in, under, upon and through all easements in the Properties that provide pedestrian and/or vehicular access from a publicly dedicated street right of way to and from stormwater drainage easements and/or Stormwater Control Measures, provided, however, during the Declarant Control Period, no such agreement shall be valid unless the same shall have been consented to in writing by the Declarant.

In recognition of the fact that different Stormwater Control Measures may be necessary or desirable for different portions of the Properties or phases of the Subdivision (for example, because of the topography of the Properties it may be desirable for a portion of the Properties to have Stormwater Control Measures separate from and/or in addition to, other Stormwater Control Measures in or serving the Properties and it may be desirable for other portions of the Properties to utilize Stormwater Control Measures located outside of the Properties), and in further recognition of the desire of the Declarant for the provisions of the Declaration to be as flexible as reasonably necessary in order to maximize the benefit to the Properties of having or using one or more Stormwater Control Measures in accordance with sound engineering practices and approvals by the Town, in fulfilling its obligations under the Declaration the Association (or, during the Declarant Control Period, the Declarant on behalf of the Association or for later assignment to the Association) may enter into different agreements, including Stormwater Agreements, for different portions of the Properties, subject to all of the other terms of the Declaration. It further is recognized and contemplated by the Declaration that if such multiple Stormwater Control Measures and/or agreements, including Stormwater Agreements, are determined to be necessary or desirable, that the costs of maintaining such Stormwater Control Measures and/or funding such agreements, including Stormwater Agreements, may be different for different portions of the Properties, some Stormwater Control Measures may be classified as Limited Common Area, and annual assessments and/or stormwater assessments (as defined herein) may be different for Lots in different portions of the Properties, and such differences may be classified as Limited Common Expenses under the Declaration.

Declarant hereby informs all Owners and other persons or entities who may from time to time deal with or come in contact with the Properties, that as stormwater drains from the Properties or other properties into any of the Stormwater Control Measures for the Properties, it is possible that substances or materials that may be classified or regulated as "hazardous substances" or "toxic substances" or other regulated substances or materials relating to the environment, may flow through and/or accumulate in such Stormwater Control Measures. Accordingly, each Owner and other person and entity assumes the risk that such flowing through and/or accumulation may occur. In addition, each Owner further acknowledges that if it becomes necessary (as determined by any applicable governmental entity or by the Board) for such substances to be removed from the Stormwater Control

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Measures or otherwise handled in accordance with applicable legal requirements, and for such Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs Stormwater Control Measures to be cleaned-up following such removal or other handling, that the costs associated with such removal, handling and/or clean-up are Common Expenses, and that an additional stormwater assessment may be required to pay for such removal and/or resultant clean-up of the Stormwater Control Measures.

Declarant, at any time and from time to time, may assign to the Association, and the Association shall accept from Declarant the assignment of, all obligations of the Declarant under all agreements, including Stormwater Agreements, entered into by the Declarant with respect to Stormwater Control Measures for the Subdivision, provided the Declarant has performed, or made adequate provision for the performance of, all obligations, if any, specifically required of the Declarant under the agreement, including Stormwater Agreements, being assigned to the Association. The provisions of this Section shall be construed liberally in order to allow the Declarant and the Association, on behalf of the Subdivision and all Owners, the necessary flexibility to comply with all applicable legal requirements with respect to stormwater, including the execution of agreements, including Stormwater Agreements, with the Town or other persons or entities and the granting of easements to the Town or other persons or entities.

Section 4. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 1 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

ARTICLE VII RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.
- (d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

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Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV hereof shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town or another governmental entity or to a nonprofit entity organized for purposes similar to those of the Association;

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

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

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

ARTICLE VIII EASEMENTS

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations

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are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for the Declarant, the Association, and their successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s).

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over, under and through the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to, from and over the Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Common Area is subject to the easements granted herein.

Section 5. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any

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condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

Section 6. Easement for Stormwater Management. In order to implement effective and adequate soil erosion controls and/or stormwater management, a perpetual, non-exclusive easement to enter upon any portion of the Properties, before and after improvements have been constructed or placed thereon, to maintain or cause to be maintained soil erosion control and/or stormwater management, facilities and devices; provided, however, the Association shall not at any time be required to exercise this easement, and no exercise of the easement shall interfere unreasonably with any permanent improvements constructed on any such portion of the Properties (which improvements have been approved pursuant to Article IX hereof). If the need for stormwater management or soil erosion controls results from the construction of improvements on any portion of the Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of the Properties, the cost of any such work performed by the Association for the purpose of implementing effective and adequate stormwater management or soil erosion control shall be assessed against the Owner of such the portion of the Properties on which such work has been performed, and shall be a lien and be enforceable in the same manner as assessments. Provided, however, if the Association determines that appropriate corrective action is necessary on any portion of the Properties, prior to exercising this easement the Association shall give the Owner of such portion of the Properties written notice of the proposed corrective action and a reasonable opportunity to take the corrective action specified in such notice. If such Owner fails to complete the corrective action by the date specified in the notice, the Association then may exercise this easement.

