

BK010955PG02600

WAKE COUNTY, NC 549

LAURA M RIDDICK

REGISTER OF DEEDS

PRESENTED & RECORDED ON

08/03/2004 AT 16:08:00

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS FOR

AMBER HOMEOWNERS ASSOCIATION, INC.,

AMBER RIDGE SUBDIVISION

BOOK:010955 PAGE:02600 - 02619

THIS DECLARATION, made on the date hereinafter set forth by Eastwind Development, LLC, 4098 Barrett Drive, Raleigh, North Carolina 27609, hereinafter referred to as "Declarant."

WITNESSETH THAT:

Whereas, Declarant is the owner of certain Properties in County of Wake, State of North Carolina, which Properties are more particularly described on Exhibit A attached hereto and incorporated herein by this reference; *Phase - 7 Bm 2004 page 1405*

WHEREAS, Declarant will convey Lots from the said Properties subject to certain protective covenants, conditions, restrictions and easements as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Properties described hereinafter shall be held, sold, occupied, used, transferred and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Assessment" shall mean and refer to the share of the Common Expenses from time to time assessed against a Lot and its owner by the Association in the manner herein provided.

Section 2. "Association" shall mean and refer to the Amber Homeowners Association, Inc., its successors and assigns.

Section 3. "Board of Directors" shall mean and refer to the Board of directors of the Association, which is the governing body of the Association.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 5. "Common Area" and "Permanent Open Space" shall mean that certain portion of the Properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including the private roads or streets, if any, parking areas and any open space and recreational areas and facilities. Common Area shall also refer to storm drainage pipes located in drainage easements and to both sanitary sewer lines and water lines located outside of (i) any Lot, (ii) any public street right-of-way.

*map recorded in
Bm 2004 page 1405*

*Eastwind Dev.,
4098 Barrett Dr.
Raleigh, NC 27609*

Section 6. "Common Expenses" shall mean and refer to all sums lawfully assessed against a Lot by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas including maintenance of landscape islands and medians located in public street rights-of-way adjoining the Properties; expenses agreed upon as Common Expenses by the Association; and expenses declared Common Expenses by the provisions of this Declaration or the Bylaws.

Section 7. "Declarant" shall mean and refer to Eastwind Development L.L.C., its successors and assigns if such successors and assigns.

Section 8. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and road rights-of-way.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Properties" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) subject to the ordinances of Wake County, the right of the association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facilities which may constitute a portion of the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any of the recreational facilities which may constitute a portion of the Common Area by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof, to deed in trust the Common Area;

(d) 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 to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members, has been recorded; and,

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area, to the members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot and, to his guests, invitees and licensees.

Section 3. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Area, shall be subject to such easements for public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, landscape easements and buffers, cable communication transmission, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by its predecessor in title, prior to the subjecting of the Properties to this Declaration; provided, however, as to any easements which may be granted that run across or affect any of the Lots, such easements shall not be granted by Declarant so as to run under or disturb in any way any of the dwelling structures which may be constructed upon such Lots; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements, if any, as may be shown upon any recorded subdivision map of the Properties are hereby reserved by the Declarant.

An easement is hereby established for the benefit of the applicable governmental authorities and any agency thereof over all Common Area and Lots hereby or hereafter established for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewer and drainage facilities, the fighting of fires, collection of garbage, police protection and postal service.

Section 4. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and all owners of any Lot to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot, and installation of driveways, sidewalks, underground drainage and utility conduits and hookups to any dwelling structure situated on a Lot. In using and taking the benefits of said easement, Declarant or its designate and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designate or an owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant, its designate or owner, as the case may be, shall indemnify the Association for the actual expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot.

Section 5. Easement for Minor Encroachments. All Lots and the Common Area shall be subject to a perpetual easement for the encroachment of initial improvements constructed on Lots by the Declarant or Owner to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls. If any encroachment shall occur subsequent to subjecting the Properties to the Declaration as a result of settling or shifting of any improvement or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and there shall be a valid easement for such encroachment and for the perpetual maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by Declarant or an Owner for a period not to exceed eighteen (18) months following conveyance of a Lot to said Owner for the purpose of correcting any problems associated with initial improvements on a Lot that may arise regarding grading and drainage. The Declarant or Owner, as applicable, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 6. Emergencies and Entrance. Every Lot thereon shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Area.