Each Owner and any other person or entity who or which uses any portion of the Properties acknowledges and agrees that any or all lakes, ponds, creeks, streams, and wetlands in the Properties, together with any dams or other facilities or devices that contain, control, or direct such waters, may be designed as water management areas (including stormwater management) and not designed solely as aesthetic features, and that, with respect to those that are water management areas, due to fluctuations in ground water elevations within the immediate area and/or the receipt or discharge of stormwater, the water level of such lakes, ponds, and wetlands may rise and fall. Each Owner and other such person or entity further acknowledges and agrees that neither Declarant nor any Approved Builder has any control over such elevations. Therefore, each Owner and other such person or entity releases and discharges Declarant and each Approved Builder, and their respective successors, assigns, contractors, subcontractors, shareholders, directors, officers, partners, members, managers, agents and employees from and against any and all losses, claims, demands, damages, costs, and expenses of whatever nature or kind, including reasonable attorneys' fees and costs at all tribunal levels, related to or arising out of any claim relating to such fluctuations in water elevations.

No Owner or other person or entity who or which uses any portion of the Properties shall alter, modify, expand, or fill any lakes, ponds, or wetlands located in the Properties without the prior written approval of the local permitting authority, the Town, the Association, the Declarant, the U.S. Army Corps of Engineers (to the extent it has authority), and such other governmental entities as may have relevant jurisdiction over such matters.

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Section 7. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

ARTICLE IX ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs) wall or other structure (including play equipment) shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or re-landscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$125.00, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article IX to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Declarant shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, or December 31, 2010, whichever is earlier.

Any use of the term "Declarant" in this Article IX shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

Declarant shall have and shall exercise the rights set forth herein as to a Lot at all times prior to issuance of a certificate of occupancy or other certificate issued by the appropriate governmental entity for the Dwelling constructed on a Lot.

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**ARTICLE X
GENERAL PROVISIONS
GENERAL PROVISIONS**

Section 1. Enforcement. The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 2. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect any other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 3. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, §47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. This Declaration may also be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots and, during the Declarant Control Period by the Declarant; provided, however, that in no event may Declarant's rights hereunder be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of the Owners or other person or entity, may amend this Declaration during the Declarant Control Period, provided such

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amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or the Common Area as set forth in this Declaration.

Furthermore, should the Federal Housing Administration ("FHA"), the Secretary of Veterans Affairs ("VA"), the Federal National Mortgage Association ("FNMA"), or the Federal Home Loan Mortgage Corporation ("FHLMC"), or any other governmental entity which adopts or has adopted statutes, laws, ordinances, rules or regulations applicable to the Project, the Association or this Declaration subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Board, without consent of the Owners, may cause an amendment to this Declaration to be recorded to reflect such change.

Section 4. Non-Liability of Governmental Entities. The Town shall not be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 5. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by the Town.

Section 6. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a Common Expense paid from the annual assessments provided in Article V of this Declaration.

Section 7. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

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In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Association shall have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed a trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 8. Condemnation/Casualty. If all or any part of the Common Area and improvements thereon are taken by power of eminent domain or are damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Common Area in lieu of a destroyed club house.

Section 9. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 10. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF KILARNEY POINTE
HOMEOWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of Kilarney Pointe Homeowners Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

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At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least _____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

Section 11. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender shall include all.

Section 12. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 13. Conflicts. In the event of a conflict between this Declaration and the Article of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A), and the ordinances of the Town shall in all cases control over any construction inconsistent therewith. The provisions of the Act and the Nonprofit Corporation Act shall in all cases control any conflicting provisions of the Cary Code.

Section 14. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto and §47F-2-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

[Signature on following page]


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IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by
IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by
its duly authorized Manager, as of the date set forth in the notary acknowledgment below.

DECLARANT:

LAUREL ISLAND PARTNERS, LLC

By:

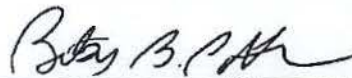

Charles F. Welsh, III, Manager

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned, a Notary Public for the County and State aforesaid, certify that Charles F. Welsh, III, personally appeared before me this day and acknowledged that he is a Manager of LAUREL ISLAND PARTNERS, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official stamp or seal, this the 3rd day of October, 2005.

[Notary Stamp or Seal]



Notary Public

My commission expires: 4-26-10



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EXHIBIT A

Lying and being in the Town of Cary, Cary Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property, containing 10.74472 acres, more or less, shown and described on the maps entitled "Subdivision & Easement Plat For Laurel Island Partners, LLC, Kilarney Pointe" recorded in **Book of Maps 2005, Pages 1884-1885**, Wake County Registry, **SAVING AND EXCEPTING THEREFROM** the rights-of-way of all public streets.

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BOOK:011617 PAGE:00961 - 00991

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



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

North Carolina – Wake County

The foregoing certificate ___ of _____

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

Laura M. Riddick, Register of Deeds

By: _____
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
31 _____ # of Pages

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WAKE COUNTY, NC 842
LAURA M RIDDICK
REGISTER OF DEEDS
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/03/2005 AT 16:09:46

BOOK:011617 PAGE:00992 - 01000

Drawn by & HOLD FOR: MOORE & ALPHIN, PLLC (bbp)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**RESTRICTIVE COVENANTS
FOR
KILARNEY POINTE SUBDIVISION**

LAUREL ISLAND PARTNERS, LLC, a North Carolina limited liability company (hereinafter "Declarant"), hereby declares that the real property described on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Subdivision") is and shall hereafter be held, transferred, sold and conveyed subject to the following restrictive covenants, which shall be appurtenant to and run with the land, by whomsoever owned, to wit:

1. **DEFINITIONS.** All terms defined in the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Kilarney Pointe, recorded in the office of the Register of Deeds of Wake County, North Carolina (as from time to time amended, said documents, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration"), shall have the same meanings when used herein.

2. **LAND USE AND BUILDING TYPE.** Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the Town of Cary, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Approved Builders, Owners, real estate brokers, and their respective agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant and Approved Builders and their respective agents and employees shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Subdivision and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

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No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not more than three (3) cars, and out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street.

3. DWELLING SIZE. The minimum heated square footage of a dwelling may not be less than 1,800 square feet for a single story dwelling or 1,000 square feet on the first floor of a two-story or two and one-half story dwelling.

4. BUILDING SETBACKS; HOUSE LOCATION. No dwelling shall be erected or maintained on any Lot outside of the building envelope required by the zoning ordinance of the Town of Cary (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face either street or the intersection of the two streets on which the Lot abuts.

5. FENCES. No fence or wall shall be erected on any Lot closer to the street which the house faces than the nearest rear corner of the house. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article IX of the Declaration. It is the intent of Declarant that all fences installed within the Subdivision must be scalloped or have some other ornamental detail (plain stockade fences will not be permitted) and must be screened from view by shrubs which will grow to a height of not less than 36" within two years after planting. Chain-link fences will not be permitted. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision.

6. TEMPORARY STRUCTURES. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7. PARKING; DRIVEWAYS AND PARKING PADS; ABANDONED VEHICLES. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface.

No mobile house trailer (whether on or off wheels), recreational vehicle, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any street or any Lot within the Subdivision. No boat, boat trailer, or any other trailer shall be parked on any street within the Subdivision. A boat, boat trailer, or any other trailer may be parked or kept on a Lot if it is parked or kept in the garage or approved out-building (and the door of the garage or out-building can close completely) or otherwise in such a manner that the boat and trailer are screened from the street and any Lot. Screening must include an

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approved fence and plantings, but, in any case, the screening must comply with the Zoning Ordinance and be approved pursuant to Article IX of the Declaration.

be approved pursuant to Article IX of the Declaration.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Vehicles without current registration and inspection stickers are considered abandoned or inoperative.

8. ANIMALS. No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other ordinary household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. The Board has the right, in its sole and absolute discretion, to determine whether or not a particular animal is a nuisance and to require removal. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's dwelling. The owner of a permitted animal shall be responsible for removing and cleaning up any excrement deposited by such animal on any Lot, street right of way, or the Common Area.

9. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted.

10. SIGNS. Except as otherwise required by the Town of Cary, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, not more than two (2) signs of not more than six (6) square feet advertising the property for sale or rent, and not more than two signs of not more than six (6) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

11. ANTENNAS; SATELLITE DISHES OR DISCS. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

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To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved pursuant to Article IX of the Declaration.

12. SWIMMING POOLS. No above-ground swimming pools are permitted in the Subdivision, except that small, inflatable wading pools shall be permitted in the back yard of the Lot.

13. MAILBOXES. No mailbox, other than community standard mailboxes specified by the Declarant, shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article IX of the Declaration.