Section 7. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to its property that is and may further be designated Common Area to the Association, at or prior to such time as it conveys the first Lot to some person other than Declarant within the specific area to be developed, as contained in a recorded subdivision plat or map, subject to easements of record for utilities, television antenna, drainage, access, greenway or other services. Similarly, Declarant will convey to the Association real estate that will be designated as common Area which becomes part of the Properties as those portions are annexed in the future, subject to the aforementioned easements. The Association shall accept the conveyance of all such Common Area pursuant to this Section 7.

Section 8. Utility Charges for Water, Sewer, Electricity and Street Lights. As consideration for the conveyance of the Common Area and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expense arising by virtue of the use of water, sewer and electricity provided to and used in connection with any of the Common Area and by virtue of the use and operation of the street lights installed and erected within the Common Area from and after the date of acceptance. Such cost of fees, charges and expense paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of Article IV below.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to Assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. No fractional vote may be cast with respect to any lot.

Class B: The Class B Member shall be the Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VIII, Section 5(a) below.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, 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: (1) annual Assessments or charges, and (2) special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided. The annual and special Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of rights-of-way adjoining the Properties and the Common Area, including any private roads or streets, for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, payment of assessments for public and private capital improvements made to or for the benefit of the Common Area, payment of local ad valorem taxes, if any, on the Common Area, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1, 1999, the maximum annual Assessment shall be \$120.00.

(a) From and after January 1, 1999, the maximum annual Assessment may be increased each year not more than ten percent (10%) above the maximum Assessment for the previous year without a vote of the membership.

(b) The Board of Directors may fix the annual Assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual Assessments authorized above, the Association may levy, in an assessment year, a special Assessment 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, provided, however, any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Fines levied by the Board of Directors shall be treated as a Special Assessment otherwise due to the Association, and as such, will be a lien against the Owner's Lot if not paid. Such fines shall be paid no later than thirty (30) days after notice of the imposition or assessment of the fines.

Section 5. Assessment for Road Culvert Maintenance. All Owners are responsible for their pro-rata share of the costs of maintaining all road culvert and any constructed approach and exit channels in a condition allowing for its required flood carrying capacity. This special assessment shall be levied against the owners when necessary to meet this obligation. This assessment shall not be subject to any restrictions or voting requirements applicable to other special assessments.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast ten percent (10%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special Assessments shall be fixed at a uniform rate for all Lots, and annual Assessments shall be due and payable and collected on a monthly basis or as deemed appropriate by the Board of Directors; provided, however, until such time as the residence on a Lot is issued a certificate of occupancy, the annual and special Assessments for such Lot shall not apply.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual Assessment shall commence, and shall be due and payable, as to any Lot on the first day of the month next following the day in which the residence constructed upon said Lot is issued a certificate of occupancy and on the first day of each calendar year thereafter. Such amount due and

payable on the first day of each such calendar year shall be as set forth and established pursuant to Section 3 of this Article. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due date shall be as previously set forth herein, unless otherwise established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments. Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date may bear interest from the due date at the rate of ten percent (10.0%) per annum or the highest rate allowed by law and shall be subject to a late charge of \$25.00. The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent Assessment, late charges and reasonable attorney's fees of any such action, or foreclose the lien against the Lot. For purposes of this section, the amount of delinquent Assessment and late charge shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby. No owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust ("mortgage"). Sale or transfer of any Lot shall not affect the Assessment lien; however, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereon shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 11. Fines. The Board may impose fines against any Lot, provided that the Board shall not impose any fine without first notifying the Owner of the offending Residential Unit or Lot in writing of the specific violation, which written notice shall also provide for a specific period of time for said offending Owner to cure the indicated violation without incurring a fine. Such fines shall be a lien against the Owner's Residential unit or Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner(s) shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner. Fines shall be as follows:

- (a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).
- (b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(c) Third and subsequent non-compliance or violation or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

ARTICLE V
INSURANCE

Section 1. Ownership of Policies. All insurance policies upon the common Area which shall be purchased by the Association shall be for the benefit of all the Association and the Owners and their mortgagees as their interest may appear.

Section 2. Coverage. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group and as a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary. Such policies shall contain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. The Association may require that all persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least one-half the annual Assessment plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to all owners as an Assessment according to the provisions of Article IV, above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association, as insurance trustee, shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) the proceeds shall be paid first to defray the costs of reconstruction and repair of casualty or liability so covered; and,

(b) any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expense or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VI
ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. A. Until such time as Declarant no longer owns any real property within the Properties, the Architectural Control Committee shall consist of one (1) or more persons designated by the Declarant.

B. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), whichever is earlier, the rights, powers, duties and obligations of the Architectural Control Committee shall be assigned to the Association. Upon said assignment to the Association, (i) the Board shall designate the number of and appoint the members of the Architectural Control Committee on an annual basis, which number shall be at least three individuals; (ii) in the event of the death, resignation, or removal by the Board (with or without cause) of any member of the Architectural Control Committee appointed by the Board, the Board shall have the full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member; and (iii) members of the Architectural Control Committee appointed by the Board may be removed and replaced by the Board at any time with or without cause, without prior notice.

C. Prior Approval. No building, sign, fence, outside lighting, hedge, wall, walk, antenna, mailbox, clothes line or other structure or planting shall be constructed, erected or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation shall have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within thirty (30) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved. There is specifically reserved unto the Architectural Control Committee, the right of entry and inspection upon any Lot for the purpose of determination by the Architectural Control Committee whether there exists any construction of any improvement which violates the terms of any covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Architectural Control Committee and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the property of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expense and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Control Committee or any officer, employee, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of

mistake in Judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant, or Architectural Control Committee to recover any such damages.

Section 2. Maintenance. Common Areas and improvements thereon and landscape islands within public street rights-of-way adjoining the Properties and landscape easements as shown on the recorded plats of the properties shall be maintained by the Association. Such areas shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants must be removed by the Association. Neither the City nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way and the Association shall hold harmless the public and indemnify the City and State from such liability.

Any Owner who fences or encloses any portion of his Lot (which fence or enclosure shall require the prior approval of the Association) may plant trees, shrubs, flowers and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties as to the Common Area. No such maintenance by an Owner shall reduce the Assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. No Owner shall plant any vegetation on the common Area except with the prior written approval of the Association.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner or his family, tenants, contract Purchasers, guests, or invitees or of any contractor, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the Assessment to which such Lot is subject.

The streets within Amber shall be dedicated for public use on each recorded map. Declarant shall remain responsible for any maintenance or repair necessary for any street until maintenance is formally accepted by the North Carolina Department of Transportation or other appropriate government entity.

Section 3. Dwelling Size and Driveways. Except with prior written approval of the Architectural Committee, no residential structure on any Lot within the property described in Exhibit A attached hereto which has an enclosed heated area of less than 1000 square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any Lot. If additional lands within the property described in Exhibit A attached hereto are annexed pursuant to the provisions of Article VIII of this Declaration, the minimum enclosed heated area applicable to residential structures on Lots within said annexed additional lands shall be as set forth in the recorded Declaration of Annexation which annexes said additional lands; if the recorded Declaration of Annexation shall not specify the minimum heated area applicable to residential structures on Lots within said annexed land, then the minimum heated area for said Lots shall be 1000 square feet as above provided. All driveways shall be paved (concrete or asphalt) from street

to each residence including parking area. The Declarant reserves the right to waive in writing any minor violation of this section, and for purposes hereof, any violation which does not exceed 10% shall be considered a minor violation.

Section 4. Building Set Back Lines. The Property is a Cluster Unit Development established pursuant to the provisions of the Code of the County of Wake and the minimum building setbacks shall be as required and established by the Code of the County of Wake from time to time.