14. MAINTENANCE OF LOT AND IMPROVEMENTS; CONSTRUCTION. As more fully provided in the Declaration, each Owner shall keep his Lot, including, but not limited to, plantings, landscaping and lawns, in a neat and attractive condition and shall keep the improvements thereon in a suitable state of repair. If an Owner fails to comply with this provision, the Declarant or the Association may remedy such non-compliance and the Owner of such Lot shall be responsible for all costs incurred by them in bringing the Lot into compliance with this provision. Any such costs shall be deemed a special assessment against the Lot.

In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within nine (9) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

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

15. GARBAGE; UNSIGHTLY STORAGE. All trash and rubbish shall be kept in garbage cans stored behind the house in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to the approved enclosure the night of the scheduled pickup. Trash containers used by the Declarant or, with the approval of the Declarant, by an Approved Builder during construction are exempt from this provision.

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Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable legal requirements shall be kept or stored or allowed to remain in or on the Properties at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Properties, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Properties, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Subdivision.

16. EASEMENTS. Easements for the installation, maintenance and repair of sanitary sewer and storm water drainage facilities are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the Owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

An easement is also reserved for the benefit of the Declarant, the Association, and the Town, and their respective successors and assigns, over, across and under those portions of Lot 34 shown and designated as "Sight Distance - Maintenance Easement" and those portions of Lot 40 shown and designated as AMaintenance & Sight Easement on the map referred to in Exhibit A for the purpose of ensuring that such areas remain free of any structure or vegetation which might interfere with lines of sight for vehicles on Kilmarey Ridge Loop. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant or the Association unless approved as provided in Article IX of the Declaration and by the Town.

The Declarant and the Association, and their successors and assigns, shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 16.

17. SUBDIVISION OF LOTS. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded map or plat, except by and with the written consent of the Declarant.

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18. UNINTENTIONAL VIOLATIONS. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article IX of the Declaration, may, but shall not be obligated to, waive any violation of the designated and approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Wake County Registry.

19. STREET LIGHTING. Declarant reserves the right to subject the Subdivision to a contract with Progress Energy for installation and operation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer or by the Association.

20. ENFORCEMENT; FINES. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. These covenants may be enforced by any Owner or by the Association pursuant to the Declaration and the Bylaws of the Association.

As more fully provided in the Declaration and Bylaws, the Board of Directors of the Association shall have the right and authority to levy fines or penalties for the violation of any provision of these Covenants and/or the rules and regulations hereafter promulgated by the Association. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

21. SEVERABILITY. Invalidity of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

22. TERM. These covenants shall run and bind the land and all owners thereof for a period of 25 years from the date they are recorded, after which time, they shall be automatically extended for successive periods of ten (10) years unless altered or amended as set forth below. These covenants may be amended during the first five-year period by the Declarant, without the approval or joinder of any other person. These covenants may also be amended during the first twenty-five year period by an instrument signed by the then-owners of not less than eighty percent (80%) of the Lots, and thereafter an instrument signed by then-owners of not less than seventy-five percent (75%) of the Lots.

23. KILARNEY POINTE HOMEOWNERS ASSOCIATION, INC. The Owners of Lots within the Subdivision are Members of Kilarney Pointe Homeowners Association, Inc., and are subject to and bound by the Declaration, which provides additional restrictions on such Lots.

24. DECLARANT. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the Town of Cary. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

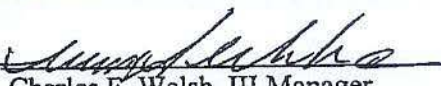
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IN WITNESS WHEREOF, Declarant has caused this instrument to be executed in its name by its duly authorized Manager, as of the date set forth in the notary acknowledgment below.

DECLARANT:

LAUREL ISLAND PARTNERS, LLC

By:


Charles F. Welsh, III Manager

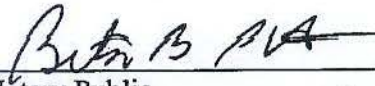
STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned, a Notary Public for the County and State aforesaid, certify that Charles F. Welsh personally appeared before me this day and acknowledged that he is a Manager of **Laurel Island Partners, LLC**, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 3rd day of October, 2005.

[Stamp or Seal]




Notary Public
My commission expires: 4-26-10

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EXHIBIT A

~~KILARNEY POINTE SUBDIVISION~~

KILARNEY POINTE SUBDIVISION

Lying and being in the Town of Cary, Cary Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property, containing 10.74472 acres, more or less, shown and described on the maps entitled "Subdivision & Easement Plat For Laurel Island Partners, LLC, Kilarney Pointe" recorded in **Book of Maps 2005, Pages 1884-1885**, Wake County Registry, SAVING AND EXCEPTING THEREFROM the the Common Property and rights-of-way of all public streets shown thereon.

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



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

North Carolina - Wake County

The foregoing certificate ___ of _____

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

Laura M. Riddick, Register of Deeds

By: _____
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages
9