Section 5. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat as well as 10 feet along the rear of each Lot and 5 feet along each side of the Lot, unless shown in excess of such distances on the recorded plat for such Lot, in which case the distance shown on the plat shall control. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements. Such easement area of each Lot, and all improvements in it, shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible and except for storm drainage pipes located in drainage easements serving more than one lot, for which the Association is responsible. No such easement shall exist along an interior Lot line on any Lot on which a residence is constructed within an area which would otherwise be an easement, if the placement of the residence is permitted by these covenants. Declarant reserves the right to waive, in writing, any one or all rear and side line easement requirements.

ARTICLE VII USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area, including, but not limited to levying fines or penalties.

Section 2. Use of Lots. No Lot shall be used except for single-family residential purposes, except that nothing herein shall preclude the use of any Lot for providing a recreational area for the individual Lot owners as a group, or for use by Declarant or Declarant's assigns as a temporary sales office. No building 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 stories in height and a private garage for not more than three cars.

(a) Outside clothes lines shall not be permitted.

(b) No Commercial signs, with the exception of a "For Sale" or "For Rent" sign no more than three feet in width and three feet in height, shall be erected or maintained on any Lot. such signs allowed hereunder, being temporary in nature, shall not be subject to any set back requirement. Declarant and/or Declarant's assigns shall be authorized to erect and maintain

temporary signs for the sales and construction offices and for marketing of the Village at Amber, and to erect and maintain decorative fencing at any sales or construction office.

(c) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used.

(d) No exposed above-ground tanks except for approved recreational swimming pools will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must exceed in height, by at least one foot, any such tank as may be placed therein.

(e) Nothing shall be kept and no activity shall be carried on in any dwelling structure on a Lot or on the Common Area which will increase the rate of insurance for the common Area. no Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his dwelling structure or on the Common Area which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area. All garbage receptacles, containers and enclosures shall be located at the rear of the dwelling structure on a Lot, out of view from any street abutting the Lot.

(f) Except with the prior written consent of the architectural Control Committee, no trailer, tent, shack, barn, or other outbuildings, except a private garage for not more than two cars, shall be erected or placed on any Lot covered by these covenants. Except with the prior consent of the Architectural Committee, no detached garage shall be used for human habitation, temporarily or permanently.

(g) No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the Architectural Control Committee. No chain link fence shall be used without prior written approval of the Architectural Control Committee.

(h) No accessory building of any nature whatsoever (including but not limited to a detached garage, storage buildings, dog houses, greenhouses) shall be placed on any Lot without prior written approval of the Architectural Control Committee, with said Committee to have the sole discretion relating to the location and type of accessory building which shall be permitted on any Lot.

(i) Each Owner shall keep his building site free of tall grass (Grasses eight (8) inches in height and taller are prohibited), undergrowth, dead trees, trash and rubbish and property maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his Lot as above provided, in the opinion of the Architectural Control Committee, the Committee may have the required work done and the costs thus incurred shall be paid by the Owner.

(j) No "satellite dish" exceeding twenty four inches (24") in diameter shall be erected or allowed to remain on any Lot. Each Owner must receive location approval by the Architectural Control Committee prior to installation.

(k) Decorative lawn ornaments shall be approved in writing by the Architectural Control Committee prior to installation on any Lot.

Section 3. Parking Rights. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of motor vehicles owned by such Owner, and Owners of Lots shall not be permitted to park their automobiles on the streets in the Properties. Owners of Lots shall not be permitted to park boats, trailers, campers and all other similar property on the streets in the development, and such property shall be parked in a garage or area screened from the street and adjoining Lot view and approved by the Architectural Control Committee. In no case shall recreational vehicle parking be allowed in front of or beside a house. Any recreational vehicle parked in the rear of a house shall be adequately screened from view of the street and adjoining Lots. No inoperative or abandoned vehicle, of any type, shall be parked or stored on any Lot or on the streets in the Properties.

Section 4. Negative Activities. The pursuit of activities which might tend to cause disorderly, unsightly or unkempt conditions shall not be permitted or undertaken on any part of any Lot or Common Area.

Section 5. Required Land Area. No single family residential Lot may be subdivided or recombined by sale or otherwise so as to reduce the total area thereof below that as shown on any recorded subdivision map of the Properties, unless approved by the Architectural Control Committee and unless the resulting lot(s) is(are) in compliance with Wake County.

Section 6. Animals and Pets. No stable, dog run, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot without the express written permission of the Association first had and obtained. However, a reasonable number of household pets, as determined by the Board of Directors of the Association, shall be permitted, provided they are not raised for commercial purposes.

Section 7. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. each owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each owner shall keep and maintain his Lot in a neat, orderly and well kept manner. No industry or trade of any kind shall be permitted on any Lot or any Common Area, except that Declarant, and/or its assigns, may use any unsold Lots of the Property for sales or display purposes.

Section 8. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VIII
GENERAL PROVISIONS

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

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3.

A. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years.

B. Amendment.

1. This Declaration may be amended during the first twenty (20) year period by an instrument approved by not less than seventy-five percent (75%) of each Class of Members, and , thereafter by an instrument approved by not less than sixty-six and two-thirds percent (66 2/3%) of the Lot Owners. Any amendment must be recorded.

2. Amendment To Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Board, and thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, without the consent of any Owner, in order to qualify the Association or the Properties, or any portion thereon, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

3. Declarant, so long as Class B membership exists, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage corporation, the City of Raleigh or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or

agency, shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

4. As long as there is a Class B membership, and if Declarant determines to qualify the Property for federal Housing Administration or Veterans Administration approval, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property, dedication of Common Area and amendment of this Declaration.

Section 4. Amendment Form. If any amendment to these covenants, conditions and restrictions is so permitted or approved, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been validly approved by the owners of the required number of Lots, if Member approval is required. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined).

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
AMBER

By authority of its Board of Directors, Amber Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly approved by the Amber Homeowners Association, Inc. and is, therefore, a valid amendment to the existing Covenants, Conditions and Restrictions of the Amber Homeowners Association, Inc.

This the _____ day of _____

AMBER HOMEOWNERS ASSOCIATION, INC.

President

Attest (SEAL)

Secretary

(c) Immediately, and within the 30 day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of their recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by the Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 5. Annexation of Additional Properties; Density Transfer.

(a) Annexation by Declarant. Additional land may be annexed by the Declarant without the consent of Members at any time. Declarant may annex said additional land to the Properties by recording with the Wake County Registry a Declaration of Annexation, duly executed by Declarant, which declaration shall describe the lands annexed, shall incorporate the provisions of this Declaration, and may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. As provided in Article VI, Section 3 of this Declaration, such Declaration of Annexation may specify the applicable minimum square footage of enclosed heated area of residential structures on Lots within the annexed additional property, which minimum square footage of enclosed heated area shall be as determined by Declarant. In addition, such Declaration of Annexation may provide for certain rights and obligations in connection with easements (including sign and landscape easements) which appear on the recorded plat(s) of said annexed lands.

(b) Reserved Declarant Rights. The Declarant reserves the following additional rights: (i) to add real estate to the Properties in accordance with Section 5 (a) above; (ii) to add Common Areas; (iii) to create Lots; (iv) to modify or change dwelling unit types; to reallocate dwelling units or Lots within the lands described in Section 5 (a) above.

Section 6. Leasing. No Lot, or the residential structure thereon, shall be leased for transient or hotel purposes, nor may any owner lease less than the entire residential structure on his Lot, nor shall any such lease be for a period of less than six months. Any lease must be in writing and provide that the terms of the lease and occupancy of the dwelling structure shall be subject to this Declaration and the bylaws and any failure by a lessee to comply with such shall be a default under the lease.

Section 7. Contract Rights of Association. As long as there is a Class B membership, any contract entered into by or on behalf of the Association shall contain a provision giving the Association or the other party thereto the right to terminate such contract upon the giving of not more than thirty (30) days written notice to the other party or parties.

Section 8. Underground Utilities and Street Lighting. Declarant reserves the right to subject the Properties to contract with Carolina Power and Light company for the installation of

underground electric cables and the installation of street lighting, either of which or both of which may require a continuous monthly charge to the owner of each Lot. Upon acceptance of a deed to a Lot, each Owner agrees to pay Carolina Power & Light Company the continuing monthly payment therefore as approved by the North Carolina Utilities Commission, or other appropriate government authorities. Declarant reserves the right to contract on behalf of each Lot with Carolina Power & Light Company, or its successors and assigns, for street lighting service.

Section 9. Lender's Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(a) any condemnation or casualty loss that affects either a material portion of the Properties or the Lot securing its mortgage;

(b) any sixty (60) day delinquency in the payment of Assessments owed by the owner of the Lot on which it holds the mortgage;

(c) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.


(d) any proposed action that requires the consent of a specified percentage of mortgage holders; or

(e) the Association's financial statement for the immediately preceding fiscal year.

Section 10. Conflicts. In the event of a conflict between the terms and provisions of this Declaration and the Bylaws or Articles of Incorporation of the Association, the terms and provisions of this Declaration shall control. In the event of a conflict between the terms and provision of the Bylaws and the Articles of Incorporation of the Association, the terms and provisions of the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned has set his hand and seal, as of the 3rd day of AUGUST, 1999. 2004

Eastwind Development, L.L.C., a North Carolina Limited Liability Company

 (SEAL)

By: **Richard H. Stockett**
Its: **Manager**

NORTH CAROLINA

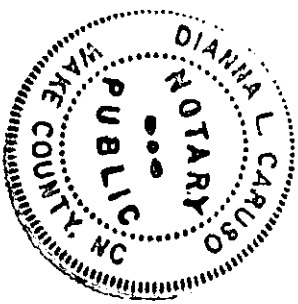
WAKE COUNTY

I, Dianna L. Caruso a Notary Public, in and for said County and State, do hereby certify that **Richard H. Stockett, Manager of Eastwind Development, LLC**, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the Company. Witness my hand and official stamp or seal, this 3 day of Aug, ~~1999~~. 2004

Dianna L. Caruso
Notary Public

My Commission expires:

3-4-2005

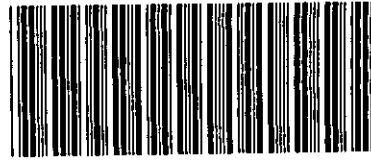


BK010955PG02618

Exhibit A
Phase-7
LEGAL DESCRIPTION

Return to
Eastwind Dev.
4098 Barrett Dr.
Raleigh, NC 27609

BEGINNING at a point located South 65°43'36" West, a distance of 55.06 Feet from the Intersection of Mailwood Drive and Ballston Place; thence South 02°16'31" East, a distance of 108.77 Feet; thence South 62°54'01" West, a distance of 137.87 Feet; thence South 33°51'29" West, a distance of 27.39 Feet; thence North 55°55'19" West, a distance of 110.11 Feet; thence North 59°37'34" West, a distance of 75.11 Feet; thence North 55°55'19" West, a distance of 83.07 Feet; thence North 34°04'41" East, a distance of 88.60 Feet; thence North 43°56'37" West, a distance of 38.63 Feet; thence North 29°09'39" West, a distance of 281.02 Feet; thence North 44°32'06" West, a distance of 79.82 Feet; thence North 53°28'08" West, a distance of 567.51 Feet; thence North 57°58'34" West, a distance of 50.54 Feet; thence North 66°20'44" West, a distance of 110.00 Feet; thence North 23°39'16" East, a distance of 239.78 Feet; thence North 28°04'03" East, a distance of 40.98 Feet; thence South 55°19'21" East, a distance of 112.14 Feet; thence South 75°26'48" East, a distance of 54.77 Feet; thence South 53°32'37" East, a distance of 524.45 Feet; thence South 50°24'27" East, a distance of 237.70 Feet; thence South 41°21'59" East, a distance of 34.83 Feet; thence South 27°29'22" East, a distance of 374.73 Feet; thence South 12°09'55" East, a distance of 78.07 Feet; thence South 48°22'33" East, a distance of 66.92 Feet to the POINT OF BEGINNING. Containing 9.181 Acres, more or less. As shown on a survey prepared by Cawthorne, Moss and Panciera, PC



BOOK:010955 PAGE:02600 - 02619

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 Diana L. Caruso

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: Sheila Chestnut
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
New Time Stamp
20 # of Pages